LAND AND PROPERTY JUDGEMENTS

2024(2)GLPJ451

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Sanjiv Khanna; Sanjay Kumar]

Civil Appeal No of 2024 **dated 24/09/2024**

Hmt Ltd

Versus

Rukmini and Others

SUPPRESSION OF FACTS

Requisitioning and Acquisition of Immovable Property Act, 1952 Sec. 7 - Suppression of Facts - Respondents/writ petitioners sought return of land or rental compensation after a portion of it was requisitioned by Defence Ministry in 1941 - Petitioners failed to disclose that part of the land had been sold by their predecessor, Putta Narasamma, and acquired for HMT Ltd.'s expansion - Supreme Court found deliberate suppression of facts by petitioners to claim benefits - Petition was filed decades after the alleged cause of action arose - Supreme Court ruled that delay and laches, coupled with suppression, rendered the claim unsustainable - Petition dismissed - Appeals Allowed

Law Point: Deliberate suppression of material facts, coupled with delay and laches, disqualifies a writ petition from being entertained under extraordinary jurisdiction

સ્થાવર મિલકતની માંગણી અને સંપાદન અધિનિયમ, ૧૯૫૨ સેક. ૭ - હકીકતોનું દમન - ૧૯૪૧ માં સંરક્ષણ મંત્રાલય દ્વારા તેના એક ભાગની માંગણી કરવામાં આવ્યા પછી પ્રતિવાદીઓ/રિટ અરજદારોએ જમીન અથવા ભાડા વળતરની પરત માંગ કરી હતી. - અરજીકર્તાઓ એ જાહેર કરવામાં નિષ્ફળ ગયા કે જમીનનો એક ભાગ તેમના પુરોગામી પુટ્ટા નરસમ્મા દ્વારા વેચવામાં આવ્યો હતો અને HMT લિમિટેડના વિસ્તરણ માટે હસ્તગત કરવામાં આવ્યો હતો. - સર્વોચ્ચ અદાલતે લાભનો દાવો કરવા માટે અરજદારો દ્વારા ઇરાદાપૂર્વક તથ્યોને દબાવી રાખ્યાનું જણાયું હતું - કાર્યવાહીના કથિત કારણ સામે આવ્યા બાદ દાયકાઓ પછી પિટિશન દાખલ કરવામાં આવી હતી - સુપ્રીમ કોર્ટે ચુકાદો

આપ્યો હતો કે વિલંબ અને બિનજરૂરી ઢીલ, દમન સાથે, દાવાને બિનટકાઉ બનાવે છે - અરજી બરતરફ - અપીલની મંજૂરી

કાયદાનો મુદ્દો: વિલંબ અને બિનજરૂરી ઢીલ સાથે, ભૌતિક હકીકતોનું ઇરાદાપૂર્વકનું દમન, અસાધારણ અધિકારક્ષેત્ર હેઠળ રિટ પિટિશનને અયોગ્ય ઠરાવે છે.

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 Sec. 7

JUDGEMENT

Sanjay Kumar, J.- [1] Leave granted.

[2] By judgment dated 05.09.2019, a Division Bench of the High Court of Karnataka, Bengaluru, allowed Writ Appeal No. 17584 of 2011 and reversed the order dated 24.05.2010 passed by a learned Judge dismissing Writ Petition No. 16553 of 2006. The Division Bench directed HMT Ltd., respondent No. 4 in the writ appeal, to vacate and handover the identified land, admeasuring Ac. 4-211/2 Guntas in Survey Nos. 21 and 22 of Jarakabande Kaval Village, Bangalore North Taluk, to the appellants/writ petitioners or, in the alternative, the Union of India and officials of its Defence department, along with HMT Ltd., respondent Nos. 1 to 4 in the writ appeal, were held jointly and severally liable to pay the current guidance value of the land, as fixed by the State Government for non-agricultural land in square feet. In addition thereto, they were also held liable to pay rental compensation, calculated from 02.03.1973 till the date of payment along with simple interest thereon @ 6% per annum from the date the writ petition was filed. The Division Bench ordered that in the event its directions were not complied with, respondent Nos. 1 to 4 in the appeal would be jointly and severally liable to pay rental compensation from 02.03.1973 with simple interest thereon @ 6% per annum till the land was redelivered to the appellants/writ petitioners. The Division Bench concluded by stating that this would be an equitable remedy given the facts and circumstances of the case. Thereafter, by order dated 13.09.2019, passed upon an application filed by the appellants/writ petitioners, the Division Bench corrected certain errors in its judgment dated 05.09.2019.

[3] These two orders are subjected to challenge by HMT Ltd., on the one hand, and by the Union of India and its officials in its Defence department, on the other. By interim order dated 10.01.2020 passed in the SLPs filed by HMT Ltd., this Court stayed the operation of the impugned judgment and order passed by the High Court. An order to the same effect was passed on 29.10.2020 in the first SLP filed by the Union of India and its officials in the Defence department.

[4] The prayer of the respondents herein, viz., the petitioners in Writ Petition No. 16553 of 2006, was to direct the respondents therein to pay rental compensation from 1973 till date and to continue to pay the same till the unacquired portion of their land

was delivered to them; to direct delivery of the unacquired portion of their land, being an extent of Ac. 2-11 Guntas in Survey No. 21 and Ac. 2-26 Guntas in Survey No. 22 of Jarakabande Kaval Village, Yelahanka Hobli, Bangalore North Taluk. By the order dated 24.05.2010, a learned Judge of the Karnataka High Court noted that the writ petition was filed forty-six years after the acquisition and held that the disputed questions of fact that were raised could not be gone into in a writ petition after that length of time. The learned Judge accordingly held that no interference was called for and dismissed the writ petition on the ground of delay and laches. Aggrieved by this order, the unsuccessful writ petitioners filed Writ Appeal No. 17584 of 2011, resulting in the impugned judgment and order in their favour which, in turn, led to filing of the present appeals.

[5] The case of the respondents/writ petitioners, as set out in W.P No. 16553 of 2006, was as follows: -

They were the heirs and successors-in-interest of Putta Narasamma, w/o of late Papaiah Naidu. Putta Narasamma was the owner and possessor of Ac. 4-01 Guntas in Survey No. 21 and Ac. 6-34 Guntas in Survey No. 22 of Jarakabande Kaval, Yelahanka Hobli, Bangalore North Taluk. This land was requisitioned by the Ministry of Defence under the provisions of the Requisition and Acquisition of Immovable Property Act, 1952 (for brevity, 'the Act of 1952'), and Putta Narasamma was paid crop compensation of 650 per year. In the year 1973, the Union of India ? acquired Ac. 5-38 Guntas out of the total extent of Ac. 10-35 Guntas. The acquisition was initiated in 1971 and the final Notification was issued on 02.03.1973 under Section 7(1) of the Act of 1952. The acquired land was Ac. 1-30 Guntas out of Ac. 4-01 Guntas in Survey No. 21 and Ac. 4-08 Guntas in Survey No. 22, leaving Ac. 2-26 Guntas therein. The balance land, being Ac. 2-11 Guntas in Survey No. 21 and Ac. 2-26 Guntas in Survey No. 22 of the village continued to be covered by the Act of 1952. Putta Narasamma died on 08.10.1992 and they, as heirs, were her successors-in-interest. They were entitled to receive rental compensation from the year 1973 and also to the possession of the land, if the Defence department did not require it. According to them, the land was lying fallow and was not being used for any purpose and, therefore, the respondents were under an obligation to redeliver it to them and also pay the rental compensation up to the date of handing over possession. They claimed to have made several requests to the respondents to hand over vacant possession of the land or, in the alternative, pay rental compensation according to present market rate of the produce that they would get on reasonable assessment but the respondents turned a deaf ear. Notice dated 01.08.2006 was issued to the respondents but no reply was received thereto. They accordingly prayed for the reliefs referred to hereinabove.

[6] It is relevant to note that this writ petition was initially filed only against the Union of India and its officials in the Defence department but other parties, including HMT Ltd., thereafter came to be impleaded therein. Perusal of the order dated

24.05.2010 passed by the learned Judge, dismissing this writ petition, manifests that the following points were taken note of: The land in question, admeasuring Ac. 10-35 Guntas in Survey Nos. 21 and 22 of Jarakabande Kaval Village was requisitioned way back in the year 1941. The proposal to acquire part of this land was initiated in 1971 and, ultimately, by Notification dated 02.03.1973, Ac. 1-30 Guntas in Survey No. 21 and Ac. 4-08 Guntas in Survey No. 22 came to be acquired under the Act of 1952. The learned Judge also noted that, as per the objections filed by HMT Ltd., the acquisition in its favour was made in the year 1958. This acquisition was in respect of Ac. 3-16 Guntas in Survey No. 21 and Ac. 1-06 Guntas in Survey No. 22, and HMT Ltd. took possession thereof and constructed a compound wall. The learned Judge, therefore, opined that the Union of India and HMT Ltd. were in possession of the respective portions of land acquired in their favour, and were in possession thereof since then, but the writ petitioners did not raise their little finger till the year 2006 when they filed the writ petition. It is in these circumstances that the learned Judge dismissed the writ petition on the ground of delay and laches.

[7] Significantly, the complete picture, in so far as the facts of the matter are concerned, was not presented before the High Court. It would be appropriate, at this stage, to note the full facts, as they have emerged now: An extent of Ac. 14-391/2 Guntas of land was originally purchased by late Papaiah Naidu. Under registered Sale Deed dated 11.07.1932, he had purchased an extent of Ac. 7-17 Guntas in Survey No. 21 and Ac. 7-221/2 Guntas in Survey No. 22 of Jarakabande Kaval Village. The Ministry of Defence requisitioned Ac. 10-35 Guntas out of the land belonging to Papaiah Naidu on 30.01.1941. The Ministry of Defence is then stated to have released Ac. 4-22 Guntas out of the requisitioned area of Ac. 10-35 Guntas in favour of the landowner in 1953. No document has been produced in proof of such release but this fact stood admitted by Putta Narasamma herself. By registered Sale Deed bearing Document No. 5932/54-55 dated 12.03.1955, Putta Narasamma sold this extent of Ac. 4-22 Guntas in Survey Nos. 21 and 22 of Jarakabande Kaval Village to Mohd. Ghouse. In this Sale Deed, Putta Narasamma categorically stated that their lands in Survey Nos. 21 and 22 were acquired earlier by the Military but out of the same, Ac. 4-22 Guntas of land was released in their favour on 14.10.1953, under Reg. 56/53-54, and that the same was being sold to Mohd. Ghouse. It appears that Ac. 0-27 Guntas was then acquired by the Ministry of Defence on 24.02.1954. Thereafter, by Notification dated 30.06.1958, the Government of Mysore acquired the land sold by Putta Narasamma to Mohd. Ghouse, in exercise of powers under the Mysore Land Acquisition Act, 1894. This acquisition was for the expansion of HMT Ltd.'s existing infrastructure at Jalahalli. This Notification specifically referred to the fact that the acquired land was in the possession of Mohd Ghouse and was an extent of Ac. 3-16 Guntas in Survey No. 21 (part) and Ac. 1-06 Guntas in Survey No. 22 (part) of Jarakabande Kaval Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore District. Possession of this acquired land was stated to have been delivered to HMT Ltd. on 11.08.1961.

Then, on 02.03.1973, the Ministry of Defence acquired Ac. 5-38 Guntas, out of the land that was originally requisitioned in 1941 which still remained with them. This acquisition was in exercise of power under the Act of 1952. Thereafter, HMT Ltd. sold about Ac. 3-39 Guntas out of the Ac. 4-22 Guntas acquired for its benefit in favour of Dollars Construction and Engineering Pvt. Ltd. under registered Sale Deed dated 16.09.2004. The balance land left in the possession of HMT Ltd. out of the acquired extent was, therefore. about Ac. 0-23 Guntas.

[8] Pertinent to note, by letter dated 14.08.1957, the Deputy Commissioner, Bangalore District, informed the Secretary to the Government of Mysore, Commerce and Industry Department, Bangalore, that HMT Ltd. had applied for acquisition of land in Survey Nos. 21 and 22 of Jarakabande Kaval Village for its expansion; that Survey Nos. 21 and 22 were under Military occupation but out of the same, Ac. 4-22 Guntas had been released and one Mohd. Ghouse had purchased the same from the owner of the land. This letter, therefore, confirmed the recital by Putta Narasamma in her Sale Deed executed in favour of Mohd. Ghouse. In effect, the land acquired for HMT Ltd. was the land sold to Mohd. Ghouse.

[9] It appears that Writ Appeal No. 17584 of 2011 was allowed in the first instance by order dated 28.06.2012. The Ministry of Defence sought review thereof but failed. Aggrieved thereby, it approached this Court and was given liberty to file another review petition before the High Court. Thereupon, the Ministry of Defence filed Review Petition No. 4 of 2014 before the High Court. By order dated 30.03.2016, the review petition was allowed and the High Court framed three issues for consideration. The first issue related to the actual area in the occupation of the respondents, keeping in view the land originally requisitioned for defence purposes. The second issue was as to lawful occupation by the respondents and the extent of land in their possession. The third issue was as to the exact extent of land which was required to be released by the Union of India to the writ petitioners. It may be noted that, at this stage, the Union of India was supporting the respondents/writ petitioners, being under the impression that HMT Ltd. was in possession of area in excess of what had been acquired for its benefit. It was only thereafter that the Union of India and its officials of the Defence department changed their stance, in the light of the facts that came to light vis- -vis the sale of land by Putta Narasamma in favour of Mohd. Ghouse; the acquisition thereof by the Government of Mysore for the benefit of HMT Ltd.; and the fact that the land so acquired for HMT Ltd.'s benefit was not out of the balance land in the possession of the Putta Narasamma.

[10] Most noteworthy is the glaring fact that the respondents/writ petitioners did not disclose any of these very relevant facts in their writ petition. No mention was made in the writ petition of the sale by Putta Narasamma in favour of Mohd. Ghouse or the fact that the land sold was the extent of land released by the Ministry of Defence out of the requisitioned original extent of Ac. 10-35 Guntas. It is also pertinent to note

that the respondents/writ petitioners themselves had filed Arbitration Case No. 120/2015 (new)/179/2008 (old) before the Arbitral Tribunal in Bangalore. This arbitration pertained to enhancement of compensation for the extent of Ac. 5-38 Guntas acquired by the Ministry of Defence. Smt. Rukmini, respondent No. 1/writ petitioner No. 1, appeared as PW1 before the Arbitral Tribunal and stated that the lands in Survey Nos. 21 and 22 of Jarakabande Kaval Village were requisitioned by the Defence of India in the year 1941 and were subsequently acquired to the extent of Ac. 5-38 Guntas. She further stated that the remaining land was sold by the claimants' grandmother to one Mohd. Ghouse. Therefore, it is clear that the respondents/writ petitioners were well aware of the sale by Putta Narasamma in favour of Mohd. Ghouse but deliberately chose to suppress not only the sale but also the crucial fact that the land so sold was that returned by the Ministry of Defence in 1953. Though the Division Bench was apprised of the sale in favour of Mohd. Ghouse, the fact that this sale pertained to the returned land was not within its knowledge, as is clear from the impugned judgment. The reason for the willful suppression of this most relevant fact is not far to gather. Once the Ministry of Defence returned an extent of Ac. 4-22 Guntas in the year 1953; acquired Ac. 0-27 Guntas in 1954; and then acquired the extent of Ac. 5-38 Guntas under the provisions of the Act of 1952, adding up to Ac. 11.07 Guntas, in excess of the total extent of the requisitioned land, the question of Ac. 4-22 Guntas still being with the Union of India and its Defence department did not arise.

[11] The respondents/writ petitioners cleverly withheld the aforestated details so as to maintain their claim against the Union of India and its Defence department, the original respondents in the writ petition. The litigation however took a different turn with the impleadment of HMT Ltd., but it appears that no steps were taken to amend the prayer in the writ petition which remained focused only on the original respondents therein. The case then proceeded on the erroneous assumption that the land acquired for HMT Ltd.'s benefit was from the balance area of land left with Putta Narasamma, after the requisitioning of Ac. 10-35 Guntas. In any event, once that mistaken assumption falls to the ground in the light of the fact that Putta Narasamma sold the returned extent of Ac. 4-22 Guntas to Mohd. Ghouse and it was that extent of land which was acquired by the Government of Mysore for the benefit of HMT Ltd.'s expansion in Jalahalli, the case of the respondents/writ petitioners also falls to the ground.

[12] In **K.D. Sharma vs. Steel Authority of India Limited and others**, 2008 12 SCC 481. this Court observed that the jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and the prerogative Writs mentioned therein are issued for doing substantial justice. This Court, therefore, held that it would be of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek appropriate relief. It was further held that if there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition should be dismissed at the threshold without

considering the merits of the claim. The aforestated principle would apply on all fours to the case on hand, given the clear lack of bonafides on the part of the respondents/writ petitioners, as is demonstrable from their deliberate suppression of relevant particulars, which were adverse to the claim that they sought to project in their writ petition. The filing of the writ petition was, therefore, nothing short of an abuse of process and did not warrant examination on merits. They were liable to be non-suited on this short ground.

[13] That apart, even as per the respondents/writ petitioners' own reckoning and as per their writ averments, their cause of action arose in the year 1973, when the Union of India and the Defence department allegedly stopped paying rental compensation. However, it was only in the year 2006 that they chose to file a writ petition. A writ petition should be preferred within reasonable time, the reasonableness of which would depend on the facts and circumstances of the case and the relief prayed for. Notably, delay by the authorities, at times, may constitute a cause of action in itself. This would be especially true in a case of a live and continuing cause of action or in the event of failure to perform a mandatory statutory duty. It is, however, equally true that there can be cases where delay and laches would be fatal and can result in the dismissal of the writ petition. For example, when there is an implied acceptance or the issue/dispute becomes stale/dead or there is a change/alteration in position or if third-party rights have been created. The above instances are illustrative and are, by no means, exhaustive. A plea of delay and laches would not be merely technical when facts are in dispute as, over time, evidence may dissipate and materials, including Government files, may become increasingly difficult to trace. Further, individuals with knowledge of the case may move on or become unavailable. The situation is exacerbated for Government servants, as they face transfers and superannuation. Further, such deserving dismissals on delay and laches serve a larger purpose, as time would not be spent unnecessarily on stale and nebulous disputes, enabling Courts/Tribunals to deal with and decide active pressing cases.

[14] Presently, as noted above, the respondents/writ petitioners repeatedly changed their stands and manoeuvred their position to suit their advantage. HMT Ltd. and the Union of India were initially handicapped and were unable to ascertain the facts and locate files, evidence and material. The Union of India was unable to produce the record relating to the release of Ac. 4-22 Guntas in the year 1953. At one point, the Union of India even supported the respondents/writ petitioners and changed its stance only after relevant facts came to light. HMT Ltd. was, however, able to cull out material to dent the oscillating and innovative stands of the respondents/ writ petitioners. The irrefutable fact remains that the respondents/writ petitioners slept over the matter for decades together which, in itself, indicates lack of merit. They should have, therefore, been prevented from raising issues that were stale and forgotten.

[15] It is in this context that this Court, in **Syed Maqbool Ali vs. State of Uttar Pradesh and another**, 2011 15 SCC 383. observed that an aggrieved person should approach the High Court diligently. Delay in filing a writ petition can result in prejudice, as parties' position and status may change. Courts do, in cases of such delay, insist that the party concerned should have a good and satisfactory explanation for it. It is only on being satisfied that other factors would not outweigh grant of relief, can the weighty objection of delay and laches be rejected. In other words, a Constitutional Court should be convinced that the case warrants exercise of jurisdiction under Article 226 of the Constitution. In **State of Maharashtra vs. Digambar**, 1995 4 SCC 683. a 3-Judge Bench of this Court had observed that the grant of relief by a Constitutional Court under Article 226 of the Constitution, without considering blameworthy conduct, such as delay and laches, would be unsustainable even if such relief was granted for the alleged deprivation of a legal right. Discretionary relief, in such circumstances, can only be obtained upon fully satisfying the Court that the delay was justified and explainable.

[16] Though the respondents/writ petitioners would now seek to place reliance on some internal correspondence of the Ministry of Defence, Union of India, and the survey maps drawn up pursuant to the orders of the High Court, we are of the opinion that these documents do not merit consideration. Such orders were passed in ignorance of the full facts of the case and the patent lack of bonafides on the part of the respondents/writ petitioners. Further, the correspondence now produced would necessarily have to be examined in the context of its genesis and foundation and cannot be relied upon, at this stage, without proper proof.

[17] In any event, the issues that arose in the context of what has emerged in this case clearly demonstrate that several disputed questions of fact would come up, which could not have been adjudicated by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. Thus, viewed in any light, W.P. No. 16553 of 2006 filed by the respondents/writ petitioners ought not to have been entertained. The judgment dated 05.09.2019 and the order dated 13.09.2019 passed by the Division Bench of the High Court of Karnataka, Bengaluru, allowing the said writ petition, therefore, cannot be sustained on grounds more than one.

[18] The appeals are accordingly allowed and, in consequence, Writ Petition No. 16553 of 2006 filed by the respondents/writ petitioners shall stand dismissed in its entirety.

Pending IAs, if any, shall stand closed.

Though eminently deserving, we refrain from mulcting the respondents/writ petitioners with punitive and exemplary costs

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2024(2)GLPJ459

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Pankaj Mithal; R Mahadevan]

Civil Appeal No 10804 of 2024 **dated 24/09/2024**

Shyamsundar Radheshyam Agrawal & Anr

Versus

Pushpabai Nilkanth Patil & Ors

STAMP DUTY LIABILITY

Transfer of Property Act, 1882 Sec. 53A - Registration Act, 1908 Sec. 17 - Maharashtra Stamp Act, 1958 Sec. 4, Art. 25, Sec. 34, Sec. 32A, Sec. 37, Sec. 33 - Stamp Duty Liability - Appeal challenging the High Court order affirming impounding of six sale agreements under Maharashtra Stamp Act due to improper stamping - Appellants argued that since sale deed was executed and stamp duty paid, prior agreements were exempt from duty - Court noted that the agreements included transfer of possession, requiring stamp duty as they constituted conveyances under Explanation I to Article 25 of Maharashtra Stamp Act - Held that the sale deed did not negate the duty on the agreements, which were principal - Appeal Dismissed

Law Point: Agreements for sale transferring possession are deemed conveyances under Maharashtra Stamp Act, requiring payment of stamp duty even if subsequent sale deed is executed.

મિલકતનું ટ્રાન્સફર એક્ટ, ૧૮૮૨ સેક. ૫૩એ - નોંધણી અધિનિયમ, ૧૯૦૮ સેક. ૧૭ - મહારાષ્ટ્ર સ્ટેમ્પ એક્ટ, ૧૯૫૮ સેક. ૪, આર્ટી. ૨૫, સેક. ૩૪, સેક. ૩૨એ, સેક. ૩૭, સેક. ૩૩ - સ્ટેમ્પ ડ્યુટી જવાબદારી - અયોગ્ય સ્ટેમ્પિંગને કારણે મહારાષ્ટ્ર સ્ટેમ્પ એક્ટ હેઠળ છ વેચાણ કરારો જપ્ત કરવાની ખાતરી આપતા હાઈકોર્ટના આદેશને પડકારતી અપીલ - અપીલકર્તાઓએ દલીલ કરી હતી કે વેચાણ ખત અમલમાં મુકાયો હોવાથી અને સ્ટેમ્પ ડ્યુટી ચૂકવવામાં આવી હોવાથી, અગાઉના કરારોને ડ્યુટીમાંથી મુક્તિ આપવામાં આવી હતી. - કોર્ટે નોંધ્યું હતું કે કરારોમાં કબજો ટ્રાન્સફરનો સમાવેશ થાય છે, જેમાં સ્ટેમ્પ ડ્યુટીની આવશ્યકતા છે કારણ કે તેઓ મહારાષ્ટ્ર સ્ટેમ્પ એક્ટની કલમ ૨૫ થી સ્પષ્ટીકરણ ૧ હેઠળ કન્વેયન્સ બનાવે છે. - એવું માનવામાં આવે છે કે વેચાણ ખત કરારો પરની ફરજને નકારતો નથી, જે મુખ્ય હતા - અપીલ બરતરફ

કાયદાનો મુદ્દો: મહારાષ્ટ્ર સ્ટેમ્પ એક્ટ હેઠળ કબજાના સ્થાનાંતરણના વેચાણ માટેના કરારોને કન્વેયન્સ ગણવામાં આવે છે, જેમાં અનુગામી વેચાણ ડીડ કરવામાં આવે તો પણ સ્ટેમ્પ ડ્યુટીની ચુકવણી જરૂરી છે.

Acts Referred:

Transfer of Property Act, 1882 Sec. 53A

Registration Act, 1908 Sec. 17

Maharashtra Stamp Act, 1958 Sec. 4, Art. 25, Sec. 34, Sec. 32A, Sec. 37, Sec. 33

JUDGEMENT

R.Mahadevan, J.- [1] Leave granted.

[2] This appeal is filed assailing the final order dated 03.03.2021 passed by the High Court of Judicature at Bombay (hereinafter shortly referred to as "the High Court") in Writ Petition No.4695 of 2017, by which, the High Court has dismissed the said writ petition, thereby affirming the order dated 26.10.2016 passed by the Court of 4th Joint Civil Judge (Senior Division), Thane, (hereinafter shortly referred to as "the trial Court") in allowing the application filed by the Defendant No.46 for impounding the six documents produced by the appellants herein.

[3] Originally, the appellants instituted a suit in Special Civil Suit No.200 of 2008 seeking declaration and injunction. Denying the plaint averments, the defendants filed their written statements. Thereafter, the Defendant No.46 took out an application under Sections 33, 34 & 37 of the Maharashtra Stamp Act, 1958 r/w Section 17 of the Registration Act, to impound the six original agreements for sale viz., Exh.145/3 dated 20.07.1994, Exh.145/9 dated 20.07.1994, Exh.145/15 dated 12.10.1994, Exh.145/19 dated 12.10.1994, Exh.145/23 dated 27.04.2006 and Exh.145/25 dated 19.09.2004 produced by the appellants, so as to get them registered, on the premise that the said documents include a clause that the physical possession of the properties mentioned therein, was transferred to the purchasers; however, they were not duly stamped; and hence, the documents require the payment of stamp duty of the conveyance. By order dated 26.10.2016, the trial Court allowed the said application, thereby impounding the documents and directing to send the same to the Collector of Stamp, Thane, for adjudication of stamp duty and penalty, if any, payable by the appellants. Aggrieved by the same, the appellants herein filed the aforesaid writ petition, which was dismissed by the High Court, by the order impugned in this appeal.

[4] Referring to Section 4 of the Maharashtra Stamp Act, 1958 (hereinafter shortly referred to as "the Act"), the learned counsel appearing on behalf of the appellants contended that the agreements to sell in relation to the same immovable properties ultimately resulted into a sale deed in favour of the appellants and the said sale deed was also duly registered, upon payment of the required stamp duty and therefore, the

prior agreements to sell are not required to be registered and stamped. Further, one of the agreements in respect of 2.550 sq. meters of land was executed in favour of Mira Bhayandar Municipal Corporation and hence, no separate stamp duty is required to be paid by the appellants. However, misinterpreting the said provision, the trial Court allowed the application filed for impounding the documents and directed to send the same to the Collector for adjudication of stamp duty and penalty, which was also erroneously affirmed by the High Court.

[5] Per contra, the learned counsel appearing on behalf of the respondents submitted that on a detailed analysis of the agreements to sell, wherein, there was a specific clause about the transfer of physical possession to the purchasers therein, the courts below have rightly allowed the application filed for impounding these documents and, therefore, the same need not be interfered with by this Court.

[6] We have heard the learned counsel appearing for the respective parties and perused the material on record, more particularly, the documents in question.

[7] The issue involved herein is, whether the appellants are liable to pay stamp duty and penalty on the agreements to sell executed prior to the sale deed executed in their favour, in respect of two properties viz., (i) S.No.165/4 admeasuring 2,550 sq. mtrs. and (ii) S.No.208/3 admeasuring 860 sq. mtrs. and S.No.208/4 admeasuring ,5650 sq. mtrs.

[8] In order to determine the stamp duty that is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be determined by ascertaining the intention of the parties from the contents and the language employed in the whole instrument and the description or the nomenclature given to the instrument by the parties is immaterial.

[9] According to the appellants, the sale deed having been executed in relation to the same immovable properties and stamp duty having been paid, the earlier agreements to sell which are part and parcel of the same transaction, got merged with the said sale deed and hence, separate stamp duty is not required to be paid on the earlier agreements to sell. To buttress the same, reliance was placed on Section 4 of the Act, which is quoted below for ready reference:

> "4. Several Instruments used in single transaction of development agreement, sale, mortgage or settlement:
>
> 1) Where, in the case of any development agreement, sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule -I for the conveyance, development agreement, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule.

2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.

3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purpose of this section, determine the principal instrument: Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed."

[10] The aforesaid provision, especially, Section 4(1), makes it clear that where several instruments are executed for completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. The proviso makes it clear that the duty chargeable on the instrument so determined shall be the highest duty which could be chargeable in respect of any of the said instruments forming part of the same transaction. Each of the other instruments is chargeable with a fixed duty. That apart, sub-section (2) also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument. We shall therefore look into the documents in question and determine whether they are required to be stamped and registered.

[11] The documents sought to be impounded at the instance of one of the defendants are:

(i) Exh.145/3 dated 20.07.1994 - agreement for sale-cum-development executed by Vinayak Kashinath Gharat and others in favour of Naresh N.Jain, Sunita P.Jain and Kalawati N. Jain, which is on the stamp paper of Rs.20/-;

(ii) Exh.145/9 dated 20.07.1994 - agreement for sale-cum- development executed by Vinayak Kashinath Gharat and others in favour of Naresh N. Jain, Sunita P. Jain and Kalawati N. Jain, which is on the stamp paper of Rs.20/-;

(iii) Exh.145/15 dated 12.10.1994 executed by Naresh N. Jain and others in favour of M/s.Chedda Enterprises, which is on the stamp paper of Rs.20/-;

(iv) Exh.145/19 dated 12.10.1994 - agreement for sale-cumdevelopment executed by Naresh N. Jain and others in favour of M/s.Chedda Enterprises, which is on the stamp paper of Rs.20/-;

(v) Exh.145/23 dated 27.04.2006 - agreement for sale executed by M/s.Sunshine Builders and Developers in favour of the appellants, which is on the stamp paper of Rs.100/-; and

(vi) Exh.145/25 dated 19.09.2004 - agreement for development -cumsale executed by M/s.Sunshine Builders and Developers in favour of the appellants, which is on the stamp paper of Rs.100/-.

[12] On a reading of all these six documents, it could be seen that the instruments /documents were not forming part of a single transaction between the same parties and they were different transactions between different vendors and purchasers. Further, for several documents to form part of a single transaction, there must be a transaction in furtherance of which several other documents are executed to complete that transaction and then it becomes imperative to charge stamp duty on the principal instrument/document. The language used in the provision is very clear, whereby the stamp duty is on the instrument and not on the transaction. It will be useful to refer to Explanation 1 to Article 25 of Schedule I of the Maharashtra Stamp Act, which would read as under:

> "Explanation I.-For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly: Provided that, the provisions of Section 32-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that Section: Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

[13] It will be apropos to mention here that the agreements were not only between different parties but also were executed during different periods, by which time the Explanation I to Article 25 of Schedule I underwent a change. The words "without executing the conveyance in respect thereof" was deleted with effect from 17.08.1994 by Maharashtra Act 38 of 1994. The above Explanation I makes it lucid that an agreement for sale is to be treated as a "conveyance" if either possession is handed over immediately or if it is agreed to be handed over within a particular time. A reading of the above Explanation I along with Section 4 makes it clear that the duty is levied only on the instrument and not on the transaction. This court, in **Veena Hasmukh Jain v. State of Maharashtra**, 1999 5 SCC 725: 1999 SCC Online SC 78 while dealing with the question as to whether the agreement to sell can be treated as document of conveyance, liable to stamp duty held as follows:

> **"4.** On examination of these terms, the High Court took the view that the agreement in question could be construed to be a conveyance falling under Section 2(g) of the Bombay Stamp Act inasmuch as the right, title and interest in the flat stands transferred in favour of the purchaser on payment of instalments as provided therein.

5. The High Court also examined the scope of Explanation I to Article 25 of Schedule I of the Bombay Stamp Act and held that the same was attracted to the case. Under the agreement, there is an obligation to hand over the possession even before execution of a conveyance and, therefore, it was a "conveyance" for the purpose of duty payable under the Bombay Stamp Act and there was no obligation in the agreement to enter into a conveyance at a later stage and clearly it was a case which attracted the said Explanation. Handing over of the possession on the very date of execution was not relevant for determining the nature of the document. On that basis, the High Court upheld the stand taken by the State in the matter of levy of duty. Other questions raised in the writ petition are not the subject-matter of these appeals and, therefore, we do not advert to those questions. On the conclusion reached by the High Court, the writ petition stood dismissed.

6. The learned counsel appearing for the appellants urged before us that the conclusion reached by the High Court either on the question of construction of the agreement amounting to a "conveyance" or on the applicability of Explanation I to Article 25 of Schedule I to the Bombay Stamp Act is incorrect. It was submitted that the agreement in question had been executed only in terms of Section 4 of the MOF Act and that under the scheme of the Act, a deed of conveyance had to be drawn in terms of Section 11 thereof. Therefore, it was submitted that the document executed in terms of Section 4 of the MOF Act cannot be construed to be a "conveyance". He also submitted that under the same Act, duty can be levied only on the "instrument" and not on any "transaction". Here, in the present case, by Explanation I to Article 25 of Schedule I, what has been done is to provide for levy of duty on a "transaction", namely, handing over possession and not on the "instrument" as such and hence the provision is ultra vires the Constitution.

7. Under Entry 44 of List III-Concurrent List of the Seventh Schedule to the Constitution, any State as well as the Central Government can levy stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty and in respect of such instruments mentioned in Entry 91 of List I-Union List of the Seventh Schedule to the Constitution. A duty is leviable under Section 3 of the Bombay Stamp Act which indicates the instruments executed in the State or those outside the State but brought into the State for the first time relating to any property situate or to any matter or thing done or to be done in the State shall be chargeable to stamp duty prescribed under the Bombay Stamp Act. Article 25 of Schedule I refers to conveyance and the amount of conveyance as sought to be explained by the Explanation. Explanation I to Article 25 of Schedule I to the Bombay Stamp Act reads as follows:

"Explanation I.-For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of Section 32-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that Section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

8. The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are that if there is an agreement to sell immovable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof, such an agreement to sell is deemed to be a "conveyance". In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance. Now, in the present case, the agreement entered into clearly provides for sale of an immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the scope of Explanation I. It is open to the legislature to levy duty on different kinds of agreements at different rates. If the legislature thought that it would be appropriate to collect duty at the stage of the agreement itself if it fulfils certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later (sic agreement) stage itself though right, title and interest may not have passed as such. Still, by reason of the fact that under the terms of the agreement, there is an intention of sale and possession of the property has also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that is exactly what has been done in the present case. Therefore, it cannot be said that levy of duty is not upon the

instrument but on the transaction. Therefore, we reject the contention raised on behalf of the appellants in that regard.

9. The learned counsel for the appellants urged that the character of an instrument cannot be determined by reason of a subsequent event to take place such as handing over of possession. But a close examination of the provisions of the Explanation will make it clear that in the case of an agreement to sell immovable property possession is transferred at any time without executing the conveyance in respect thereof and such an instrument is deemed to be a "conveyance". The object of the Explanation is clear that if an agreement is entered into and that agreement itself contemplates the delivery of possession of the property within the stipulated time, then such an agreement should be deemed to be a conveyance for the purpose of duty leviable under the Bombay Stamp Act.

10. It is clear that the object of the Stamp Act is to levy stamp duty on different kinds of instruments. The legislature, in the present case, has chosen to levy a rate of duty equivalent to conveyance in respect of an agreement though the transaction may not have been completed because of certain instruments arising out of such agreement being executed and possession thereof being taken prior to or simultaneous with the document or subsequently. But in the Explanation, it is not clear that if the document provides that possession has to be taken without execution of the conveyance, certainly it would attract the appropriate duty. If the agreement provides that possession will be handed over on the execution of a conveyance as contemplated under Section 11 of the MOF Act, then the Explanation shall not be attracted at all. In the present case, it is clear that in the terms of the agreement, there is no provision made at all for execution of the conveyance. On the other hand, what is submitted is that the provisions of the MOF Act could be applied to the agreement and, therefore, a conveyance could be executed subsequently when it is not clear as to when the conveyance is to be executed and the stipulated time within which the possession has to be handed over. If that is so, it is clear that the document would attract duty as if it is a conveyance as provided in the Explanation. Thus we find no error in the view taken by the High Court. It is not necessary to examine in these appeals as to whether the instrument in question itself conveys a title or not. Therefore, we uphold the decision of the High Court made in this regard. The appeals are dismissed."

[14] In the instant case, in the documents, though there was a clause for conveyance between the vendors and purchasers in relation to the respective properties, the value of the properties were above Rs.100/- and there was also a clause by which possession was admittedly handed over on the date of the agreement,

implying acquisition of possessory rights protected under Section 53A of the Transfer of Property Act, which requires payment of proper stamp duty and registration as mandated under Section 17 of the Registration Act. Further, as per Section 4(2) of the Maharashtra Stamp Act, the parties are at liberty to parties to determine as to which of the document shall be principal document. As noted above, the agreement for sale consists of a clause whereby the possession was handed over to the purchaser satisfying the requirement to treat the instrument as conveyance and what remained was only the formality of execution of the sale deed. Therefore, it can be safely concluded that the agreement for sale was the principal document on which stamp duty was to be paid as per Article 25. Even considering the contention of the appellant, that the sale agreements ultimately concluded in the sale deed on which stamp duty was paid, would not by ipso facto absolve the primary liability of paying the appropriate stamp duty at the time of execution of the sale agreement as it was the principal document. Therefore, we are of the opinion that Section 4 of the Act cannot come to the aid of the appellants. Therefore, all these six documents ought to have been necessarily stamped and registered.

[15] Taking note of the facts and circumstances of the case and legal position, the trial Court rightly observed that the subsequent sale deed cannot be construed as a principal transaction and the agreements to sell would be treated as the principal conveyance as per Explanation I of Article 25 of Schedule-I of the Act and impounded all these documents and directed to send the same to the Collector for adjudication of stamp duty and penalty. After, a detailed analysis, the High Court held that no case for interference was made out by the appellants, which, we affirm, to be correct.

[16] In addition, we wish to further record that the second proviso to Article 25 only states that if the stamp duty is already paid or recovered on the agreement to sale, then the same shall be deducted while computing the stamp duty payable when the sale deed is executed; the proviso does not contemplate a situation similar to this case, where the document ought to have been registered with payment of stamp duty on the agreement for sale initially and only the balance, on the deed of sale after deduction of the duty already paid ought to have been collected. Since, the state cannot recover by way of stamp duty in excess of what it is entitled to, the recovery shall be restricted only to the extent of difference in stamp duty and the entire penalty from the date of execution of the agreement for sale till the date of payment of stamp duty. Needless to say, that until the defect is cured by satisfying the requirements under Section 34, the documents impounded cannot also be used in evidence.

[17] In view thereof, we find no reason to interfere with the orders passed by the Courts below. Accordingly, this appeal fails and is dismissed. Pending application(s), if any, shall stand closed

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2024(2)GLPJ468
[From HIMACHAL PRADESH HIGH COURT]
[Before J B Pardiwala; Manoj Misra]
Civil Appeal No. 10662 of 2024 **dated 20/09/2024**

Ultra-tech Cement Ltd

Versus

Mast Ram & Ors

LAND COMPENSATION

Land Acquisition Act, 1894 Sec. 6, Sec. 41, Sec. 11, Sec. 17, Sec. 7, Sec. 4 - Companies Act, 1956 Sec. 391, Sec. 394 - Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 38, Sec. 101, Sec. 24 - Land Compensation - Appellant challenged High Court's order directing it to pay compensation for land acquired for a cement project - Acquisition proceedings initiated under the 1894 Act, and Supplementary Award passed in 2022 - Appellant argued that liability for compensation rested with Jaiprakash Associates Ltd (JAL) under a Scheme approved by NCLT - Court found that JAL bore liability under the Scheme and the land was not transferred to the Appellant - Court directed State to pay compensation to landowners and recover it from JAL - Appeal Allowed

Law Point: Compensation for land acquired for a project should be paid by the entity responsible under the acquisition agreement or scheme, even if ownership or control of the project has been transferred to another party.

જમીન સંપાદન અધિનિયમ, ૧૮૯૪ સે. ૬, સેક. ૪૧, સેક. ૧૧, સેક. ૧૭, સે. ૭, સેક. ૪ - કંપનીઝ એક્ટ, ૧૯૫૬ સેક. ૩૯૧, સેક. ૩૯૪ - જમીન સંપાદન, પુનર્વસન અને પુનર્વસન અધિનિયમ, ૨૦૧૩ માં વાજબી વળતર અને પારદર્શિતાનો અધિકાર સેક. ૩૮, સેક. ૧૦૧, સેક. ૨૪ - જમીન વળતર - અરજદારે સિમેન્ટ પ્રોજેક્ટ માટે સંપાદિત કરવામાં આવેલી જમીન માટે વળતર ચૂકવવાનો નિર્દેશ આપતા હાઈકોર્ટના આદેશને પડકાર્યો હતો. - ૧૮૯૪ એક્ટ હેઠળ અધિગ્રહણની કાર્યવાહી શરૂ કરવામાં આવી અને ૨૦૨૨માં પૂરક એવોર્ડ પસાર થયો - અપીલકર્તાએ દલીલ કરી હતી કે વળતર માટેની જવાબદારી NCLT દ્વારા મંજૂર કરાયેલી યોજના હેઠળ જયપ્રકાશ એસોસિએટ્સ લિમિટેડ (JAL) પર છે. - કોર્ટને જાણવા મળ્યું કે જેએએલ યોજના હેઠળ જવાબદારી વહન કરે છે અને જમીન અપીલકર્તાને ટ્રાન્સફર કરવામાં આવી નથી - કોર્ટે રાજ્યને જમીન માલિકોને વળતર ચૂકવવા અને તેને JAL પાસેથી વસૂલવા નિર્દેશ આપ્યો - અપીલની મંજૂરી

કાયદાનો મુદ્દો: પ્રોજેક્ટ માટે સંપાદિત કરવામાં આવેલી જમીનનું વળતર એક્વિઝિશન એગ્રીમેન્ટ અથવા સ્કીમ હેઠળ જવાબદાર એન્ટિટી દ્વારા ચૂકવવું જોઈએ, પછી ભલેને પ્રોજેક્ટની માલિકી અથવા નિયંત્રણ અન્ય પક્ષને ટ્રાન્સફર કરવામાં આવ્યું હોય.

Acts Referred:

Land Acquisition Act, 1894 Sec. 6, Sec. 41, Sec. 11, Sec. 17, Sec. 7, Sec. 4

Companies Act, 1956 Sec. 391, Sec. 394

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 38, Sec. 101, Sec. 24

Counsel:

Navin Pahwa (Senior Advocate), Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Rohan Talwar, Victor Das, Geetika Sharma, Manavi Agarwal, E C Agrawala, Subhash Chandran Kr, Virender Thakur, Krishna Lr, Biju P Raman, Himanshu Tyagi, Anup Rattan (Senior Advocate), Puneet Rajta, Vikrant Narayan Vasudeva, Sharmila Upadhyay, Pawan R Upadhyay, Sarvjit Pratap Singh, M/S Unuc Legal Llp, Ranjit Kumar

JUDGEMENT

J.B. Pardiwala, J.- [1] For the convenience of exposition, this judgment is divided into the following parts: -

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1. Leave Granted.

[2] This appeal arises from the order passed by the High Court of Himachal Pradesh at Shimla dated 12.07.2022 in Civil Writ Petition No. 2350/2018 filed by the Respondent Nos. 1 to 6 herein (original petitioners) by which the High Court allowed the writ petition and directed the Appellant herein to pay the requisite amount towards compensation as determined in the Supplementary Award dated 02.05.2022 passed by the Land Acquisition Collector, Arki **("LAC")** (Respondent No. 10) in the first instance with liberty to recover the same from M/s Jaiprakash Associates Limited **("JAL")** (Respondent No. 11) if permissible under the legal relationship between the two companies.

I. FACTUAL MATRIX

[3] The State of Himachal Pradesh (Respondent No. 7) issued a notification dated 25.07.2008 under Section 4 of the Land Acquisition Act, 1894 (the **"1894 Act"**) through its Department of Industries declaring its intention to acquire the subject land admeasuring 56-14 bigha, situated at Mauza Bhalag, Tehsil Arki, District Solan, Himachal Pradesh (the **"subject land"**) in favour of Jaypee Himachal Cement project, a unit of JAL, invoking special powers in cases of urgency as provided under Section 17 of the 1894 Act. It appears that the purpose for acquiring the subject land was to create a safety zone surrounding the mining area. In other words, the subject land was situated in the vicinity of the leasehold area of the mining project and could not have been otherwise used for residential purposes or creation of any other structures. Subsequently notifications were also issued under Sections 6 and 7 respectively of the 1894 Act.

[4] It appears from the materials on record that during the acquisition proceedings, some of the landowners, including the Respondent Nos. 1-6 herein did not allow the authorities to undertake the evaluation of their houses, trees, structures, etc., standing on the subject land for the purpose of determination of compensation.

[5] The acquisition proceedings ultimately came to be challenged by some of the landowners before the High Court by way of CWP No. 2949 of 2009 titled as **Premlal & Ors. v. State of Himachal Pradesh & Ors**. and CWP No. 481 of 2010 titled as **Chunni Lal & Ors. v. State of Himachal Pradesh & Ors.** inter alia, on the ground that sub-section (4) of Section 17 of the 1894 Act could not have been invoked as the acquisition was not for any public purpose. The High Court passed an ad interim order dated 14.12.2011 granting stay on the acquisition proceedings.

[6] The High Court by a common judgment dated 23.06.2016 dismissed the writ petitions referred to above inter alia, on the ground that acquisition of the lands in question was for a public purpose as the said land contained vital raw material (limestone) for the manufacturing of cement and the usage of such mineral wealth would advance the public purpose of infrastructure development.

[7] As the writ petitions stood dismissed, the Land Acquisition Collector, Arki proceeded to pass the Award No. 1/2018 dated 08.06.2018 as per Section 11(1) of the 1894 Act and Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the "**2013 Act**") determining the compensation to the tune of Rs. 10,77,53,842.27/- (Rupees Ten Crore Seventy Seven Lakh Fifty Three Thousand Eight Hundred and Forty Two and Twenty Seven paisa Only) along with the incidental charges @ 2% amounting to Rs. 9,09,315.12/-. The LAC clarified in the award passed by him that the compensation amount towards the houses and other structures constructed prior to the date of notification under Section 4, whose survey was not allowed by the landowners during the acquisition proceedings would be considered in the supplementary award that may be passed separately after the reports regarding the valuation of structures were received.

[8] The amount as determined under the Award dated 08.06.2018 was deposited by JAL and disbursed to the landowners. The possession certificate dated 07.06.2019 in respect of the subject land was issued in favour of JAL. Subsequently, the entries in the revenue record of the subject land in favour of JAL came to be mutated on 12.11.2020.

[9] Being dissatisfied with the Award dated 08.06.2018, the Respondent Nos. 1- 6 herein filed writ petition no. 2350 of 2018 before the High Court on 16.09.2018, praying for a direction to the LAC to pass a supplementary award after quantifying the compensation for the damage caused to the structures and standing crops on the subject land for the period between 2008 and 2018 as well as for a direction to the LAC to pass a fresh award under the provisions of the 2013 Act to provide additional amount @ 12% on market value with effect from the date of notification under Section 4 till the date of Award dated 18.06.2018. On 12.07.2019, the Respondent Nos. 1-6 also filed a Reference Petition under the 2013 Act praying inter alia for the enhancement of the amount of compensation determined under the Award dated 08.06.2018.

[10] On 24.11.2021, the High Court passed an order directing the LAC to pass a supplementary award in accordance with law. On 23.05.2022, the High Court recorded that the supplementary award dated 02.05.2022 had been passed in compliance with its order dated 24.11.2021 under which an additional amount of Rs. 3,02,75,605/- along with incidental charges @ 2% of total assessment value was to be paid by JAL. Thus, the total additional amount determined was Rs. 3,05,31,095/- (Rupees Three Crore Five Lakh Thirty One Thousand and Ninety Five). However, the High Court recorded on 20.06.2022 that the said amount had not been deposited in terms of its order dated 23.05.2022.

[11] During the pendency of the acquisition proceedings, JAL entered into an agreement with the Appellant herein for the transfer of the cement project in question.

In this regard, a Scheme of Arrangement was signed between the Appellant, JAL and Jaypee Cement Corporation Ltd. (the unit of JAL operating the cement project) (the **"Scheme"**) under the relevant provisions of the Companies Act, 1956. The Scheme was approved by the National Company Law Tribunal **("NCLT")** Mumbai Bench on 15.02.2017 and NCLT Allahabad Bench on 02.03.2017.

[12] On 21.06.2017, the Director of Industries, Department of Industries, Government of Himachal Pradesh issued a letter to JAL and the Appellant acknowledging the approval given by the Joint Secretary to the Government of Himachal Pradesh as regards the transfer of the cement plant, as per the Scheme approved by the NCLT and as per the Tripartite Agreement between the Appellant, JAL and Government of Himachal Pradesh respectively, entered into on 29.06.2017.

[13] In such circumstances, the High Court examined the relationship between the Appellant and JAL and also referred to the Scheme for the purpose of determining the issue as to who should pay the compensation amount determined under the Supplementary Award to the Respondent Nos. 1-6 respectively.

[14] On 12.07.2022, the High Court relying on Clause 7.1 of the Scheme, passed the impugned order, directing the Appellant to pay the compensation amount at the first instance and left it open for the Appellant to recover the same from JAL later, if permissible in law.

[15] In view of the aforesaid, the Appellant is before this Court with the present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT

[16] Mr. Navin Pahwa, the learned senior counsel appearing for the Appellant made the following submissions:

a. The High Court, in its impugned order, erred in directing the Appellant to pay the compensation amount determined under the Supplementary Award because the initial Award dated 08.06.2018 as well as the Supplementary Award dated 02.05.2022 were passed by the LAC fixing the liability to pay compensation on JAL.

b. The High Court failed to consider that under the Scheme between the Appellant and JAL, as sanctioned by NCLT, Mumbai on 15.02.2017 and NCLT, Allahabad on 02.03.2017, all contingent liabilities pertaining to matters relating to the "JAL Business" (as defined in Clause 1.1(w) of the Scheme), including those of pending litigations where the disputed claims were not crystallized on or before the effective date, i.e., 29.06.2017, would be the sole liability of JAL. Since the acquisition proceedings for the subject land were initiated by a notification under Section 4 of the 1894 Act dated 25.07.2008, therefore, the litigation was pending as on 29.06.2017

(the **"Effective Date"**) and the disputed claim was not crystallized till the passing of the Supplementary Award dated 02.05.2022.

c. The High Court erred in recording that the Appellant had made the payment under the Award dated 08.06.2018, whereas factually, it was JAL who had paid the compensation amount under the said Award. The High Court also failed to consider that by making the payment under the Award dated 08.06.2018, JAL had accepted its liability for claims arising out of the acquisition proceedings.

d. The subject land was acquired for JAL. Accordingly, the LAC had issued a possession certificate dated 07.06.2019 in favour of JAL and handed over spot possession of the subject land to it under Section 16 of the 1894 Act. The subject land was duly mutated in the name of JAL vide Mutation No. 232 dated 12.11.2020. The High Court failed to take into consideration the fact that the subject land had not been transferred as an asset to the Appellant under the Scheme. To establish the same, the Appellant had placed on record and referred to a Chart of Comparison of Khasra Numbers under the Scheme and the Khasra Numbers which were transferred to JAL under the Award dated 08.06.2018 contending that none of the Khasra Numbers of the subject land or portions thereof overlap with the Khasra Numbers of the land/assets transferred under the Scheme. Therefore, since the Appellant was not enjoying the possession or benefit, if any, of the subject land, the liability of paying the compensation under the Supplementary Award could not have been fastened on it.

e. As per the Scheme, the Appellant only purchased certain assets listed in the Schedule-I and Schedule-IA thereof on a "slump exchange basis" and did not take over JAL. Mr. Pahwa clarified that JAL is a surviving entity and the High Court had erred in understanding that JAL stood merged or transferred with the Appellant.

f. Mr. Pahwa also brought our attention to the order passed by this Court dated 16.12.2019 in **Ultratech Cement Ltd. v. Tonnu Ram,** SLP (C) (Diary) No. 42997 of 2019 wherein this Court clarified that the impugned judgment of the High Court of Himachal Pradesh could not have been construed as permitting third party to pursue claim for recovery against the Appellant in disregard of the Scheme and the executing court would be duty-bound to examine the purport of the Scheme and pass orders strictly in consonance therewith.

The relevant observations made by this Court in **Tonnu Ram (supra)** are reproduced below:

"...It cannot be construed as permitting third party to pursue claim for recovery against the petitioner in disregard of the scheme of arrangement propounded by the NCLT in respect of respondent No.4- M/s. Jaiprakash Industries.

Despite this clear position, if any third party intends to pursue remedy against the petitioner, **the Executing Court would be duty bound to examine the purport of the stated scheme propounded by the NCLT and pass orders strictly in consonance therewith.** It would be open to the petitioner to invite attention of the Executing Court or any other Forum about the relevant provisions in the scheme in support of the argument that the liability to pay the dues will remain that of respondent No.4- M/s. Jaiprakash Industries as per the stated scheme."

[Emphasis supplied]

g. The senior counsel also submitted that JAL had made a declaration on oath in Form-16A under Order XXI Rule 41(2) of the Code of Civil Procedure, 1908 dated 04.12.2023 in Civil Revision Petition No. 174 of 2022 titled **Tohnu Ram (Deceased) v. M/s Ultratech Cement Ltd**. before the High Court of Himachal Pradesh which read as follows:

"...(e) Other Property: List of Property of Jaiprakash Associates Ltd., i.e. Land measuring 56-14 bigha, situate at village bhalag, PO Kandhar, Tehsil Arki, Distt. Solan (HP), vide which the Mutation was attested on 12.11.2020 in favour of Jaiprakash Associates Ltd..."

Therefore, in view of the above, the subject land remained in ownership of JAL and the Appellant had no connection with the subject land, directly or indirectly and that the subject land was neither acquired for the benefit of the Appellant nor was it transferred under the Scheme to the Appellant.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1-6

[17] Mr. Biju P. Raman, the learned counsel appearing for the Respondent Nos. 1-6 made the following submissions:

a. The subject land forms a part of the safety zone area meant for the cement plant that was being operated by the cement unit of JAL. The District Administration acquired 56.14 bhigas of land and the Award for the same was passed on 08.06.2018 by the LAC, Arki.

b. The plant/project had been taken over by the Appellant herein by acquiring all the assets and liabilities of JAL in the year 2017 and all movable and immovable assets and liabilities ancillary thereto were transferred to the Appellant, which was affirmed by a tripartite Memorandum of Understanding signed between the Appellant, JAL and the Government of Himachal Pradesh (the **"MOU"**) dated 29.06.2017.

c. The High Court vide order dated 12.07.2022 recorded the submission of the Respondent Nos. 1-6 that the payment towards the Award No. 1 of 2018 pertaining to the subject land was deposited by the Appellant.

d. The Appellant and JAL are trying to escape from their legal obligation and liability to pay the compensation amount as determined under the Supplementary Award to the Respondents and are in collusion with each other creating an inter-se dispute with the intention of depriving the original landowners of their legitimate right to receive compensation due to them.

e. The subject land was acquired for public purpose and was being utilized by the Appellant for its purposes.

IV. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 10

[18] Mr. Puneet Rajta, the learned Additional Advocate General appearing for the Respondent No. 10 i.e., the Land Acquisition Collector, Arki made the following submissions:

a. The subject land was acquired in the year 2018 for providing a safety zone to the cement plant which had already been taken over by the Appellant in the year 2016.

b. The acquired land is being utilized by the Appellant as a safety zone for the cement plant being run by them. However, the land is recorded in the name of JAL.

c. The role of the State was limited to the extent of initiating the acquisition proceedings and as per the MOU signed with the Government of Himachal Pradesh, all costs pertaining to the acquisition/transfer of land would be borne by the company only. It was clarified that the State had no role to play in the business of manufacturing or running the cement plant of the company and all payments under the Award No. 1 of 2018 dated 08.06.2018 stood paid to the landowners by JAL.

d. The Supplementary Award was passed on 02.05.2022 in accordance with the direction of the High Court dated 16.09.2018 in CWP No. 2350 of 2018 and the High Court through a separate order dated 12.07.2022 directed the Appellant to make the payment to the landowners and recover the said amount from JAL. The said order was challenged by the Appellant and this Court while issuing notice vide order dated 22.08.2022 directed that there shall be a stay of operation and implementation of the impugned order of the High Court.

e. The land is being used by the Appellant for the purpose of operating the cement plant however, they are raising disputes only with the view to deny the rights of the landowners. Therefore, the liability for payment of

compensation be fixed as against the Appellant or JAL. It was submitted that if the State was directed to compensate the landowners, it would have to do so out of public funds and seek reimbursement.

V. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 11

[19] Mr. Ranjit Kumar, the learned senior counsel appearing for the Respondent No. 11 i.e., M/s Jaiprakash Associates Limited (JAL) made the following submissions:

a. During the process of passing of the Supplementary Award dated 02.05.2022, JAL had clarified that that it had handed over the cement project to the Appellant on 29.06.2017 and the subject land was acquired for the purpose of mining activities and safety zone. It was asserted that the subject land was an integral part of the cement project. Therefore, whosoever was operating the cement plant and carrying out the mining activities was responsible for maintaining the safety zone. Accordingly, it was the duty of the Appellant to pay the amount determined under the Supplementary Award.

b. During the course of the hearing of the Writ Petition No. 2350 of 2018, the Appellant had stated that it did not require the subject land for its projects. The Counsel contended that since JAL had already handed over the cement project to the Appellant and the subject land was acquired for the purpose of safety zone for the said project, the Appellant cannot say that they never had any need for this particular land.

c. Although the State Government had handed over the symbolic possession of the subject land in favour of JAL on 07.06.2019 yet the physical possession of this land remained with the villagers/landowners including Respondent Nos. 1-6 who had illegally occupied the subject land and had constructed houses/structures on the same even after the deliverance of the Award dated 08.06.2018 and the Supplementary Award dated 02.05.2022.

d. It was submitted that the substantial delay in the issuance of the Award by the LAC had frustrated the purpose of acquisition for JAL. Since the entire project has been under the custody and possession of the Appellant, it is the appropriate party to address the issue of the requirement of the subject land for the purpose of Mining Activities & Safety Zone. If the Appellant is not interested in the subject land, then the same should be returned to the original landowners (Respondent Nos. 1-6 herein) and the amount deposited as an award of Rs. 10,77,53,842/- in the year 2018 should be refunded to JAL.

e. Mr. Kumar contended that according to the statement provided by the Appellant to the High Court, it can be reasonably concluded that the Appellant does not require the land in question, which was acquired for the purpose of Mining Activities and Safety Zone for the Cement project.

Therefore, the Appellant may proceed to submit an application in this regard to the Government of Himachal Pradesh, as submitted before the High Court.

f. The Counsel reiterated that JAL had sold out and handed over the entire cement project to the Appellant in the year 2017, which included the acquired private land and government land diverted for this purpose. It was submitted that the subject land was required for an entity involved in cement production in the area, therefore, the responsibility for maintaining the Safety Zone of the cement project was with the Appellant. If the Appellant is not interested in the acquired subject land, then the same may be returned and the amount of Rs. 10,77,53,842/- deposited as award in the year 2018 be refunded to JAL.

VI. ISSUES FOR DETERMINATION

[20] Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following four questions fall for our consideration:-

i. Whether the subject land and all other liabilities associated with it were transferred to the Appellant in terms of the Scheme?

ii. Whether it was the Appellant or JAL who was legally obliged to pay the compensation amount determined under the Supplementary Award?

iii. Whether the land in terms of Section 101 of the 2013 Act can be returned to the Respondent Nos. 1-6 at this stage under the scheme of the Act? In other words, what is the scope of Section 101?

iv. Whether the State of Himachal Pradesh, being a welfare state, had the responsibility to ensure full payment of compensation amount determined under the Supplementary Award dated 02.05.2022?

VII. ANALYSIS

A. Scheme of Arrangement between the Appellant and JAL under Sections 391 to 394 respectively of the Companies Act, 1956

[21] An analysis of the Scheme agreed between the Appellant and JAL as sanctioned by the NCLT, Mumbai and NCLT, Allahabad respectively is the key to determine who should pay the amount determined under the Supplementary Award dated 02.05.2022. With respect to the Scheme, the following questions need to be looked into:

i. Whether the dispute pertaining to payment of the requisite amount under the Supplementary Award arose before or after the "Effective Date" fixed in the Scheme?

ii. Whether the subject land is an integral part of the cement project and the liability of paying compensation under the Supplementary Award for the said

land can be imposed on the Appellant despite the said land not being in its name?

[22] Clause 1.1 (o) defines the "Effective Date" as the date on which the Scheme becomes effective in accordance with its terms, which shall be the Closing Date [defined in Clause 1.1(k) and Clause 10.1]. The said date was decided to be 29.06.2017 among the parties.

[23] Clause 1.1(w) defines the business and assets transferred by JAL to the Appellant. The definition of the same is reproduced below:

"...(w) **"JAL Business"** means the business of manufacturing, sale and distribution of cement and clinker manufactured at the JAL Cement Plants, including all rights to operate such business, its movable or immovable assets, captive power plants, DG sets, coal linkages, rights, privileges, liabilities, guarantees, land, leases, licenses, permits, mining leases, prospecting licenses for mining of limestone, letters of intent for mining of limestone, tangible or intangible assets, goodwill, all statutory or regulatory approvals, logistics, marketing, warehousing, selling and distribution networks {marketing employees, offices, depots, guest houses and ether related facilities for the JAL Business), employees, existing contracts including fly-ash contracts, railway sidings, fiscal incentives in relation to the JAL Business, more particularly described in Schedule I hereto, but does not include

(i) construction equipment an.d such assets to be listed in Schedule II.

(ii) any liability including contingent liability disclosed in the balance sheet of JAL Business on the Closing Date provided to the Transferee, other than those included in the JAL Financial Indebtedness and JAL Net Working Capital;

(iii) any guarantee or deposits for any disputes;

(iv) the JAL Excluded Employees;

(v) JAL Non Moving Stores, Doubtful Receivables of the JAL Business, non-recoverable debtors, loans or advances in the books of the Transferor1. For this purpose, non-recoverable debtors; loans or advances shall refer to such debtors; loans or advances for which Transferor1 has not received any confirmation for the receivables as mentioned in Clause 9.1 (i);

(vi) coal mitting block - Mandla (North) and the related guarantees, deposits etc;

(vii) fiscal incentives in relation to the JAL Business that accrue up to the Closing Date;

(viii) any intellectual property of Transferor1;

(ix) **litigations pertaining to the JAL Business as of the Closing Date;**

(x) freehold plot of land admeasuring about 1087 square metres at Varanasi and land admeasuring 24.7 acres outside the Balaji plant in Krishna, Andhra Pradesh;

(xi) 180 megawatt power plant at Churk, Uttar Pradesh;

(xii) railway siding in Turki, Rewa, Madhya Pradesh;

(xiii) Related Party payables or receivables; and

(xiv) Ghurma limestone mine, Padrach limestone mine and Bari dolomite mine

It is clarified that the guarantee listed in Schedule III B, which shall be updated as of the Closing Date, shall be the only guarantees which shall be taken over by the Transferee on the Closing Date..."

[Emphasis Supplied]

[24] The parties by way of Clause 1.1(w)(ix) agreed that all litigations pertaining to the business and assets being transferred to the Appellant that arose before or on the Closing Date would not be transferred to the Appellant and will remain with JAL.

[25] The aforesaid aspect has been further elaborated under Clause 7 of the Scheme which is reproduced below:

"7. LEGAL PROCEEDINGS

7.1 **All legal or other proceedings (whether civil or criminal, including before any statutory or judicial or quasi-judicial authority or tribunal) by or against the Transferor1 and /or the Transferor2, initiated on or arising and pending before the Effective Date, and relating to the JAL Business and the JCCL Business shall remain with the Transferor1 and/or the Transferor2, as the case may be.**

7.2 In the event any case or matter pertaining to contingent liabilities being in the nature of disputed claims, not crystallized on the Closing Date or guarantees listed in Schedule III A and Schedule XI A or any similar instrument by whatsoever name called which have been advance against disputes related to the JAL Business or the JCCL Business existing on the Closing Date, or pertaining to NPV of afforestation charges in respect of mining land being Block 1, 2, 3, 4 and Ningha of Dalla Plant and Jaypee Super Plant, by force of law are transferred to the Transferee, then the Transferor1 and the Transferor 2, shall have full control in respect of the defence of such proceedings including filing the necessary appeals, revisions, etc.. provided that the Transferor1 and the Transferor2, as the case may be, shall not, take any action that is detrimental to the operation of the JAL Business and the JCCL Business. Provided that in respect of such cases pertaining to immovable properties which are part of the JAL Business or the

JCCL Business, as the case may be the Transferee shall have a right to participate in such proceedings to ensure that no action detrimental to the operation of JAL Business and the JCCL Business is taken. It is clarified that: (a) any liabilities in respect of cases or matter referred to in this Clause 7.2 shall be paid by the Tranferor1 or the Transferor2 and if paid by the Transferee, the same shall be reimbursed by the Transferor1 or the Transferor2 within 7 (seven) days of such payment; and (b) the aforesaid bank guarantees provided by the Transferor1 and the Transferor2 in respect of the contingent liabilities being in the nature of disputed claims related to the JAL Business or the JCCL Business shall continue wherever required and the Transferee shall have no obligation to replace such bank guarantees on the Closing Date and in the event the period of any such bank guarantee expires after the Closing Date, the Transferor1 and /or the Transferor2, as the case may be, shall renew or replace such guarantees wherever required.

7.3 The Transferor1, the Transferor2 and the Transferee shall give full and timely cooperation to each other for the pursuit of such case or matter. The Transferee shall promptly give necessary authorization, power of attorney, board resolution, etc. for pursuit of such case or matter to the Transferor1 and the Transferor2. "

[Emphasis Supplied]

[26] Clause 7.1 of the Scheme states without any ambiguity that any legal or other proceeding by or against JAL or its unit operating the cement project relating to the JAL Business as defined in Clause 1.1(w), initiated on or arising and pending before the Effective Date shall remain with JAL.

[27] It is pertinent to note that the subject land was acquired under the compulsory provisions of the 1894 Act to provide a safety zone for the cement plant and mining areas. Therefore, the land was acquired in connection with the JAL Business. The acquisition proceedings began with the notification issued under Section 4 dated 25.07.2008 which was stayed by the High Court of Himachal Pradesh on 14.12.2011. After the disposal of the writ petitions filed by the original landowners, the operation of the stay on the acquisition proceedings came to an end on 23.06.2016. As the next step towards the proceedings, an Award dated 08.06.2018 was passed. The facts indicate that the land acquisition proceedings had commenced before the Effective Date of the Scheme (i.e. 29.06.2017) and the compensation remained undetermined as on the Effective Date. To our understanding, these facts attract the application of Clause 7.1 of the Scheme as the acquisition proceedings and the liability to pay compensation associated with it squarely falls within the meaning of 'other proceedings' as intended by the parties under the said Clause.

[28] JAL has also not disputed that it had made payment of the amount determined under the Award of 2018 i.e., Rs. 10,77,53,842/- after the Effective Date of

the Scheme. The said amount has already been disbursed to the landowners. There is nothing on record to show that the payment of compensation amount at that time was contested by JAL.

[29] Further, the exercise of determination of compensation amount which is a part of the acquisition proceedings remained pending even after the Effective Date of the Scheme. After the LAC determined the amount under the Award dated 08.06.2018, JAL paid the same without any protest or reference to the Scheme. Therefore, at the stage of the Supplementary Award pertaining to the same land and same original landowners, JAL cannot be allowed to take the plea that the payments with respect to the subject land were required to be made by the Appellant.

[30] As regards the contention of JAL that the subject land formed an integral part of the cement project transferred to the Appellant for the purpose of payment of compensation determined under the Supplementary Award, we find it difficult to accept the same. The subject land was acquired as a safety zone for the cement project and in light of the several safety hazards as stated in the Award No. 1 of 2018, the land had to be acquired to safeguard the lives and property of the original landowners.

[31] However, we take notice of the fact that the subject land was not covered under the list of assets transferred to the Appellant under the Scheme and remains in the ownership of the JAL till date. While we agree that the acquisition of the subject land was done for the purposes of the cement project, we cannot accept the contention of JAL that the liabilities arising out of the said land should be fastened upon the Appellant without any such liabilities being covered by the Scheme, not even on the strength of the argument that the subject land was integral to the cement project.

[32] We may only say that the issue regarding the ownership of the subject land may be decided between the parties i.e., the Appellant and JAL amongst themselves. In our considered view, disputes regarding the ownership of the subject land, if any cannot be an impediment to the legitimate rights of the original landowners to receive compensation. Therefore, the contention of JAL that the Appellant should pay the amount as determined under the Supplementary Award because the subject land was integral to the cement project is rejected.

B. Return of acquired land under the 2013 Act

[33] It is the case of JAL that the substantial delay in acquisition of the subject land has frustrated its purpose, and it could not make any use of the land. It was submitted that if the Appellant does not require the said land, then it should be returned to the original landowners and the amount of Rs. 10,77,53,842/- paid under the Award of 2018 should be refunded to JAL.

[34] The return of acquired land is governed by Section 101 of the 2013 Act which is reproduced below:

> **"101. Return of unutilised land.-** When any land acquired under this Act remains **unutilised for a period of five years from the date of taking over the possession,** the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.
>
> Explanation.-For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use."
>
> **[Emphasis Supplied]**

[35] The necessary conditions for the application of Section 101 are: (1) the land should be unutilized; and (2) the period it remains not in use should be at least five years from the date of taking of possession.

[36] We do not find any merit in the contention of JAL that the land be returned to the original landowners. While we agree that a period of five years has elapsed from the date of taking of possession by JAL, the first condition that the land should remain unutilized is not fulfilled.

[37] The subject land was acquired for the purpose of providing a safety zone to the mining area of the cement plant. The objective for acquiring the subject land mentioned in the Award of 2018 is reproduced below:

> "...3. Compulsory Acquisition by invoking the provisions of Section 17 (4)
>
> During the process of Notification issued under Section - 4 of the Land Acquisition Act, the matter was taken up for compulsory acquisition U/s 17(4) of Land Acquisition, Act, 1894 with the Govt. or Himachal Pradesh **for the reasons that the land area under acquisition fell just below the mine leasehold area and was necessarily required as Mining Area Safety Zone. As the land area under acquisition cannot be allowed for any residential purpose in view of safety reasons and because the land proposed for acquisition is located just along the bank or Bhalag Nallah and most of the residents of village Bhalag had been constructing structures in large numbers on the right Bank of Nallah in Bhalag village, therefore provisions of compulsory acquisition needed to be invoked.**
>
> Furthermore, to invoke the provisions of compulsory acquisition, it was submitted vide this office letter No. 2766 dated 06.01.2009 to Pr. Secretary (Industries) GoHP that **the main dumping site of the project at Baga - Sehnali is situated above village Bhalag and during the unprecedented I I heavy rain season of 2007 - 08, muck had over flown into the Bhalag Nallah endangering the Safety Zone area under proposed acquisition**..."

[Emphasis Supplied]

[38] Therefore, the acquisition of the subject land was done as a safety measure for the residents of the area and not to be used actively in the cement project. No other use except that the subject land may pose hazard to the residents was envisaged during the acquisition proceedings. JAL cannot pray for return of the land as that would result in endangering the lives and property of the original landowners. We find that the subject land has been in use all throughout the operation of the cement project by serving as a safety zone and the condition of being unutilized is not satisfied.

[39] It is not in dispute that the Supplementary Award had to be passed as the compensation for standing crops, structures and other damages for the subject land which could not be fixed and evaluated under the Award No. 1 dated 08.06.2018. The same was also recorded in the Award of 2018. We find that the passing of Supplementary Award was not a fresh exercise but rather a continuation/extension of the Award of 2018. Therefore, when JAL has already paid the compensation amount as determined under the previous Award without any demur, it cannot be allowed to question its liability under the Supplementary Award and make a plea for return of the land at this stage on the ground that the purpose of the land is frustrated due to delay in acquisition proceedings.

[40] At this stage, it is necessary for us to discuss the purport of Section 101 of the 2013 Act. The instant section was introduced in the 2013 Act for the first time as a beneficial provision for the landowners whose lands were usurped but remained unutilized or were not used in accordance with the purpose stated in the notifications under Section 4. However, the application of the Section is warranted only in the circumstances where the return of the land would benefit the landowners. The party which has failed to utilize the land cannot plead for the return of the land and consequent refund of the compensation paid, as that would tantamount to taking advantage of its own wrong or default.

C. Impugned Order of the High Court

[41] The High Court directed the Appellant herein to pay compensation amount determined under the Supplementary Award at the first instance and if permissible, recover the same from JAL.

[42] We find that the High Court's reasoning for passing such a direction is unsustainable for the following reasons:

i. The High Court has referred to Clause 7.1 of the Scheme but has not applied it correctly in any manner, thereby ignoring the Scheme of Arrangement between the parties.

ii. The High Court has also recorded that JAL has been taken over by the Appellant herein and that the Appellant had made payment of compensation under the Award No. 1 of 2018 dated 08.06.2018. We find that these are

incorrect facts on the basis of the materials presented to us by the parties to this appeal.

JAL has only transferred the cement project and clinkerisation business to the Appellant by way of the Scheme and is still existing independently of the Appellant's control in respect of its other functions.

The documents on record also show that it was JAL that had made payments under the Award of 2018 and not the Appellant.

iii. The High Court failed to consider that the ownership of the subject land continued to be with JAL despite the Scheme being brought into effect on 29.06.2017. The Appellant cannot be directed to make payment of the amount determined by the Supplementary Award for the portions of land which are neither in its ownership nor possession.

iv. The High Court also failed to consider the order of this Court in **Tonnu Ram (supra)** dated 16.12.2019 which imposed a duty on the executing court to examine the purport of the Scheme propounded by the NCLT and pass orders strictly in consonance therewith. It was held that it would be open to the Appellant to take support of the relevant provisions of the Scheme in support of the argument that the liability to pay the dues remains with JAL as per the stated scheme.

D. Role of the State under Article 300-A of the Constitution

[43] The Right to Property in our country is a net of intersecting rights which has been explained by this Court in Kolkata Municipal Corporation & Anr. v. Bimal Kumar Shah & Ors.,2024 SCCOnLineSC 968. A division bench of this Court identified seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his/her property. The relevant observations of this Court under the said judgment are reproduced below:

"...27.

... Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property - the right to notice, ii) the duty of the State to hear objections to the acquisition - the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose - the duty to acquire only for public purpose, **v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process,** and vii) final conclusion of the proceedings leading to vesting - the right of conclusion..."

[Emphasis Supplied]

This Court held that a fair and reasonable compensation is the sine qua non for any acquisition process.

[44] In **Roy Estate v. State of Jharkhand**, 2009 12 SCC 194; **Union of India v. Mahendra Girji**, 2010 15 SCC 682 and **Mansaram v. S.P. Pathak**, 1984 1 SCC 125, this Court underscored the importance of following timelines prescribed by the statutes as well as determining and disbursing compensation amount expeditiously within reasonable time.

[45] The subject land came to be acquired by invoking special powers in cases of urgency under Section 17(4) of the 1894 Act. The invocation of Section 17(4) extinguishes the statutory avenue for the landowners under Section 5A to raise objections to the acquisition proceedings. These circumstances impose onerous duty on the State to facilitate justice to the landowners by providing them with fair and reasonable compensation expeditiously. The seven sub-rights of the landowners identified by this Court in **Kolkata Municipal Corporation (supra)** are corresponding duties of the State. We regret to note that the amount of Rs. 3,05,31,095/- determined as compensation under the Supplementary Award has not been paid to the landowners for a period of more than two years and the State of Himachal Pradesh as a welfare State has made no effort to get the same paid at the earliest.

[46] This Court has held in Dharnidhar Mishra (D) and Another v. State of Bihar and Others,2024 SCCOnLineSC 932 and **State of Haryana v. Mukesh Kumar**, 2011 10 SCC 404 that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. This Court held in **Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder v. M.I.D.C. and Ors.**, 2013 1 SCC 353 that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non-fulfilment of such obligations under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.

[47] That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Company & Ors. v. State of Maharashtra & Ors.,2024 SCCOnLineSC 2547 wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.

[48] In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the

requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the Appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300A and the idea of a welfare State.

[49] Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.

[50] The State Government, in peculiar circumstances, was expected to make the requisite payment towards compensation to the landowners from its own treasury and should have thereafter proceeded to recover the same from JAL. Instead of making the poor landowners to run after the powerful corporate houses, it should have compelled JAL to make the necessary payment.

[51] Although the requirement to pass a supplementary award for the purpose of determining additional compensation for the standing trees, damaged structures, houses, etc. had been envisaged and recorded in the Award dated 08.06.2018, yet the possession of the subject land came to be handed over to JAL vide the possession certificate dated 07.06.2019 without passing such a supplementary award. We are of the considered view that the omission or lapse to complete such exercise before taking possession of the land could be said to be in contravention of the mandate of Section 38(1) of the 2013 Act. The relevant portion of Section 38 is reproduced below:

> "38. **Power to take possession of land to be acquired. -**
>
> (1) **The Collector shall take possession of land after ensuring that full payment of compensation** as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30: Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award: Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired..."

[Emphasis supplied]

[52] A bare reading of Section 38 as reproduced above indicates that the payment of full and final compensation to the land owners is a precursor to taking possession of the land sought to be acquired from such persons. It is clear from the facts that the acquisition proceedings herein failed to confirm to this statutorily mandated sequence of events. It is regrettable that the State of Himachal Pradesh, being a welfare state, did not ensure payment of compensation to the Respondent Nos. 1-6 before taking possession of their land. In fact, the landowners had to approach the High Court to seek directions to the LAC for passing of the supplementary award which was finally passed on 02.05.2022 that is, after a period of almost four years from the date of passing of the Award of 2018.

[53] Further, the acquisition proceedings for the subject land had commenced vide the notification under Section 4 dated 25.07.2008. In such circumstances it is necessary to consider the relevant provisions of the 1894 Act, more particularly Section 41 thereof which pertains to the process required to be followed in cases of acquisition of land for companies. The relevant portion of Section 41 of the 1894 Act is reproduced below:

> **"41. Agreement with appropriate Government. -**
>
> If the appropriate Government is satisfied [after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40, **it shall require the Company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:-**
>
> **(1) the payment to the appropriate Government of the cost of the acquisition;**
>
> **(2) the transfer, on such payment, of the land to the Company...."**
>
> **[Emphasis supplied]**

[54] Section 41 necessitates an agreement between the appropriate government and the company for whose purpose the land is being acquired. One of the purposes of such an agreement is to ensure that payment towards the cost of acquisition is made by the company to the appropriate government and it is only upon such payment that the land is transferred to the company. Thus, it can be said that JAL was mandated to make the requisite payment to the State of Himachal Pradesh prior to the subject land being transferred to it.

[55] However, as discussed in the foregoing paragraphs, even before the amount of compensation could be determined by way of a supplementary award as stipulated in the Award dated 08.06.2018, the subject land stood transferred to JAL. This, in our view, is in contravention of Section 38 of the 2013 Act and Section 41 of the 1894 Act respectively.

[56] Thus, we deem it appropriate to direct the Respondent Nos. 7 and 10 that is, the State of Himachal Pradesh and the Land Acquisition Collector, Arki, to pay the amount of Rs. 3,05,31,095/- to the Respondent Nos. 1-6 for expeditious conclusion of the acquisition proceedings. However, we clarify that the State shall recover the said amount from JAL as the liability to pay the cost of acquisition of the subject land ultimately falls on JAL in view of the aforesaid discussion.

VIII. CONCLUSION

[57] For all the foregoing reasons, this appeal succeeds and is hereby allowed in the aforesaid terms. The impugned order dated 12.07.2022 passed by the High Court is set aside.

[58] The Respondent Nos. 7 and 10 are directed to pay the compensation amount of Rs. 3,05,31,095/- (Rupees Three Crore Five Lakh Thirty-One Thousand and Ninety-Five Only) along with 9% interest thereupon from the date of passing of the Supplementary Award i.e., 02.05.2022 till the date of realization, within a period of fifteen days from today. The total amount paid by the State shall be recovered from the Respondent No. 11 (JAL)

2024(2)GLPJ488

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

[Before Abhay S Oka; Augustine George Masih]

Civil Appeal No 8374 of 2024 **dated 13/09/2024**

Siddaraja Manicka Prabhu Temple

Versus

Idol of Arulmighu Kamakala Kameshwarar Temple

TRUST PROPERTY DISPUTE

Code of Civil Procedure, 1908 Sec. 92 - Transfer of Property Act, 1882 Sec. 10, Sec. 11 - Trust Property Dispute - Appellant challenged the ownership of a property claimed by Respondent-Temple - Property was part of a compromise decree from 1929 where it was vested in the head of Guru Manicka Prabhu Temple for temple maintenance - Appellant claimed absolute ownership - Court held that as per the decree, the property was intended for trust purposes, with income to be used for temple maintenance - Rejected argument that ownership was absolute and dismissed appeal -

Court affirmed that the property remained trust property under the control of Respondent-Temple - Appeal Dismissed

Law Point: Properties vested for specific purposes under a trust cannot be claimed as personal property, and the terms of trust agreements are binding on successors.

સિવિલ પ્રોસિજર કોડ, ૧૯૦૮ સેક. ૯૨ - મિલકતનું ટ્રાન્સફર એક્ટ, ૧૮૮૨ સેક. ૧૦, સે. ૧૧ - ટ્રસ્ટ મિલકત વિવાદ - અપીલકર્તાએ પ્રતિવાદી-મંદિર દ્વારા દાવો કરાયેલી મિલકતની માલિકીને પડકારી હતી - મિલકત ૧૯૨૯ ના સમાધાન હુકમનામાનો એક ભાગ હતી જ્યાં તે મંદિરની જાળવણી માટે ગુરુ માનિકા પ્રભુ મંદિરના વડાને સોંપવામાં આવી હતી. - અપીલકર્તાએ સંપૂર્ણ માલિકીનો દાવો કર્યો - કોર્ટે જણાવ્યું હતું કે હુકમનામાં મુજબ, મિલકત ટ્રસ્ટના હેતુઓ માટે બનાવાયેલ છે, જેમાં આવકનો ઉપયોગ મંદિરની જાળવણી માટે કરવામાં આવશે. - માલિકી નિરપેક્ષ હતી તેવી દલીલને નકારી કાઢી અને અપીલ કાઢી નાખી - કોર્ટે સમર્થન આપ્યું હતું કે મિલકત પ્રતિવાદી-મંદિરના નિયંત્રણ હેઠળની ટ્રસ્ટની મિલકત છે - અપીલ બરતરફ

કાયદાનો મુદ્દો: ટ્રસ્ટ હેઠળ ચોક્કસ હેતુઓ માટે નિહિત મિલકતોનો વ્યક્તિગત મિલકત તરીકે દાવો કરી શકાતો નથી, અને ટ્રસ્ટ કરારની શરતો અનુગામીઓ માટે બંધનકર્તા છે.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 92

Transfer of Property Act, 1882 Sec. 10, Sec. 11

JUDGEMENT

Augustine George Masih, J.- [1] The challenge in this Appeal pertains to the Judgment dated 26.10.2017 passed by the Division Bench of the High Court of Judicature at Madras (hereinafter referred to as the "Madras High Court") in Original Side Appeal No. 272 of 2011, whereby the appeal preferred by the Appellant-Defendant was dismissed.

[2] The relevant facts for the purpose of adjudication of the present challenge are succinctly enumerated as follows. The subject matter in question comprises of an immovable property located adjacent to the Respondent-Plaintiff-Temple, namely, Kamakala Kameshwarar Temple (hereinafter referred to as the "suit property" or "Schedule 'A' property"). The suit property and the Respondent-Plaintiff-Temple were

owned by one late Rai Raja Eswardoss Diawanth Bahadur. On his death, the properties dwelled upon his son Mr. T. Lakshmidoss and his grandson Mr. T. Venkataprasad. They were declared as insolvents vide Order dated 27.04.1914 passed by the Madras High Court. In pursuance thereto, the Official Assignee became the possessor of the properties in the said authority.

[3] Thereupon, Mr. T. Lakshmidoss and Mr. T. Venkataprasad arrived at an arrangement with the creditors and with the intent of annulling the declaration of their insolvency obtained a Decree dated 31.12.1915. According to the said decree, the Official Assignee was required to divide the estate between the said two insolvents in the proportion of three-fourth and one-fourth respectively, subject to clearance of the amounts due to the creditors. For the purposes of making payments of such outstanding dues, Mr. T. Lakshmidoss and Mr. T. Venkataprasad agreed to sell some of their properties, including the suit property. The said sale was made in favour of one Mr. W. Ramakrishna Lala for an amount of INR 1,10,000/- (Rupees One Lakh Ten Thousand only). Consequently, two Conveyance-cum-Sale Deeds dated 23.03.1917 were executed in favour of Mr. W. Ramakrishna Lala, who executed a Trust Deed dated 12.12.1917 appointing three trustees by name, Mr. M.S. Anantha Ram Lala, Mr. A.S. Subba Rao and Mr. C. Ranganadhan Nayudu (proprietor of creditorcompany, namely, M/s Dowden and Company). As stipulated under the said Trust Deed, these trustees were empowered to sell all the properties except for the family house which is the suit property. Also, the income derived from the properties was required to be distributed between Mr. T. Lakshmidoss and Mr. T. Venkataprasad in a ratio of 3:1.

[4] On 07.02.1924, Mr. T. Lakshmidoss and Mr. T. Venkataprasad were adjudged as insolvents for the second time resulting in vesting of the possession of the properties again in the Official Assignee. An Agreement dated 15.09.1925 came to be entered into with the creditors where the three trustees were also associated. The suit seeking specific performance of the said Agreement dated 15.09.1925 was preferred by the creditors namely, M/s Devakinandan Dubey and Sons where apart from the debtors, the aforementioned three trustees were impleaded as defendants. The said suit was decreed in favour of the creditors vide Compromise Decree dated 26.11.1929. To the said decree were appended three separate schedules which were marked as Schedule 'A' which comprised of the suit property, Schedule 'B' encompassed the properties which stood excluded from the Trust dated 12.12.1917, and Schedule 'C' relating to the Respondent-Plaintiff-Temple. It is this Decree dated 26.11.1929 which holds the key with regard to the nature of the property which is a subject matter of the present lis.

[5] Pursuant to the terms of the said decree, the Official Assignee along with the two insolvents, and Mr. W. Ramakrishna Lala executed a Conveyance Deed bearing No. 1113 of 1931 for the transfer of the suit property enumerated in Schedule 'A' subject to certain cogent conditions and another Conveyance Deed bearing No. 1114 of 1931 comprising of the Respondent-Plaintiff-Temple stipulated in the Schedule 'C',

in favour of the then spiritual head of the Guru Manicka Prabhu Temple and his successors in office.

[6] Subsequently, a set of proceedings was initiated by the Appellant-Defendant in 1954 whereby an application being O.A. No. 76 of 1954 was moved before the Deputy Commissioner of Hindu Religious and Charitable Endowments (hereinafter referred to as the "HR & CE") seeking hereditary trusteeship in the Respondent-Plaintiff-Temple. The said application was initially allowed, however, in an appeal the same was reversed vide Order dated 31.12.1954. A suit bearing Original Suit No. 557 of 1955 assailing the said decision of the appellate authority preferred by the Appellant-Defendant also met the same fate of dismissal and so was the appeal, being A.S. No. 14 of 1960, moved thereafter.

After the decision of the appeal, an application being C.M.P. No. 5404 of 1962 for withdrawal of suit was filed with a plea that the claim of the hereditary trusteeship was made by mistake and that the Respondent-Plaintiff-Temple was his private property.

[7] It is thereafter that in April 1962 another application being O.A. No. 38 of 1962 was preferred before the Deputy Commissioner of HR & CE putting forth a claim that the Respondent-Plaintiff-Temple was a private temple. The said application was dismissed vide Order dated 04.10.1963 and an appeal assailing the said order was also dismissed. Subsequently, the Appellant-Defendant preferred a civil suit being Original Suit No. 547 of 1965 to overturn these orders. The said suit was decreed, and a declaration as prayed for that Kamakala Kameshwarar Temple being the Respondent-Plaintiff-Temple herein was a private temple was granted vide Judgment dated 10.02.1965. The decree was affirmed in an appeal. Thereupon, an Appeal being L.P.A. No. 119 of 1983, preferred before a Division Bench of the Madras High Court by the Respondent-Plaintiff was allowed vide Judgment dated 04.04.1990, thereby setting aside the decree of declaration in favour of the AppellantDefendant and consequently declaring the Respondent-Plaintiff-Temple as a public temple. Further, a challenge to the said decision before this Court by way of Special Leave Petition (Civil) No. 326 of 1991 was dismissed vide Order dated 07.10.1991. Consequently, the Judgment dated 04.04.1990 of the Division Bench of the Madras High Court attained finality and the Respondent-Plaintiff Kamakala Kameshwarar Temple became a public temple.

[8] With this the claim as regards the AppellantDefendant in the present proceedings came to an end with the opening up of a new chapter which emerged with the filing of a suit being Original Suit No. 921 of 1999 by the Respondent-Plaintiff in the Madras High Court, wherein the Respondent-Plaintiff herein sought a declaration of being the absolute owner of the plaint schedule property with a direction for the delivery of possession thereof. The learned Single Judge of the Madras High Court proceeded to hold vide its Judgment dated 26.04.2011 that the suit property is a trust property whilst relying on the contents of the Compromise Decree dated 26.11.1926

and the conveyance deeds executed in pursuance thereof. The High Court, upon perusal of the conditions encapsulated in the said compromise decree and the admissions made by the AppellantDefendant in his cross-examination, concluded that the suit property along with other properties contained in Schedule 'C' of the said decree was conveyed to the Appellant-Defendant for the purposes of utilisation of income thereof for a limited object of maintenance and upkeep of the Respondent-PlaintiffTemple as well as the Guru Manicka Prabhu Temple. Moreover, the High Court noted that the AppellantDefendant forfeited his position as a trustee over the suit property, as well as the Respondent-PlaintiffTemple upon failure to utilise the income for the aforesaid restricted purpose and rather misappropriating such funds for personal use. Consequently, the Court required the AppellantDefendant to handover the possession of the suit property to the Respondent-Plaintiff. Accordingly, the suit was decreed as sought for by the RespondentPlaintiff.

[9] The Appellant-Defendant being aggrieved by the aforesaid decision of learned Single Judge preferred an appeal being Original Appeal No. 272 of 2011 before the Division Bench of the Madras High Court, which was dismissed vide Impugned Judgment dated 26.10.2017 holding therein that the suit property is a trust property and if the Appellant-Defendant was in its possession, it was only as a trustee and not as an absolute owner. The reasons for arriving at such conclusion was a comprehensive analysis of the terms of transfer of the suit property stipulated in the Compromise Decree dated 26.11.1929 conspicuously paragraph numbers 01 to 04, 11, and 13, as also the subsequent conduct of the Appellant-Defendant in pursuing multiple proceedings whilst maintaining the claim for hereditary trusteeship till 1962 and the absence of any sale consideration backing the claim of absolute vesting in favour of the AppellantDefendant. Such perusal of the documents incentivised the Division Bench to adjudge the suit property as one belonging to the trust. Moreover, the Division Bench unequivocally rejected the argument that the proceedings were barred by the principle of res judicata considering the previous proceedings which declared an adjacent property, namely, the Respondent-Plaintiff-Temple to be a public temple, as relating to an issue distinct from the present proceedings, which do not impact the nature of the suit property herein.

[10] Assailing the judgment of the Division Bench of the Madras High Court, the Appellant-Defendant has approached this Court in the present Appeal. It is the case of the Appellant-Defendant that the RespondentPlaintiff had neither presented any pleadings or evidence, nor raised any issue claiming the suit property as a trust property. Bereft of such pleadings, it is the submission that the High Court ought not to have decided on the issue as to the nature of the suit property. In addition, it was contended that the suit filed by the Respondent-Plaintiff before the learned Single Judge of the Madras High Court did not adhere to the requirements contemplated under Section 92 of Code of Civil Procedure 1908, which specially deals with suits

against trusts, hence, bolstering the contention that the suit property was never intended to be conceived by the Respondent-Plaintiff to be a trust property.

[11] Furthermore, drawing reference from the contents of the Compromise Decree dated 26.11.1929, the Appellant-Defendant asserted that the suit property is not a trust property rather under his absolute ownership as the said decree required modifications to the Trust Deed dated 12.12.1917 in case the property were to be a trust property, but no such modifications were made, nor was any trust deed executed and the Conveyance Deed made pursuant thereto explicitly identifies the Appellant-Defendant as the transferee with absolute ownership, not as a trustee. Additionally, it was contended that the responsibility for maintaining the temples would not tantamount to limiting the vesting of the suit property, rather such conditions are inconsistent and void by virtue of Sections 10 and 11 of the Transfer of Property Act 1882, and the property does not revert after a set period. To buttress this contention, the Appellant-Defendant submitted that the Trust Deed of 1917 and the Conveyance Deed thereto did not confer the status of a trustee to the spiritual head of Guru Manicka Prabhu Temple.

[12] Per contra, it is the case of the Respondent-Plaintiff that the Appellant-Defendant initially claimed title over the suit property as a hereditary trustee but later asserted that the Respondent-Plaintiff-Temple is a private entity. The issue of whether the RespondentPlaintiff-Temple is public or private has been previously addressed in the proceedings bearing LPA No. 119 of 1983, and the same issue is being relitigated now. It was, therefore, asserted by the Respondent-Plaintiff that the suit property and Respondent-Plaintiff-Temple being identical properties to the properties enumerated in the Compromise Decree dated 26.11.1929, the present proceedings, being subsequent proceedings, is barred by the principle of res judicata.

[13] Furthermore, it is the case of the Respondent-Plaintiff that post taking over of the possession of the temple by the HR & CE from the Appellant-Defendant, it has maintained the suit property and managed it as a public temple since 1946, consequently, asserting that the Respondent-Plaintiff-Temple being a declared public institution under HR & CE's stewardship, the property should remain under Respondent-Plaintff's management to protect public worship and ensure proper maintenance.

[14] Having heard the learned Senior Advocate for the Appellant-Defendant and the Counsel for the Civil Appeal No. 8374 of 2024 Page 13 of 22 Respondent-Plaintiff, it is pertinent to adjudge the present challenge in light of the aforementioned chronology of facts and proceedings.

[15] Considering the submissions made by the parties herein and the factual backdrop as has been delineated in the earlier part of the judgment which is not being repeated for brevity, it is evident that the present challenge relating to the title over the suit property rests on the interpretation of terms and conditions enumerated under the Compromise Decree dated 26.11.1929. The Appellant-Defendant posits absolute

ownership over the suit property obverse to the claim of the Respondent-Plaintiff being the persistent nature of suit property as trust property. Therefore, it is apposite to delve into a comprehensive analysis of the relevant paragraph numbers 01 to 04, 11, and 13 of the Compromise Decree dated 26.11.1929, as has been reproduced by the Division Bench of the Madras High Court in paragraph number 12 (vii) of the Impugned Judgment which reads as follows:

(1) "That the provisions of the Trust deed dated the 12th day of December 1917 shall attach only to the property described in Schedule "A" hereto and even in so far as those properties shall immediately be incested (sic: Vested) in Sri Guru Marthanda Manicka Guru as Head of the Guru Manicka Prabhu Temple and his successors in office as Head of the said Temple, subject to the condition that the net worth (sic: monthly) income from the said properties ascertained after payment of repairs and taxes, as and when the same accrues be applied and utilised by the said Sri Guru Marthanda Manicka Prabhu for the maintenance of the defendants Nos. 7 and 8 and of the survivor of them, during their lifetime.

(2) That after the death of the survivor of the 7th and 8th defendants the head of the said Guru Manicka Prabhu Temple for the time being do pay to Ponbati Bai (sic: Parvati Bai) the sister of the 8th defendant during the term of her natural life from and out of the said income the sum of Rupees Forty (Rs.40/-) per mensem and the balance of the said income shall be utilised by him for the purpose of the said temple.

(3) That after the death of the said Ponbati Bai (sic: Parvati Bai) the said premises and the income thereof shall absolutely vest in the Guru of the said temple for the time being and be utilised for the maintenance and upkeep of the said Manicka Prabhu Gadi and the Kamakala Kameswarar Temple founded by the late Rai Raja Eswaradas Daiwanth Bahadur, the father of the 7th defendant, and situated in Raja Hanumantha Lala Street, Triplicane, Madras.

(4) That the remaining properties includes (sic: included) in the said. trust deed dated the 12th day of December 1927 (sic - 1917) and (in) particular set out in schedule "B" here to be and are hereby exonerated from the said Trust and that the said properties are the absolute properties of the 7th and 8th defendants, and they have already vested in the 2nd defendant.

xxxx

(11) That for the purposes of giving effect to paragraph 1 of this decree, the 2nd and 3rd defendants shall execute in favour of the spiritual Head of the Guru Manicka Prabhu Temple a conveyance of the properties set out in schedule "A" hereto and the said spiritual Head of the said temple shall execute in favour of the 6th defendant a power of attorney empowering him to manage the properties set out in schedule "A" hereto during the life of the 7th and 8th defendants and the survivor of them and the said Parbati Bai (sic: Parvati Bai) and for the purpose of making the payment set out in

paragraphs 1 and 2 above and during such time the said 6th defendant shall hold possession of the said premise.

xxxx

(13) That the 2nd, 7th and 8th defendants shall execute in favour of the spiritual Head of the said Kamakala Kameswarar Temple a Conveyance of the building comprising the said temple and the land on which the same is situate more particularly described in schedule "C" hereto that the application of the monthly income from the properties set out in schedule "A" in the manner indicated above shall be in the nature of a provision for maintenance and the said income shall not be liable to be alienated or anticipated (sic: appropriated) by the 7th and 8th defendants or the said Parbati Bai (sic: Parvati Bai) to be attached or proceeded against by the creditors of the 7th and 8th defendants and the said Parbati Bai (sic: Parvati Bai)...."

[16] A perusal of the above would show that the provisions of the Trust Deed dated 12.12.1917 were restricted to property described in Schedule 'A', that is, the suit property herein. The said property would forthwith vest in Shri Guru Marthanda Manicka Prabhu as the head of the Guru Manicka Prabhu Temple and his successors in office. The monthly income as would be derived from the said property after payment of repairs and taxes in relation to the temple would be utilized for Mr. T. Lakshmidoss and Mr. T. Venkataprasad during their lifetime.

[17] As stipulated in paragraph number 02 of the decree, post the death of Mr. T. Lakshmidoss and Mr. T. Venkataprasad, the head of the Guru Manicka Prabhu Temple for the time being was to pay during the lifetime a sum of INR 40/- (Rupees Forty only) per month to Ms. Parvati Bai, being daughter of Mr. T. Lakshmidoss and sister of Mr. T. Venkataprasad and the remaining income had to be utilized for the purposes of the temple. After the death of Ms. Parvati Bai, the Schedule 'A' property which is the suit property as also the income derived therefrom would vest absolutely in Guru of the Manicka Prabhu Temple for the purpose of maintenance and upkeep of Guru Manicka Prabhu Temple and Kamakala Kameshwarar Temple, i.e. the Respondent-Plaintiff Temple herein.

[18] The remaining properties as mentioned in the Trust Deed dated 12.12.1917 as provided for in Schedule 'B' were excluded from the trust as contemplated by paragraph number 04 of the said decree. This can be said with regard to the properties and their utilization which are found in paragraph numbers 01 to 04.

[19] Paragraph numbers 11 and 13 enumerate the steps to be undertaken to give effect to the process of rescheduling of the suit property out of properties which formed part of the Trust Deed dated 12.12.1917, in other words, to materialize what was contemplated by virtue of paragraph number 01 of the decree. Paragraph number 11 specifically required the Official Assignee and Mr. W. Ramakrishna Lala to execute in favour of the spiritual head of the Guru Manicka Prabhu Temple a

conveyance of properties as spelt out in Schedule 'A'. On this part, the spiritual head of the Manika Prabhu Temple shall execute a Power of Attorney in favour of Mr. C. Ranganathan Nayudu, the proprietor of M/s Dowden and Company, that is, the creditor's company, to manage the properties set out in Schedule 'A' during the lifetime of Mr. T. Lakshmidoss and Mr. T. Venkataprasad as also Ms. Parvati Bai for the purpose of executing the terms of payment set out as mentioned in paragraph numbers 01 and 02. It is during this period that the creditor shall hold possession of the suit property.

[20] Further, paragraph number 13 required the Official Assignee, Mr. T. Lakshmidoss, and Mr. T. Venkataprasad to execute a conveyance deed of the building comprising of Kamakala Kameshwarar Temple, i.e. the Respondent-Plaintiff-Temple herein through its spiritual head qua the building comprising the said temple including the land situated thereon more particularly as described in Schedule 'C' of the decree.

[21] It is pertinent to emphasise herein that the income derived from the properties set out in Schedule 'A' as also in Schedule 'B' were not to be alienated or appropriated by Mr. T. Lakshmidoss, Mr. T. Venkataprasad, and Ms. Parvati Bai nor could the creditors proceed against the said schedule properties.

In the above perspective, it is apparent that the said properties as provided in Schedules 'A' and 'C' could neither be alienated by any of the parties nor proceeded against by the creditors. What in effect it means is that they continue to be a part of the trust property.

[22] It would not be out of the way to mention here that the parties to this decree acted upon the same as is apparent from the two transfer deeds dated 28.08.1931 executed by the Official Assignee, Mr. T. Lakshmidoss and Mr. T. Venkataprasad and Mr. W. Ramakrishan Lala. Document bearing no. 1113 of 1931 (Exhibit D-1) was executed by Official Assignee along with Mr. W. Ramkrishna Lala and Document bearing No. 1114 of 1931 (Exhibit P-8) was executed by the Official Assignee in favour of the spiritual head of Guru Manicka Prabhu Temple.

[23] From the aforementioned analysis, it is apposite to conclude that except for Schedule 'B' properties, properties in Schedule 'A' and 'C' existed and continued to be a part of the trust. This leads us to a logical corollary that the head of the Guru Manicka Prabhu Temple (Appellant-Defendant herein) could hold the property in Schedule 'A' which is the suit property as a trustee only, and not in any other capacity.

[24] Another plea raised by the Counsel with reference to application of principle of res judicata for averring a bar on the present proceedings was rightly rejected by the learned Single Judge and the Division Bench of the Madras High Court on account of distinct nature of claims in both proceedings, that is, previous proceedings dealt with the issue of nature of Respondent-Plaintiff-Temple as being public or private temple, whereas the present proceedings relate to a suit for declaration of title over the suit scheduled property. It was rightly pointed out by the learned Single Judge of the High

Court that the nature of the Respondent-Plaintiff-Temple would not affect the obligations envisaged by the Compromise Decree dated 26.11.1926 in relation to the suit scheduled property herein. Hence the challenge raised in the earlier proceedings cannot be said to impact the present litigation.

[25] In light of the above, we are in agreement with the judgment passed by the Division Bench of the Madras High Court which is impugned herein. Consequently, the present Appeal being devoid of merit is hereby dismissed.

[26] There shall be no order as to costs.

[27] Pending applications, if any, stand disposed of

2024(2)GLPJ497

IN THE SUPREME COURT OF INDIA

[Before B R Gavai; Prashant Kumar Mishra; K V Viswanathan]

Civil Appeal No 258 of 2021, 259 of 2021, 265 of 2021, 266 of 2021

dated 12/09/2024

Pune Municipal Corporation

Versus

Sus Road Baner Vikas Manch and Others

GARBAGE PLANT CLOSURE

Maharashtra Regional and Town Planning Act, 1966 Sec. 28 - National Green Tribunal Act, 2010 Sec. 22, Sec. 16 - Municipal Solid Wastes (Management and Handling) Rules, 2000 Rule 6, Rule 7, Rule 4 - Solid Waste Management Rules, 2016 Rule 22, Rule 1, Rule 20, Rule 15 - Garbage Plant Closure - Appellant challenged NGT's order to close Baner Garbage Processing Plant (GPP) due to environmental violations - Plant established per 2008 Development Plan on land reserved for waste management - Respondents objected citing pollution and proximity to residential areas - NGT ordered plant relocation and environmental compensation - Supreme Court found 2016 Solid Waste Rules did not apply retroactively, and buffer zones required for landfill sites, not GPPs - NGT order quashed, with directions for odor control and environmental audit compliance. - Appeal Allowed

Law Point: Solid waste management plants are not subject to 2016 Rules retroactively; buffer zones apply to landfill sites, and public interest must be considered when directing plant closure.

મહારાષ્ટ્ર પ્રાદેશિક અને ટાઉન પ્લાનિંગ એક્ટ, ૧૯૬૬ સેક. ૨૮ - નેશનલ ગ્રીન ટ્રિબ્યુનલ એક્ટ, ૨૦૧૦ સેક. ૨૨, સે. ૧૬ - મ્યુનિસિપલ સોલિડ વેસ્ટ (વ્યવસ્થાપન અને

સંચાલન) નિયમો, ૨૦૦૦ નિયમ ૬, નિયમ ૭, નિયમ ૪ - ઘન કચરા વ્યવસ્થાપન નિયમો, ૨૦૧૬ નિયમ ૨૨, નિયમ ૧, નિયમ ૨૦, નિયમ ૧૫ - ગાર્બેજ પ્લાન્ટ બંધ - અપીલકર્તાએ પર્યાવરણના ઉલ્લંઘનને કારણે બાનેર ગાર્બેજ પ્રોસેસિંગ પ્લાન્ટ (GPP) બંધ કરવાના NGTના આદેશને પડકાર્યો હતો. - કચરાના વ્યવસ્થાપન માટે આરક્ષિત જમીન પર ૨૦૦૮ વિકાસ યોજના મુજબ પ્લાન્ટની સ્થાપના - પ્રતિવાદીઓએ પ્રદૂષણ અને રહેણાંક વિસ્તારોની નિકટતાને ટાંકીને વાંધો ઉઠાવ્યો - NGTએ પ્લાન્ટ રિલોકેશન અને પર્યાવરણીય વળતરનો આદેશ આપ્યો - સર્વોચ્ચ અદાલતે શોધી કાઢ્યું કે ૨૦૧૬ ના સોલિડ વેસ્ટ નિયમો પૂર્વવર્તી રીતે લાગુ પડતા નથી, અને લેન્ડફિલ સાઇટ્સ માટે બફર ઝોન જરૂરી છે, GPP માટે નહીં - ગંધ નિયંત્રણ અને પર્યાવરણીય ઓડિટ પાલન માટેના નિર્દેશો સાથે NGTનો આદેશ રદ કરવામાં આવ્યો. - અપીલની મંજૂરી છે

કાયદાનો મુદ્દો: ઘન કચરા વ્યવસ્થાપન પ્લાન્ટો ૨૦૧૬ના નિયમોને પૂર્વવર્તી રીતે આધીન નથી; બફર ઝોન લેન્ડફિલ સાઇટ્સ પર લાગુ થાય છે, અને પ્લાન્ટ બંધ કરવાનું નિર્દેશન કરતી વખતે જાહેર હિત ધ્યાનમાં લેવું આવશ્યક છે.

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 Sec. 28
National Green Tribunal Act, 2010 Sec. 22, Sec. 16
Municipal Solid Wastes (Management and Handling) Rules, 2000 Rule 6, Rule 7, Rule 4
Solid Waste Management Rules, 2016 Rule 22, Rule 1, Rule 20, Rule 15

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JUDGEMENT

B.R. Gavai, J.- [1] These Civil Appeals challenge the judgment and order dated 27th October 2020 passed by the National Green Tribunal, Principal Bench, New Delhi **[Hereinafter referred to as the 'Tribunal'.]** in Original Application **[Hereinafter referred to as OA]** No. 210 of 2020**[1]** wherein the Tribunal disposed of the OA preferred by the Sus Road Baner Vikas Manch, Respondent No. 1 herein, by directing the Pune Municipal Corporation **[Hereinafter referred to as the 'appellant-Corporation'.]** to close the Garbage Processing Plant **[Hereinafter referred to as the 'GPP'.]** operated by Noble Exchange Environment Solution Pune LLP **[Hereinafter referred to as the 'respondent-Concessionaire'.]**, at Baner, Pune and to shift the same to an alternate location in terms of the guidelines issued by the Central Pollution Control Board **[Hereinafter referred to as the "CPCB".]**, within 4 months from the date of the order. Having directed the closure of the GPP, the Tribunal further granted liberty to the Maharashtra Pollution Control Board **[Hereinafter referred to as the "MPCB".]** to recover environmental compensation on the basis of 'polluter pays' principle from the GPP for the entirety of the period during which the environmental norms were violated by the GPP. Seeking a review of the aforesaid order, the respondent-Concessionaire, the operator of the aforementioned GPP, filed a Review Application being No. 49 of 2020 which came to be dismissed by the Tribunal vide order dated 22nd December 2020. The said order is also under challenge in these present appeals.

[2] We have two Civil Appeals before us. The first set of Civil Appeals being CA Nos. 258-259 of 2021 have been filed by the Pune Municipal Corporation. The second set of Civil Appeals being CA Nos. 265-66 of 2021 have been filed by Noble Exchange Environment Solution Pune LLP. For the sake of clarity and to avoid confusion, the parties will be referred to according to their positions in the first set of civil appeals.

[3] The facts which give rise to the present appeals are as under:

3.1. Upon the municipal limits of the appellant-Corporation being extended to include Baner Balewadi, a Development Plan was drawn up in 2002 wherein land situated at Survey No. 48/2/1 in Baner Balewadi, Pune was reserved for the purpose of a GPP. In 2004, a public hearing was conducted for the purpose of drawing up a new development plan, subsequent to which, the Planning Committee of the appellant-Corporation submitted its report on 30th December 2004 to the General Body of the appellant-Corporation earmarking the aforesaid land for a GPP in the Draft Development Plan of 2005. The said Plan was submitted to the Government of Maharashtra on 29th November 2005 whereafter the Plan came to be sanctioned by the State Government vide Notification dated 18th September, 2008.

3.2. In the interregnum, while the aforesaid Plan was pending approval, in 2005, permission was sought for constructing a residential building being Tarai Heights at a

site which was approximately 100 metres away from the earmarked land in Survey No. 48/2/1 and subsequently, in 2008, permission was sought for constructing another residential building being 52 Green Woods at a site which was approximately 140 metres away from the aforesaid earmarked land. In said fashion, over the years, permission for construction of similar such residential projects were sought in and around the earmarked portion of land. The last such permission was sought in 2019 for the construction of a residential building being Platinum 9.

3.3. Subsequent to the Development Plan of 2005 being sanctioned, the appellant-Corporation and the respondent-Concessionaire, Respondent No. 7 in the first appeal, entered into a Concession Agreement on 30th March 2015 for setting up an Organic Waste Processing Plant at the land situated at Survey No. 48/2/1. The purpose of the Concession Agreement was to set up an operational waste-processing facility where pre-segregated, non-compacted organic waste received from the appellant-Corporation would be crushed into a slurry, after removing any non-biodegradable material, and the said slurry would be transported to a facility in Talegaon where raw biogas would be generated from the slurry. The Concession Agreement was for a period of 30 years.

3.4. Subsequently, in compliance of the notification dated 14th August 2006, for the setting up of GPP, the respondent-Concessionaire sought Environment Clearance from the State Level Environment Impact Assessment Authority **[Hereinafter referred to as 'SEIAA'.]** on 13th August 2015. Thereafter, pursuant to a public hearing the SEIAA granted Environment Clearance to the respondent-Concessionaire for establishment of Organic Waste Management Plant on 1st February 2016. The Environment Clearance accorded was to be valid for a period of 7 years.

3.5. In the meanwhile, on 2nd December 2015, the MPCB, Respondent No. 2 herein, granted authorization to the respondent-Concessionaire to set up and operate a solid waste processing/disposal plant in accordance with the Municipal Solid Waste (Management and Handling) Rules, 2000 **[Hereinafter referred to as the '2000 Rules'.]**. The said authorization was valid till 31st December 2016.

3.6. The authorization granted by the MPCB was subsequently renewed on two occasions. On 4th May 2017, the MPCB further granted authorization to the appellant-Corporation to set up and operate waste processing/recycling/treatment/disposal facilities at various sites, 48 in total, including at the concerned site i.e. Survey No. 48/2/1, at Baner, Pune. The said authorization was to be valid till 31st December 2021. The authorization was renewed once again on 3rd August 2022 and the same is valid up till 31st July 2027.

3.7. In 2019, Respondent No.1-Sus Road Baner Vikas Manch, a registered Trust that had been established to protect the interests of the citizens residing at the Sus Road and Baner areas in Pune, preferred an OA being No. 34 of 2019 before the National Green Tribunal, Western Zone, seeking to restrain the respondent-Concessionaire from operating the aforementioned GPP at Survey No. 48/2/1 at Baner,

Pune since the same had been established without following the procedure prescribed by law.

3.8. Deeming it appropriate to verify the factual details set out in the OA, the Tribunal vide its order dated 5th September 2019 constituted an expert committee comprising of the CPCB and the MPCB to inspect the GPP and the area in question, and to submit a report within a month.

3.9. In compliance of the aforesaid order, the CPCB and the MPCB conducted a joint inspection of the GPP and area in question. Subsequently, a report was submitted before the Tribunal wherein the joint inspection team had made several observations about the operational capacity of the GPP, its authorization status and certain procedural shortcomings.

3.10. Based on the Joint Inspection Report, the Tribunal vide the first impugned order dated 27th October 2020 held that the GPP was in violation of the right to clean environment of the inhabitants and was against the statutory norms. In that view of the matter, the Tribunal disposed of the OA in the aforementioned terms. While directing a shut- down of the plant, the Tribunal further directed that the site in question might be used for the purpose of developing a bio-diversity park, for which purpose the site had been originally designated. The Tribunal further constituted a Joint Committee comprising of the CPCB, the MPCB, District Magistrate of Pune and the Municipal Corporation of Pune to monitor the subsequent course of action in light of the aforesaid decision.

3.11. Aggrieved thereby, the respondent-Concessionaire filed a Review Application before the Tribunal being Review Application No. 49 of 2020 which came to be dismissed vide second impugned order dated 22nd December 2020.

3.12. Being aggrieved thereby, the present statutory appeals have been filed under Section 22 of the National Green Tribunal Act, 2010 **[Hereinafter referred to as the "NGT Act".]**.

[4] We have heard Shri A.N.S. Nadkarni, learned Senior Counsel appearing on behalf of the appellant in CA Nos. 258- 259 of 2021, Shri K. Parameshwar, learned Senior Counsel appearing on behalf of the appellant in CA Nos. 265-266 of 2021 and on behalf of respondent No.7 in CA Nos.258-259 of 2021, Shri Ninad Laud, learned counsel appearing on behalf of respondent No.1 in both the matters and Shri Rahul Kaushik, learned Senior Counsel appearing on behalf of respondent No.2-MPCB in both the appeals.

[5] Shri Nadkarni submitted that the Draft Development Plan 2002 for Pune city was sanctioned on 18th September 2008. He submitted that this was done after inviting and hearing objections under Section 28 of the Maharashtra Regional and Town Planning Act, 1966 **[Hereinafter referred to as the "MRTP Act".]**. He submitted that, at that stage, no objection was raised by anyone. He further submitted that the

advertisement inviting Expression of Interest for setting up Waste Segregation and Processing Unit was published on 4th March 2014. He submitted that the Concession Agreement was entered into on 30th March 2015. It is submitted that the Waste Segregation Unit is set up within Pune city limits and the Processing Plant is situated at Talegaon that is outside the city limits. It is further submitted that the MPCB granted its authorization to set up and operate on 2nd December 2015 and the Environmental Clearance was also issued on 1st February 2016.

[6] Shri Nadkarni submitted that the respondent No. 1 herein despite having knowledge of the reservation in the Development Plan, EC and grant of authorization for the Waste Segregation and Processing Unit, filed an OA seeking cancellation and revocation of EC only on 2nd March 2019. It is therefore submitted that the OA was filed belatedly almost after a period of three years from the date of grant of EC. It is therefore submitted that the OA was filed much beyond the period prescribed under Section 16 of the NGT Act. As such, the OA ought to be dismissed on the ground of limitation alone.

[7] Shri Nadkarni further submitted that the learned Tribunal had mixed up the facts. Whereas the GPP reservation is in Plot No. 48/2/1 under the Development Plan, the Bio-diversity Park is in Plot No. 49 which is an adjoining plot. As such, the direction issued by the learned Tribunal to use Plot No. 48/2/1 for Bio-diversity Park is unsustainable.

[8] Shri Nadkarni further submitted that the reservation for the GPP in the Draft Development Plan is since 2002 which was subsequently sanctioned in 2008. The residential buildings had come up at a much later point in time. He submitted that only one project was commenced on 27th December 2005 whereas the second project was commenced on 25th March 2008 and all other projects that is 17 in number were commenced only from 2010 onwards that is much after sanction of the Development Plan.

[9] Shri Nadkarni further submitted that the Environmental Clearance for the GPP was received on 1st February 2016 and the Plant was set up and commenced in the same year. He submitted that, at the relevant time, the 2000 Rules were in force. It is submitted that the Solid Waste Management Rules, 2016 **[Hereinafter referred to as the "2016 Rules".]** granted two years period for the migration and upgrading of the existing Plant to the 2016 Rules and as such, the provisions pertaining to the waste disposal came into force on 8th April 2018 i.e. after two years from the date of notification of the 2016 Rules.

[10] Shri Nadkarni further submitted that the provisions as regards the buffer zones around waste processing and disposal facility came into force in 2017 and as such, would not apply to a plant which was conceived, set up and became functional in 2016. It is submitted that, even the 2016 Rules envisage decentralization of the process i.e. segregation at source. It is submitted that the present location of the GPP conforms

to the requirement of the 2016 Rules inasmuch as only the waste generated from surrounding areas alone is segregated and crushed at the Baner Plant.

[11] Shri Nadkarni further submitted that in pursuance of the observations made by this Court, the appellant-Corporation took steps to look for an alternative site, but it has not been possible to find out an alternative site on account of variety of reasons.

[12] Shri Nadkarni further submitted that the reasoning given by the learned Tribunal that there was no consent of MPCB for establishment of the GPP is also unsustainable. It is submitted that, at the relevant time, the MPCB was not issuing a separate "consent to establish" under the Water Act, 1974 or the Air Act, 1981 but was issuing a composite authorization to "set up and operate" across the State. It is submitted that the circular issued by the MPCB dated 6th September 2021 would clarify this position. It is further submitted that the said practice was followed throughout the State. Shri Nadkarni relies on the proceedings of the Minutes of the Consent Committee Meeting dated 9th November 2015.

[13] Shri Nadkarni submitted that, since initially the authorization granted by MPCB on 2nd December 2015 was valid till 31st December 2016, the appellant-Corporation and the respondent-Concessionaire applied for renewal and the authorization, vide communication of the MPCB dated 4th May 2017, was renewed for a period of five years i.e. till 31st December 2021. It is submitted that, before the expiry of five years period which was to expire on 31st December 2021, the appellant-Corporation and the respondent-Concessionaire again applied for renewal of the authorization to set up and operate on 26th October 2021 and vide communication dated 3rd August 2022, the authorization to set up and operate was renewed till 31st July 2027. Not only that, but on 1st November 2022, consent to operate was also obtained as per notification dated 6th September 2021. The consent to operate has been further renewed till 30th September 2025.

[14] Shri Nadkarni further submitted that the Joint Inspection Committee appointed by the learned Tribunal erroneously applied the 2016 Rules which did not apply to the GPP which was conceived and became functional prior to 2016.

[15] Insofar as the finding of the learned Tribunal regarding buffer zone is concerned, Shri Nadkarni submitted that the said buffer zone of 500 meters is to be maintained from land fill sites and does not apply to Waste Segregation Plant. Shri Nadkarni further submitted that the continuation of the Project was in the larger public interest. It is submitted that the GPP processes the organic waste generated in the western part of the city i.e., Aundh, Baner, Kothrud, Sinhagad road and Katraj. It is submitted that, prior to commencement of the said Plant, the organic waste generated in the western part of the city was taken all the way to Hadapsar which is in the eastern part of the city. It is submitted that this led to foul odour and nuisance to public. It is therefore submitted that the impugned order of the learned Tribunal rather than subserving in public interest, would be detrimental to the public interest.

[16] Shri Nadkarni submitted that, in any case, in order to address the concern of the respondents, the appellant-Corporation is in the process of installing portable compactors with hook lifting mechanism to ensure that the reject waste generated does not touch the ground. It is submitted that the tenders for the same have already awarded to one M/s Global Waste Management and the installation of the machinery would be completed by December 2024. He further submitted that the construction of shed to cover the reject area would also be completed by December 2024. Shri Nadkarni further submitted that the appellant-Corporation would construct bitumen road to the Waste Segregation Plant and concrete the Reject Area immediately. This will in turn enhance the clean transfer of waste and avoid accumulation of water around the Waste Segregation Plant. He submitted that though the appellant-Corporation desired to do it earlier, it could not be done since the appellant-Corporation was facing objections from protestors due to pendency of the present proceedings.

[17] Shri Parameshwar, learned Senior Counsel appearing on behalf of the respondent-Concessionaire also supported the submissions made on behalf of the appellant-Corporation. He submitted that the respondentConcessionaire specializes in processing food waste with cutting edge anaerobic digestion technology - a process in which microorganisms break down biodegradable waste to produce biogas and organic manure. He submitted that, when cleaned and purified to 96% purity, Bio CNG/CBG can replace fossil fuels such as LPG, diesel, petrol, etc. It is further submitted that the anaerobic digestion is an efficient and controlled biological process that productively utilises waste in an enclosed space, rather than dumping it in a landfill, which causes environmental harm through leaching, contamination of groundwater, risk of fires, etc. It is further submitted that Indian food waste is unique in its composition, with a high concentration of antibacterial ingredients like turmeric and spices, and greases such as ghee that cannot be broken down using conventional enzymes and cultures. He submitted that the respondent-Concessionaire, through years of research and experience, has successfully developed enzymes, cultures, and processes to biologically break down Indian food. It is submitted that the Project commissioned by the respondent-Concessionaire, as a matter of fact, is environment friendly inasmuch as it converts the food waste into biogas which has also been used to run public transport buses in Pune City.

[18] Shri Parameshwar submitted that, in order to carry out the conversion of food waste into biogas, the respondent-Concessionaire has established two plants - one in Baner and one in Talegaon. He submitted that the site at Baner is a waste processing facility where pre-segregated, non-compacted organic waste is received from the appellantCorporation. The waste is segregated again to remove any non-biodegradable materials, and the residual organic waste is crushed to make a slurry. The slurry produced is then transported to a different site in Talegaon, which is about 34 kms away from Pune City, where raw biogas is generated from the slurry.

[19] Shri Parameshwar submitted that though the reservation in the Draft Development Plan is of 2002 which was sanctioned in 2008, no challenge has been made in the OA challenging the reservation of this Plot as GPP. He therefore joins Shri Nadkarni in submitting that the impugned order passed by the learned Tribunal is not sustainable in law.

[20] Shri Ninad Laud, learned counsel appearing on behalf of respondent No.1 in both the matters submitted that the checklist prescribed by the MPCB in 2003 would also apply to waste processing facility and the same is not restricted to landfill sites. He submitted that, as per the said checklist, no development zone of 500 meters is prescribed for Municipal Solid Waste Processing Plants and Landfill sites. He further submitted that a mere reservation in the municipal land will not absolve the appellant-Corporation of the environmental obligation. He submitted that the appellant-Corporation itself has sanctioned the plans of the buildings where the residents of respondent No.1 reside. Having sanctioned the Plans, the appellant-Corporation cannot run away from its duty of preventing pollution in the area on account of GPP.

[21] Insofar as the contention that the MPCB was only granting authorization and not consent, Shri Laud submitted that merely because the MPCB was following a particular practice, it cannot absolve the appellant-Corporation of obtaining consent under the Water Act, 1974 or the Air Act, 1981 which are statutory requirements. Shri Laud submitted that the 2003 checklist is traceable to 2000 Rules.

[22] Shri Laud further submitted that, a perusal of the Joint Inspection Committee Report itself would reveal that the Joint Inspection officials felt prevalence of odour in and around the plant premises. He further submitted that the Joint Inspection Committee also found that the segregation rejects has been transported in open truck without any cover. He has submitted that the said Report also suggests that such open carriage would cause nuisance during transportation. He therefore submitted that it is clear that the GPP was causing pollution in the area thereby making the life of the residents of respondent No. 1 miserable. He submitted that, not only that even the suggestions which are given by the National Engineering and Environment Research Institute **[Hereinafter referred to as the "NEERI".]** have also not been implemented.

[23] Shri Laud, in the alternative, submitted that, in the event this Court is inclined to hold that the GPP is entitled to continue its operations, the Court should issue stringent directions so that the residents are not compelled to suffer the pollution.

[24] Shri Kaushik, learned Senior Counsel appearing on behalf of the MPCB also accepts the position that, at the relevant time i.e. when the GPP commenced, the MPCB was following the practice of only granting authorization and only after its circular dated 6th September 2021, it has started granting consent. He therefore submitted that accordingly, the first consent was granted on 1st November 2022 and the second consent has been granted on 16th March 2024.

[25] We have heard the learned counsel for the parties and also perused the materials placed on record.

[26] A perusal of the proposed Land Use Map for village Balewadi, Baner which was notified on 31st December 2002 would reveal that in the said Plan, Plot No. 48/2/1 has been reserved for GPP. Plot Nos. 49/289/50 and 7 have been shown in Green Belt. The Draft Development Plan was published under Section 28(4) of the MRTP Act on 30th November 2005. In the said Plan also, Plot No. 48/2/1 has been shown as reserved for GPP. Plot Nos. 49/289/50 and 7 have been reserved for Bio-diversity Park (BDP). The Government of Maharashtra vide notification dated 18th September 2008 sanctioned the said Draft Development Plan. It could thus clearly be seen that right from 2002, the Plot in question has been reserved for GPP. As already observed hereinabove, the first building was granted commencement certificate on 27th December 2005 whereas the second was granted commencement certificate on 25th March 2008 and all other, that is 17 buildings, have been granted commencement certificate only after 2008. It is thus clear that the commencement certificate insofar as the first building is concerned is also after the Draft Development Plan was statutorily notified. The commencement certificates insofar as all other buildings are also after the Draft Development Plan was sanctioned by the State Government. It is thus clear that the commencement certificates in respect of all the buildings are after the date on which the Plot was reserved for GPP.

[27] The learned Tribunal while allowing OA of respondent No.1 has also come to a conclusion that the GPP is also in violation of Rule 20 of 2016 Rules. For considering the correctness of the said finding of the learned Tribunal, we will have to first consider as to which of the Rules are to be applicable to the said GPP.

[28] It is the contention of the appellant-Corporation that the GPP would be covered by the 2000 Rules whereas it is the contention of the respondent No. 1 that the same would be covered by the 2016 Rules.

[29] As per sub-rule (2) of Rule 1 of the 2016 Rules, the Rules were to be given effect from the date of their publication in the Official Gazette. The 2016 Rules were notified on 8th April 2016. As per Entry No. 7 under Rule 22 of the 2016 Rules, the time frame for establishment of necessary infrastructure for implementation of these Rules was to be created by the local bodies and other concerned authorities within a period of two years from the date of the said Rules coming into force. It is further to be noted that the application for authorization as per sub-rule (2) of Rule 4 of the 2000 Rules was made by the appellant-Corporation on 10th August 2015 in Form-I and the authorization was granted in Form-III of the 2000 Rules on 2nd December 2015. The processing plant also became operational on 17th December 2015. It is also to be noted that the SEIAA granted Environment Clearance in respect of the Organic Waste Management Plant at Talegaon, Dabhade after public hearing on 1st February 2016. The GPP and the Organic Waste Management Plant at Talegoan, Dabhade are part of

the same Concession Agreement which was entered into between the appellant-Corporation and the respondent-Concessionaire on 30th March 2015. It could thus clearly be seen that the application for grant of authorization, grant of authorization, grant of Environment Clearance by the SEIAA and the commencement of the project was all prior to 8th April 2016 i.e. the date on which the 2016 Rules came into force.

[30] It will also be relevant to refer to the Preamble of the said 2016 Rules, which reads thus:

> "Now, therefore, in exercise of the powers conferred by sections 3, 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986) and in supersession of the Municipal Solid Waste (Management and Handling) Rules, 2000, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for management of Solid Waste, namely:-"

[31] It could thus clearly be seen that the Preamble itself states that though the 2016 Rules are in supersession of the 2000 Rules, they will apply except as respect things done or omitted to be done before such supersession.

[32] It will be relevant to refer to the following observations of this Court in the case of **State of Punjab v. Harnek Singh**, 2002 3 SCC 481: [2002 INSC 84], wherein this Court after considering the earlier decisions has observed thus:

> **"16.** The words "anything duly done or suffered thereunder" used in clause (b) of Section 6 are often used by the legislature in saving clause which is intended to provide that unless a different intention appears, the repeal of an Act would not affect anything duly done or suffered thereunder. This Court in **Hasan Nurani Malak v. S.M. Ismail, Asstt. Charity Commr., Nagpur**, 1967 AIR(SC) 1742 has held that the object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the things done before a particular date from which the repeal of such a pre-existing law takes effect. In **Universal Imports Agency v. Chief Controller of Imports and Exports**, 1961 AIR(SC) 41: [(1961) 1 SCR 305] this Court while construing the words "things done" held that a proper interpretation of the expression "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom."

[33] It can thus be seen that this Court has in unequivocal terms held that the term "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequences flowing therefrom.

[34] In the present case, as already discussed hereinabove, the application for authorization, the grant of authorization, the grant of Environment Clearance by the SEIAA and the commencement of the GPP all have taken place prior to 8th April 2016

i.e. the date on which the 2016 Rules came into force. As such, we hold that the learned Tribunal has grossly erred in observing that the GPP in question was covered by the 2016 Rules.

[35] The next finding of the learned Tribunal is with regard to the consent under the Water Act or the Air Act. A perusal of the Minutes of the 11th Consent Committee Meeting of 2015-16 held on 9th November 2015 would clearly reveal that the MPCB was following the practice of granting authorization under the 2000 Rules which covers all the aspects of the consent. As such, MPCB did not find it necessary to cover such processing plant for the consent management.

[36] It will be relevant to refer to the Circular issued by the MPCB dated 6th September 2021, which reads thus:

> "Board is receiving applications from solid waste Management Facilities and ULBs for grant of consent for installation and operation of the facility. As there is no comprehensive categorization of all Solid waste processing operations/activities in modified CPCB categorization for Solid Waste Management, Board is not granting the consent for Solid Waste Management Facility/operations/activities.
>
> Presently, Board is granting authorization under The Solid Waste Management rules, 2016, for setting up and operation of solid waste management facilities.
>
> The Board in its 176th meeting held on 25/O2/2O2I passed resolution on consent management for solid waste processing plants / facilities and decided to grant Consent to Establish/Operate for Solid Waste Management facilities.
>
> The Consent fees is charged as per Env. Dept. GoM GR dated 25.8.2011 to individual/Integrated Solid Waste Management facility depending upon type of ULB. The term of consent for Red, Orange, and Green category of Industry is one, two and three years respectively".
>
> Local Bodies to pay the consent fees to the Board as per the statement given below.
>
> • Urban Local Bodies-

Sr. No.	**Urban Local Body**	**Fees**
1.	Municipal Corporation	Rs.1,00,000/-
2.	Municipal Council Class-A	Rs.50,000/-
3.	Municipal Council Class-B	Rs.5,000/-
4.	Municipal Council Class-C	Rs.2,000/-

• Other than Local Body-

Individual Operator/Industry installing MSW based processing plant.	Based on gross capital investment as per prevailing rules for industries.

• Delegation of powers to various authorities for grant of consent will be as per "revised delegation of powers for consent Management" issued vide Office Order No. 12, Dated23/12/2O2O.

Therefore, all Ros and SROs are hereby directed to communicate all local Bodies/Cantonment Boards of Concern area of jurisdiction for submission of application to obtain Consent to Establish/Operate for setting up and operation of existing as well as proposed solid waste management facilities."

[37] It could thus be seen that prior to 6th September 2021, the MPCB was not granting Consent for Solid Waste Management facility/operations/activities. The MPCB was granting authorization for setting up and operation of solid waste management facilities. Only in the meeting dated 25th February 2021, a Resolution was passed on consent management and it was decided to grant Consent to operate for Solid Waste Management Facilities. Vide the said communication, all ROs and SROs were directed to communicate to all local Bodies/Cantonment Boards of concerned areas for submission of applications to obtain Consent to establish/operate for setting up and operation of existing as well as proposed Solid Waste Management Facilities.

[38] Admittedly, after the said date i.e. 6th September 2021, the Consent to Operate was granted by the MPCB on 1st November 2022. The said Consent to Operate has been further renewed till 30th September 2025 and authorization to set up and operate has been granted till 31st July 2027. It can thus clearly be seen that the MPCB started granting Consent only after 6th September 2021 and prior to that, it was only issuing a composite authorization. We find that the learned Tribunal has failed to take this into consideration and as such, the finding in that regard also deserves to be set aside.

[39] The next contention is that the Checklist issued by the MPCB which was published in 2003 would also apply to the GPP. The learned counsel for respondent No. 1 submitted that the said Checklist specifically prescribes that no development zone of 500 metres was required to be kept from the boundary of the landfill site. Further relying on the Checklist, the learned counsel submitted that the buffer zone of 500 metres was required to be kept from the Solid Waste Processing Plant as well. A perusal of the said Checklist would reveal that the requirement of no-development zone or a buffer zone is only with regards to landfill sites. It can further be seen that the Schedules framed under Rules 6 (1)(3) and 7 (2) of the 2000 Rules prescribe separate Schedules for landfill sites on one hand and Composting, Treated Leachates and Incineration by waste processing or disposal facilities on the other hand. From the

said Schedule-III which is applicable to landfill sites, it can be seen that under clause 9, a buffer zone of no-development is required to be maintained around the landfill site and the same shall be incorporated in the Town Planning Department's land use plans. However, insofar as the Standards for Composting, Treated Leachates and Incineration are concerned, the same read as under:

> "3. In order to prevent pollution problems from compost plant and other processing facilities, the following shall be complied with, namely:-
>
> i. The incoming wastes at site shall be maintained prior to further processing. To the extent possible, the waste storage area should be covered. If, such storage is done in an open area, it shall be provided with impermeable base with facility for collection of leachate and surface water run-off into lined drains leading to a leachate treatment and disposal facility;
>
> ii. Necessary precautions shall be taken to minimise nuisance of odour, flies, rodents, bird menace and fire hazard;
>
> iii. In case of breakdown or maintenance of plant, waste intake shall be stopped and arrangements be worked out for diversion of wastes to the landfill site;
>
> iv. Pre-process and post-process rejects shall be removed from the processing facility on regular basis and shall not be allowed to pile at the site. Recyclables shall be routed through appropriate vendors. The non-recyclables shall be sent for well designed landfill site(s).
>
> v. In case of compost plant, the windrow area shall be provided with impermeable base. Such a base shall be made of concrete or compacted clay, 50 cm thick, having permeability coefficient less than 10 -7 cm/sec. The base shall be provided with 1 to 2 per cent slope and circled by lined drains for collection of leachate or surface run-off;
>
> vi. Ambient air quality monitoring shall be regularly carried out particularly for checking odour nuisance at down-wind direction on the boundary of processing plant."

[40] We are therefore of the considered view that the contention of the learned counsel for respondent No. 1 that under the 2000 Rules, a buffer zone is required to be maintained insofar as the GPP is concerned is without substance.

[41] We further find that the finding of the learned Tribunal that initially the plot where GPP was constructed was reserved for Bio-diversity Park is also erroneous and factually incorrect. As discussed hereinabove, the plot in question has been reserved for the GPP since inception and it is only the adjoining plot which was reserved for the Bio-diversity Park.

[42] We are therefore of the considered view that the learned Tribunal has erred in allowing the OA of the respondent No. 1 and directing closure of the GPP. Apart from that, we find that the closure of the GPP in question rather than subserving the public interest, would be detrimental to public interest. If the GPP in question is closed, the organic waste generated in the western part of Pune city would be required to be taken all the way throughout the city to Hadapsar which is in the eastern part of the city. This will undoubtedly lead to foul odour and nuisance to the public.

[43] It will be relevant to refer to clauses (q) and (v) of Rule 15 of the 2016 Rules, which read thus:

> **"15.** Duties and responsibilities of local authorities and village Panchayats of census towns and urban agglomerations.- The local authorities and Panchayats shall,-
>
> .....
>
> (q) transport segregated bio-degradable waste to the processing facilities like compost plant, bio-methanation plant or any such facility. Preference shall be given for on site processing of such waste;
>
> .....
>
> (v) facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilization or various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Urban Development from time to time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralized processing to minimize transportation cost and environmental impacts such as-
>
> a) bio-methanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable waste;
>
> b) waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns;"

[44] It can thus be seen that the 2016 Rules also give preference to the on-site processing of the waste. It also emphasizes preference to be given to decentralized processing to minimize transportation cost and environmental impact. It has been submitted on behalf of the appellant-Corporation that 48 such GPPs have been commissioned throughout the city of Pune wherein the non-compacted, organic waste is segregated to remove any nonbiodegradable materials and the residual organic waste

is crushed to make a slurry. The said slurry is then transported to a site in Talegaon where raw biogas is generated from the slurry. At the Talegaon plant, biogas is produced which is used for providing fuel to the public transport buses. As such, the entire Project is environmentally friendly.

[45] The approach of respondent No. 1 appears to be that such a Facility though could be established in the vicinity of the other buildings, it should not be established in their backyard. The Division Bench of the Bombay High Court in the case of Bhavya Height Co-operative Housing Society Ltd. v. Mumbai Metropolitan Region Development Authority and Others,2019 SCCOnLineBom 1075 had an occasion to consider a similar situation, wherein the High Court observed thus:

> **"36.** ..... To this affidavit there are sketch plans annexed prepared by the Petitioner's architects. These propose that the Monorail Station staircase be shifted to a point to the south, directly in front of Rehab Building No. 5. In other words, it would prima facie seem that this is the classic NIMBY principle - Not In My Back Yard. For what the Petitioner seems to be suggesting is that it is perfectly all right if the lives of the residents of the seven-storey slum rehab building (all previously slum dwellers) are endangered by the same staircase, but the Petitioner's members' interest must remain paramount. We cannot and do not countenance any such submission."

[46] We agree with the said observations of the High Court.

[47] We are therefore of the considered view that the impugned judgment and order of the learned Tribunal deserves to be quashed and set aside and the OA of the respondent No. 1 is to be dismissed.

[48] In the result, the appeals are allowed. The impugned judgments and orders dated 27th October 2020 passed by the learned Tribunal in OA No. 210 of 2020 and dated 22nd December 2020 in Review Application being No. 49 of 2020 are quashed and set aside. OA No. 210 of 2020 filed by respondent No. 1 is also dismissed.

[49] However, before we part with the judgment, we find it necessary to caution the appellant-Corporation as well as the respondent-Concessionaire that they should take necessary steps so that the residents residing in the nearby buildings do not have to suffer on account of foul odour. The NEERI, in its Report, had made the following recommendations:

> **"Recommendations:**
>
> Based on the observations and good engineering practices, following suggestions are offered:
>
> **Plant A:**
>
> • The slurry making area needs proper cover in the hopper area to reduce odour / foul smell,

• A suitable odour control system / misting system (e.g carbon filters, etc) needs to be installed immediately,

• Better material of construction and design could be employed to avoid corrosion problems and frequent shut downs,

• The space is too congested for capacity enhancement. PMC may think of additional/alternative space,

• The food bags need to be stored properly before using them.

• Slurry sampling and analysis needs to be done frequently to understand the decomposition of food waste and control it to the level so that maximum methane can be produced in the Talegaon plant.

• The technology provider must also look into reducing the transporting cost between slurry making facility at Baner and Talegaon plant by finding an optimum slurry density."

[50] We direct the appellant-Corporation and the respondent-Concessionaire to ensure that all the aforesaid suggestions made by NEERI should be strictly complied with. We further direct the appellant-Corporation to install the portable compactors with hook mechanisms so as to ensure that the reject waste does not touch the ground by 31st December 2024.

[51] The appellant-Corporation is further directed to construct bitumen road to the Waste Segregation Plant and concrete the reject area which will enhance clean transfer of waste and avoid accumulation of water around the Waste Segregation Plant.

[52] We further direct the appellant-Corporation as well as the respondent-Concessionaire to construct a shed so as to cover the reject area by 31st December 2024.

[53] We further direct the appellant-Corporation/respondent-Concessionaire to carry out plantation with thick density so that there would be a green cover on all the sides of the GPP.

[54] A perusal of the sanctioned plan would reveal that, on one side, there is a reservation for the Bio-diversity Park. As such, the plantation would be required to be done to cover the three sides.

[55] Insofar as the Bio-diversity Park is concerned, we direct the State Government to consider the possibility of growing Miyawaki forests so as to provide green lungs to the nearby areas.

[56] We further direct the NEERI to conduct an environmental audit of the GPP every six months and in turn, the appellant-Corporation and the respondent-Concessionaire are directed to ensure that the suggestions made in the said audit are strictly complied with.

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

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1 Earlier OA No. 34 of 2019 (WZ). Initially the OA was preferred before the Tribunal, Western Zone, and was subsequently transferred to the Principal Bench, New Delhi

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2024(2)GLPJ514

IN THE SUPREME COURT OF INDIA

[From UTTARAKHAND HIGH COURT]

[Before Abhay S Oka; Ahsanuddin Amanullah; Augustine George Masih]

Civil Appeal No 2394 of 2023; 2395 of 2023, 2396 of 2023, 2398 of 2023, 2399 of 2023, 2400 of 2023, 2401 of 2023, 2402 of 2023, 2403 of 2023 **dated 12/09/2024**

Ranjit Singh & Anr

Versus

State of Uttarakhand & Ors

EX PARTE DECREE CHALLENGE

Code of Civil Procedure, 1908 Or. 21 R. 97, Sec. 47 - Transfer of Property Act, 1882 Sec. 106 - Provincial Small Cause Courts Act, 1887 Sec. 25 - Ex Parte Decree Challenge - Appellant challenged an ex parte decree passed without giving them an opportunity to defend due to irregular adjournments and procedural lapses - Appellants argued that the Trial Court preponed the date without notice, violating principles of natural justice - Supreme Court set aside the ex parte decree, ordered restoration of the suit, and imposed conditions on the appellant to deposit Rs.1,00,000 per month pending final judgment - Suit remanded for trial based on merits. - Appeal Partly Allowed

Law Point: Ex parte decrees passed without following due process and without giving defendants an opportunity to be heard violate principles of natural justice and may be set aside for a fair trial.

સિવિલ પ્રોસિજર કોડ, ૧૯૦૮ ઑર્ડર. ૨૧ રૂ. ૯૭, સેક. ૪૭ - મિલકતનું ટ્રાન્સફર એક્ટ, ૧૮૮૨ સેક. ૧૦૬ - પ્રાંતીય સ્મોલ કોઝ કોર્ટ્સ એક્ટ, ૧૮૮૭ સેક. ૨૫ – એક તરફી ડિક્રી પડકાર - અરજદારે અનિયમિત સ્થગિતતા અને પ્રક્રિયાગત ક્ષતિઓને કારણે બચાવ કરવાની તક આપ્યા વિના પસાર કરેલા એક તરફી પક્ષના હુકમને પડકાર્યો - અપીલકર્તાઓએ દલીલ કરી હતી કે ટ્રાયલ કોર્ટે કુદરતી ન્યાયના સિદ્ધાંતોનું ઉલ્લંઘન કરીને નોટિસ વિના તારીખ આગળ વધારી હતી. - સર્વોચ્ચ અદાલતે એક પક્ષીય

હુકમનામું રદ કર્યું, દાવો પુનઃસ્થાપિત કરવાનો આદેશ આપ્યો, અને અંતિમ ચુકાદો બાકી હોય ત્યાં સુધી અરજદારને દર મહિને રૂ. ૧,૦૦,૦૦૦ જમા કરાવવાની શરતો લાદી. - મેરિટના આધારે ટ્રાયલ માટે દાવો રિમાન્ડ. - અપીલ અંશતઃ મંજૂર

કાયદાનો મુદ્દોઃ યોગ્ય પ્રક્રિયાને અનુસર્યા વિના અને પ્રતિવાદીઓને સાંભળવાની તક આપ્યા વિના પસાર કરાયેલા એક તરફી હુકમો કુદરતી ન્યાયના સિદ્ધાંતોનું ઉલ્લંઘન કરે છે અને ન્યાયી સુનાવણી માટે અલગ રાખવામાં આવી શકે છે.

Acts Referred:

Code of Civil Procedure, 1908 Or. 21R. 97, Sec. 47
Transfer of Property Act, 1882 Sec. 106
Provincial Small Cause Courts Act, 1887 Sec. 25

Counsel:

Jaideep Gupta (Senior Advocate), Jitendra Mohan Sharma (Senior Advocate), Anurag Gupta, Gagan Gupta, Anil Kumar Sinha, Rachna Gupta, Sanjiv Kr Saxena, Partha Sil, Ruchir Mishra, Ramneek Mishra, Poonam Shukla, Reba Jena Mishra, D Bharathi Reddy, Suveni Bhagat, R Venkataramani, Harin P Raval (Senior Advocate), Mukesh Giri, Shreya Bansal, Mandaar Giri, Abhishek Pandey, Chitvan Singhal, Shrestha Narayan, Urmi Raval, Akshat Sharma, Amrit Pardhan, Anil Raina

JUDGEMENT

Abhay S Oka, J.- [1] Civil APPEAL NOS.2399-2401/2023

1. The appellants are the defendants in a suit filed by the first respondent and one Shanti Devi, who is no more and has been shown as the third respondent in these Appeals. For convenience, we are referring to the parties with reference to their status in the suit. We have heard the learned counsel for the parties.

[2] The suit was filed on 8th November, 2001 for possession of the property, more particularly described in the schedule (suit property). The allegation in the suit is that the first defendant, the State of Uttaranchal (now Uttarakhand), was a tenant of the plaintiffs in respect of the suit property at a monthly rent of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty- two), which was fixed by an order dated 18th May, 1999 passed by the learned 3rd Additional District Judge, Dehradun. The allegation is that though the rent was fixed with effect from 1st September, 1993, the first defendant did not pay the rent. Therefore, the plaintiffs issued a notice of termination of tenancy under Section 106 of the Transfer of Property Act, 1882. As the defendants failed to comply with the said notice, the suit for eviction was filed.

[3] It appears from the record of the Trial Court that after the service of summons on the defendants, they appeared and applied for adjournments for filing the written

statement. The first such application was made on 13th December 2001. Subsequent applications were made for adjournments. On 22nd April 2002, the learned trial Judge did not accede to the prayer for grant of further time and passed an order that the suit would proceed ex parte and a date for ex parte hearing, i.e., 30th May 2002, was fixed. At this stage, we may also note that the plaintiffs also made an application to strike out the defence of the defendants. The said application was filed on 18th February 2002. On the said application, the Advocate for the plaintiffs made an endorsement in the margin that as there was no advocate representing the defendants, a copy of the application was attached to the application. Though the date for the ex parte hearing was already fixed as 30th May 2002, on 3rd May 2002, the plaintiffs made an application to the Trial Court for passing an order on the application dated 18th February 2002 for striking out the defendants' defence. Interestingly, on the same day, the plaintiffs moved another application stating that the plaintiffs may be permitted to lead their ex parte evidence through affidavits. It appears that on 3rd May, 2002, the Trial Court allowed the application for striking out the defence. Subsequent facts narrated in this judgment would show that the suit was taken on the cause list on that day without any notice to the defendants.

[4] On 16th May, 2002, an application was moved by the defendants for setting aside the order dated 22nd April, 2002. In the application, the averments were made that on 22nd April, 2002, the District Judge before whom the suit was pending, was holding a Camp Court at Mussoorie. We may note that the suit was pending in the Court at Dehradun. The contention in the said application was that as the learned District Judge was unavailable, the defendants were under the impression that the suit would not proceed. In fact, in the affidavit filed in support of the said application by one Mukesh Kumar Malik on behalf of the Superintendent of Police, Dehradun, it is stated that he was present on 22nd April 2002 till 4:00 p.m., but the case was not called out. On 30th May, 2002, the application for setting aside the order directing the suit to proceed ex parte was rejected. At this stage, we may note here that in the proceedings of 22nd April 2002, it was recorded that on that day, the lawyers had abstained from the Court work, and the learned Presiding Judge was on a tour of Mussoorie for holding a camp. There is no mention in the proceedings of 22nd April, 2002 that any in charge Judicial Officer passed an order to proceed with the suit ex parte. To the specific allegations made by the defendants in the application for setting aside the ex parte order that the Judicial Officer was not available, in the reply filed by the plaintiffs in paragraph 4, all that is stated is that the contentions that on 22nd April, 2002, the learned District Judge had proceeded to Mussoorie, are misconceived and the provisions of the Assam and Agra Civil Courts Act are apparent in this respect.

[5] On 1st July, 2002, the defendants applied for setting aside the order dated 3rd May, 2002 by which their defence was struck out. The application proceeds on the allegation that on 3rd May, 2002, the Court proceeded to strike out the defendants' defence without giving them an opportunity of being heard and the hearing was

conducted ex parte. Very interestingly, a reply was filed to the said application by the plaintiffs in which a stand has been taken that as the suit was directed to proceed ex parte, there was no occasion to give an intimation to the defendants or their counsel that the application will be taken up on 3rd May, 2002. Therefore, it is an accepted position that the application for striking out the defence of the defendants was taken up on the cause list on 3rd May 2002 without issuing notice to the defendants, though on 22nd April, 2002, the next date was already fixed as 30th May 2002. The application for setting aside the order dated 3rd May, 2002 was rejected. At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation.

Therefore, notwithstanding an order passed earlier to proceed ex parte, while deciding an application for striking out the defence, it was the duty of the Court to give an opportunity of being heard to the defendants. However, that was not done. As the suit was fixed on 30th May, 2002, the defendants were entitled to a notice that the suit would be taken up on an earlier date for hearing the application for striking out the defence. When the defendants had appeared in the suit, the act of preponing the date without notice to them or their advocate was completely illegal and contrary to elementary principles of natural justice. Therefore, it follows that the order striking out the defendants' defence is completely illegal, and the said order deserves to be set aside.

[6] There is something further which must be noted. As can be seen from the record, the plaintiffs moved an application on 2nd August, 2002 to amend the description of the suit property. The endorsement on the application records that 'the case is proceeding ex parte against the defendants'. Therefore, a copy of the said application was not served upon the defendants. As seen from the proceedings, the application was allowed on 2nd August, 2002. Thereafter, the suit was decreed on 24th August, 2002. It is true that before the application for amendment of the plaint was allowed, the defendants' defence was already struck out. Even if the defendants' defence was struck out, the defendants were entitled to a copy of the amended plaint. What was struck out was the right to defend the suit as unamended. Whether the subsequent plaint will affect the earlier order of striking out the defence will depend upon the nature of the amendment. However, even a copy of the amended plaint was not served on the defendants.

[7] The defendants challenged the ex parte decree by filing a statutory revision application under Section 25 of the Provincial Small Cause Courts Act, 1887, before the learned Single Judge of the High Court. By the impugned judgment, the learned

Single Judge rejected the said revision application without noticing the glaring facts borne out from the record which we have reproduced above. A review of the said order of the learned Single Judge was sought. However, the same was dismissed on 4th January, 2011. However, the defendants did not challenge the decree or the order passed on the revision application or review for three years. Instead, they were advised to raise objections under Section 47 of the Code of Civil Procedure, 1908 in the execution proceedings.

[8] The learned senior counsel appearing for the plaintiffs submitted that the defendants' conduct needs to be deprecated. The revenue entries were illegally altered to enable them to raise a contention regarding the lack of title on the part of the plaintiffs. Even the State Government prosecuted the plaintiffs.

[9] Now, the clear picture which emerges is that the suit was decreed ex parte without giving proper opportunity to the defendants to defend themselves. On 22nd April 2002, when the order directing that the suit would proceed ex parte was passed, the date fixed for ex parte hearing was 30th May 2002. On that date, the defendants could have appeared and applied for setting aside the said order. The Court could have always favourably considered that application by putting the defendants to conditions. However, without waiting till 30th May, 2002, on 3rd May 2002, without issuing notice to the defendants, the suit was taken up by the Trial Court, and an order of striking out the defendants' defence was passed, obviously, without hearing the defendants. Therefore, an illegality has been associated with the conduct of the suit proceedings and the manner in which the ex parte decree was passed. Consequently, we propose to set aside the orders dated 22nd April, 2002 and 3rd May, 2002 and relegate the suit to that stage.

[10] There is another aspect of the matter. On 18th May 1999, the 3rd Additional District Judge, Dehradun, passed an order in an Appeal directing the defendants to pay rent at Rs.86,232/ (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month. The High Court and this Court confirmed the said order. The defendants' liability under the said order was to pay rent at Rs.86,232/- per month from 1st September, 1993. The learned Attorney General for India, on instructions of the State Government, states that the rent at the said rate has been deposited up to date. We take the statement on record.

[11] Much water has flown after the rent was fixed at the rate of Rs.86,232/- per month on 18th May, 1999. The fact remains that the proceedings were delayed due to some default on the part of the defendants. Therefore, as a condition for setting aside the ex parte decree, we propose to direct the State Government to pay an ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month from 14th July, 2014 and continue to pay the said amount till the disposal of the suit. The deposit will be subject to the outcome of the suit. The defendants will be entitled to an adjustment of the amounts they paid at the rate of Rs.86,232/- per month. We propose to grant two

months to the defendants to pay the balance amount payable up to date at the rate of Rs.1,00,000/- per month from 14th July, 2014.

[12] Hence, we set aside the impugned orders and partly allow the Appeals with the following directions:

(i) The ex parte decree dated 24th August, 2002 passed by the learned District and Session Judge, Dehradun, in SCC Suit No.24/2001 is hereby set aside. The suit is restored to the file of the learned District and Session Judge, Dehradun, subject to the condition of the appellants/defendants depositing an ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month from 14th July, 2014 with the Trial Court within a period of two months from today. As stated earlier, the appellants/defendants will be entitled to an adjustment of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month deposited by them for the said period. We make it clear that on the failure of the appellants/defendants to deposit the said amount within the stipulated period, the ex parte decree shall stand revived;

(ii) If the direction mentioned above is complied with, even the orders dated 22nd April, 2002 and 3rd May, 2002 will stand set aside;

(iii) The defendants shall continue to deposit the amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month till the disposal of the suit;

(iv) In the event the compliance is made by the appellants/defendants, we direct that the restored suit shall be listed before the learned District and Session Judge, Dehradun in the morning on 25th November, 2024. We make it clear that the defendants and the plaintiffs shall be under an obligation to appear before the Court of the learned District and Session Judge, Dehradun, on that day, and no further notice shall be served upon them. We clarify that on the date of appearance, the appellants/defendants shall file a reply to the application for striking out the defence, and no further time shall be granted to them for that purpose. If the appellants/defendants fail to file a reply to the application for striking out their defence on that day, the Trial Court will be justified in proceeding with the hearing of the said application without the reply of the appellants/defendants;

(v) Only after deciding the application for striking out the defence, depending upon the outcome of the said application, the Trial Court will pass orders regarding permitting the appellants/defendants to file written statement;

(vi) The amounts deposited in this Court at the rate of Rs.86,232/- (Rupees Eighty-six Thousand Two Hundred and Thirty-two) per month with accrued interest thereon shall be transferred by the Registry of this Court to the Trial Court at Dehradun after expiry of the present fixed deposit. We direct the Trial Court to invest the amount which may be deposited by the appellants/defendants in terms of this judgment and the amount which will transferred by the Registry of this Court to the Trial Court in a fixed deposit with any nationalised bank;

(vii) After the application for striking out the defence is decided, it will be open for the plaintiffs to apply for withdrawal of the amounts. The Trial Court shall decide the said application on its own merits. All contentions on that behalf are left open;

(viii) We make it clear that we have made no adjudication on the merits of the controversy, including the title issue raised by the appellants/defendants. The Trial Court shall pass appropriate orders in accordance with the law in the restored suit on its own merits;

(ix) We make it clear that as we have directed the appellants/defendants to deposit the ad hoc amount at the rate of Rs.1,00,000/- (Rupees One Lakh) per month, we are not passing a separate order of costs;

(x) Considering the fact that the suit is of the year 2001, it is obvious that the Trial Court will give necessary out of turn priority for hearing the application for striking out the defence. In the event the suit is required to be heard on merits, the Trial Court will give the necessary priority to the disposal of the suit, considering the fact that the suit is of the year 2001;

(xi) In view of this judgment, the pending execution application for execution of the decree will not survive. However, if the ex parte decree is revived in terms of the clause (i) above, the execution application shall proceed;

(xii) The findings recorded in this judgment are only for the limited purposes of considering the legality and validity of the ex parte order and the order by which the defence of the defendants was struck out. This judgment will not affect any other proceedings pending between the parties and all contentions therein are left open;

(xiii) The Appeals are partly allowed on above terms; and

(xiv) The Registry is directed to immediately return the record of the suit along with a copy of this judgment to the Trial Court.

CIVIL APPEAL NO.2394/2023

1. As the execution application has been disposed of in terms of the judgment passed today in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The same is disposed of accordingly.

CIVIL APPEAL NO.2395/2023

1. The compulsory acquisition of the property claimed by the appellants was initiated by the State Government, which has been set aside by the impugned judgment. The appellants cannot have any grievance about setting aside the acquisition. Hence, no case for interference with the impugned order is made out. The Appeal is, accordingly, dismissed.

CIVIL APPEAL NO.2396/2023

1. As the execution application has been disposed of in terms of the judgment passed today in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The same is disposed of accordingly.

CIVIL APPEAL NO.2398/2023

1. The application made by the appellant under Rule 97 Order XXI of the Code of Civil Procedure, 1908, has been dismissed by the executing Court on the ground that the appellant was not in possession. It is an admitted position that the appellant was not in possession. Therefore, we find no error in the view taken under the impugned order. The Appeal is, accordingly, dismissed.

CIVIL APPEAL NO.2402/2023

1. As the decree dated 24th August, 2002 has been set aside in terms of the judgment in Civil Appeal Nos.2399-2401/2023, this Appeal does not survive. The Appeal is disposed of accordingly by keeping all the contentions in the restored suit expressly open.

CIVIL APPEAL NO.2403/2023

1. Admittedly, this Appeal arises from the orders passed in the execution of the decree dated 24th August 2002. Therefore, in view of the judgment passed today in Civil Appeal Nos.2399-2401/2023 setting aside the decree dated 24th August 2002, this Appeal will not survive, and the same is disposed of accordingly.

2024(2)GLPJ521

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Abhay S Oka; Augustine George Masih]

Civil Appeal No 9731 of 2024, 9732 of 2024 **dated 11/09/2024**

Lakshmesh M

Versus

P Rajalakshmi

OWNERSHIP AND COMPENSATION

Ownership and Compensation - Appeals filed against High Court decision regarding ownership and compensation of suit property - Appellant/Plaintiff's ownership over land upheld - Dispute arose over 30% compensation awarded to private Defendants despite Appellant's established ownership - High Court's decision granting compensation to private Defendants for acquired land for Metro Project found unsustainable due to lack of claim or challenge by Defendants regarding entitlement -

Appellant entitled to full compensation - Defendants can seek remedy if they choose - Appeal Allowed

Law Point: Compensation for acquired property must be based on established ownership, and parties failing to raise claims cannot receive benefits without proper legal grounds.

માલિકી અને વળતર - મિલકતની માલિકી અને વળતર અંગે દાવા સામે હાઇકોર્ટના નિર્ણય સામે દાખલ કરેલી અપીલ - અરજીકર્તા/વાદીની જમીન પરની માલિકી માન્ય રાખવામાં આવી છે - અપીલકર્તાની સ્થાપિત માલિકી હોવા છતાં ખાનગી પ્રતિવાદીઓને આપવામાં આવેલ ૩૦% થી વધુ વળતરનો વિવાદ ઊભો થયો - મેટ્રો પ્રોજેક્ટ માટે સંપાદિત જમીન માટે ખાનગી પ્રતિવાદીઓને વળતર આપવાનો હાઇકોર્ટનો નિર્ણય પ્રતિવાદીઓ દ્વારા હકદારી અંગેના દાવા અથવા પડકારના અભાવે બિનટકાઉ જણાયો. - અપીલકર્તા સંપૂર્ણ વળતર માટે હકદાર છે - જો તેઓ પસંદ કરે તો પ્રતિવાદીઓ ઉપાય શોધી શકે છે - અપીલની મંજૂરી છે

કાયદાનો મુદ્દો: હસ્તગત કરેલી મિલકત માટે વળતર સ્થાપિત માલિકી પર આધારિત હોવું જોઈએ, અને દાવાઓ વધારવામાં નિષ્ફળ રહેલા પક્ષકારો યોગ્ય કાનૂની આધારો વિના લાભ મેળવી શકતા નથી.

Counsel:

D L Chidananda, Rakhi Poornyam Sahijpal, Uditha Chakravarthy, Ankur S Kulkarni, Somanatha Padhan, Vaijayanthi Girish, Girish Ananthamurthy

JUDGEMENT

Augustine George Masih, J.- [1] These two Appeals have been preferred against the final judgment and order dated 05.12.2014 by the High Court of Karnataka at Bengaluru in RFA Nos. 902 of 2008 and 887 of 2008 (hereinafter referred to as the 'impugned judgment'). While disposing of these Regular First Appeals against the judgment and order dated 31.03.2008 passed by XII Addl. City Civil and Sessions (CCH No. 27) Judge at Bengaluru in O.S No. 5634 of 1980, by the common impugned order, the High Court while upholding the Trial Court judgment decreeing the suit and holding that the Appellant/Plaintiff is the lawful owner of the suit property, has further held that site allotted to Defendant No. 20 (Respondent No. 27 in Civil Appeal No. 9731 of 2024 and Respondent No. 01 in Civil Appeal No. 9732 of 2024) is not the part of Sy. No. 305/2. Furthermore, the High Court has held that Defendant Nos.9, 10(a), 11(a), 12, 13, 14, 16, 18, 23 and 24 (Respondent Nos.1 to 13 in Civil Appeal No. 9731 of 2024 and Respondent Nos.10, 12, 13, 14, 15, 17, 18, 19, 20, 22, 24, 28 and 29 in

Civil Appeal No. 9732 of 2024) are entitled to receive 30 per cent of the amount of compensation payable in respect of ten sites situated on the suit property.

[2] Aggrieved by the abovesaid findings and directions, the Appellant/Plaintiff has preferred these two Appeals. For ease of reference, the parties are referred to by their original position before the Trial Court. The limited questions for consideration before this Court are as follows:

i. Whether the High Court by its impugned judgment is correct in holding that the Appellant/Plaintiff has failed to establish that the site allotted to Defendant No.20 is not part of Sy. No. 305/2.

ii. Whether the High Court by its impugned judgment is correct in holding that ten allottees (Defendant Nos.9, 10(a), 11(a), 12, 13, 14, 16, 18, 23 and 24) are entitled to receive 30 per cent of amount of compensation payable in respect of the ten sites, in spite of holding that the Appellant/Plaintiff is the lawful owner of the suit property and is entitled for full rights over the same.

[3] Before proceeding further, it is pertinent to provide a brief factual overview of the case at hand. To elaborate, the Appellant/Plaintiff brought forward O.S. No. 5634 of 1980 to seek a court declaration affirming his title over 1 acre and 12 guntas of land situated in Sy No. 132/2, Kempapura Agrahara Inam village, Bangalore City. The suit also aimed to secure possession of the land and obtain a mandatory injunction against Defendant No.20, specifically to remove any constructions erected on the suit property. In addition to Defendant No.20, the suit involved a total of 23 other defendants.

[4] It is relevant to mention here that Kempapura Agrahara village was an Inam village, and the land stood vested in the State in terms of the provisions contained in Mysore (Personnel & Miscellaneous) Inams Abolition Act, 1954 with effect from 01.02.1959. Consequently, all jodidars retained interests corresponding to their respective shares. Among them was one Smt. B.C. Subbalakshmamma, who held 1/7th share in the village. Pursuant to an application submitted by her to the competent authority, Smt. B.C. Subbalakshmamma was granted occupancy rights for 1 acre and 3 guntas of land in Sy No. 132/2, vide order dated 09.12.1969. Although the initial mutation was sanctioned in her name, the Tehsildar, following an on-site inspection, adjusted the records to reflect the actual area in her possession. As a result, a revised mutation order dated 20.05.1972 was passed, updating the record to 1 acre and 12 guntas in Sy No. 132/2 in her name. The land was subsequently renumbered as Sy No. 305/2, with a measurement of 1 acre and 12 guntas. The Appellant/Plaintiff, Lakshmesh M. acquired this land (hereinafter referred to as 'the suit property') from Smt. B.C. Subbalakshmamma through a registered sale deed dated 10.06. 1975.

[5] After the Appellant/Plaintiff acquired the suit property, the Defendant No. 1, REMCO Industrial Workers House Building Cooperative Society Limited

(Respondent 14 in Civil Appeal No. 9731 of 2024 and Respondent 2 in Civil Appeal No. 9732 of 2024), and its members attempted to take forcible possession of the same. The Defendant No.1-Society claimed rights over 4 acres and 2 guntas within Sy No. 305. A survey was conducted by the Police based on a complaint moved by the Appellant/Plaintiff which indicated that the claims of Defendant No.1-Society over suit property are unfounded. Aggrieved thereby, Defendant No.1-Society filed a suit seeking permanent injunction. Although a temporary injunction was initially granted, the possession of the land remained with Defendant No.1-Society.

[6] In such circumstances, the Appellant/Plaintiff filed O.S. No. 5634 of 1980, a suit for declaration of his title over the suit property and the consequential reliefs of mandatory injunction and possession. This suit was partly decreed on 30.10.1986 declaring the title of the Appellant/Plaintiff over 1 acre and 3 guntas of the suit property, but the relief of possession as sought was dismissed on the ground that the sale deed did not detail the land in question as the declaration of possession of Smt. B.C. Subbalakshmamma was 1 acre and 12 guntas. Suit of declaration for recovery of possession from out of the scheduled property which measured 1 acre and 12 guntas was to be resorted to by the Appellant/Plaintiff.

[7] Aggrieved by the judgment and decree dated 30.10.1986, the Appellant/Plaintiff preferred RFA No.747 of 1986 whereas Defendant No.1-Society preferred RFA No.191 of 1987. The Regular First Appeal as preferred by the Appellant/Plaintiff was allowed and that of the Defendant No.1-Society was dismissed. The result thereof was that the suit of the Appellant/Plaintiff was decreed.

[8] Subsequently, Defendant No.1-Society preferred Civil Appeal Nos.992-993 of 1997 before this Court (correcting a typographical error in the impugned judgment, referring to the years of the Appeals as 2007 instead of 1997). By Order dated 28.08.2003, this Court allowed the said Appeals and remanded the case to the Trial Court with directions to consider the effect of the order granting occupancy rights in favour of one Muniyappa on the subsequent grant dated 09.12.1979. The Court further ordered the Trial Court to identify the land covered by both grants by framing necessary issues and providing an additional opportunity to both parties.

[9] The suit being OS No.5634 of 1980, as remanded by this Court was decreed on 31.03.2008, and the Appellant/Plaintiff was declared as the owner of the scheduled property to the extent of 1 acre and 3 guntas in Sy No.305/2. He was also held entitled to get possession of the same. The Respondents/Defendants preferred appeals against this judgment and decree before the High Court of Karnataka at Bengaluru. The Defendant No.1- Society preferred RFA No.882 of 2008, Defendant No.20 preferred RFA No.887 of 2008 and Defendants Nos.9, 10(a), 11(a), 12, 13, 14, 16, 18, 23 and 24 preferred RFA No.902/2008.

[10] The High Court vide the impugned judgment dated 05.12.2014 upheld the judgment passed by the Trial Court in OS No.5634 of 1980 and dismissed the appeal

preferred by the Defendant No.1-Society, i.e. RFA No.882/2008. However, RFA No.887 of 2008 preferred by Defendant No.20 was allowed. The High Court set aside the judgment and decree so far as it pertained to the land allotted to Defendant No.20, declaring that the site allotted to Defendant No.20 was unrelated to the scheduled suit property.

[11] Regarding RFA No.902 of 2008, the High Court determined that Defendants Nos. 9, 10(a), 11(a), 12, 13, 14, 16, 18, 23, and 24 (hereinafter referred to as 'private Defendants') were entitled to receive 30 per cent of the compensation for the acquired portion, proportionate to the sites allotted to them in the suit property. This amount was to be distributed proportionately among these private Defendants. Consequently, the High Court partly allowed their appeals based on the above terms.

[12] The Appellant/Plaintiff has brought forward these Appeals in response to the impugned judgment passed by the High Court.

[13] It is the contention of the learned Senior Advocate for the Appellant/Plaintiff that the High Court has failed to appreciate that Defendant No.20 has not stepped into the witness box to put forward his claim with regard to the allotment of the land in his favour. He further contends that the grant of relief to Defendant No.20 in these circumstances is unsustainable.

[14] This contention of the learned Senior Advocate for the Appellant/Plaintiff cannot be accepted as the specific plea of Defendant No.20 that the site allotted to him does not form part of Sy No.305/2, but formed part of Sy No.305/3 has not been disputed by the Appellant/Plaintiff. Even the courts below have not returned a finding holding that the site allotted to Defendant No.20 and the construction made thereon by him is part of Sy No.305/2. Since the Appellant/Plaintiff has failed to establish that the site allotted to Defendant No.20 was part of Sy No.305/2, the High Court has rightly set aside the findings of the Trial Court to the said extent. No interference thus on this aspect is called for in the present Appeal(s).

[15] The learned Senior Advocate for the Appellant/Plaintiff has further challenged the grant of relief equal to 30 per cent of the amount of compensation payable in respect of the sites which were allotted to the private Defendants by asserting that for the fault of Defendant No.1-Society, the Appellant/Plaintiff cannot be held liable, nor can he be forced to share the amount of compensation. The liability, if any, would be of Defendant No.1-Society of which these private Defendants were members. It has further been asserted by him that the possession and construction, if any, carried out by these private Defendants was at their own risk and peril. After the High Court had held the Appellant/Plaintiff to be the absolute lawful owner of the suit property, being entitled to full rights over the same, these private Defendants cannot be held entitled to receive compensation payable in respect of the sites built on the suit property. Once it has been held that the Appellant/Plaintiff is the owner of the suit property merely because these private Defendants are in possession of the sites built on

the scheduled property, they would not be entitled to any compensation for the land acquired for the Metro Rail Project.

[16] Another expostulation which has been put forward by the learned Senior Advocate for the Appellant/Plaintiff is that the compensation was neither asserted nor claimed by these private Defendants at any stage and, in fact, the same was not even argued what to say of taking a ground in the appeal which has been preferred by the said private Defendants before the High Court. Under such circumstances, a portion of the compensation made payable for the acquisition of the suit property of which the Appellant/Plaintiff is the absolute owner, is unacceptable and unsustainable in law.

[17] On the other hand, the learned Senior Advocate for the private Defendants submits that the factum of possession and construction on the suit property by the private Defendants is not disputed. Once they are in possession of the sites built on the land in question and that too as per the allotment made by Defendant No.1-Society, they have rightly been granted the benefit of compensation which is a portion of the amount payable for the acquisition of the suit property for the Metro Rail Project. Support has, therefore, been made with regard to the grant of compensation.

[18] We have carefully considered the submissions made by the learned Senior Advocate for the parties but are unable to accept the stand as has been sought to be projected by the learned Senior Advocate for the private Defendants.

It is not in dispute that till date, no claim whatsoever has been projected either in the appeal before the High Court or before any other competent authority for the grant of compensation for the land having been acquired. The judgment as has been passed by the High Court affirming the ownership and title of the suit property in favour of the Appellant/Plaintiff has not been challenged by any of these private Defendants. The said judgment and the findings recorded therein have attained finality. In the absence of any claim with regard to their entitlement to compensation for the land acquired, the relief granted by the High Court in the appeal is not sustainable. Given the lack of pleadings, evidence on record, and submissions made at the time of hearing before the High Court, the judgment passed by it granting 30 per cent of the amount payable by way of compensation in respect of the ten sites in possession of the private Defendants, deserves to be set aside. The Appellant/Plaintiff is entitled to receive the full amount payable in respect of acquisition of the suit property for the Metro Rail Project.

[19] In the light of the above, the Civil Appeal No.9732 of 2024, titled as Lakshmesh M. v. C.N. Rangaraju (since dead) by LRs. stands dismissed.

[20] The Civil Appeal No.9731 of 2024 titled as Lakshmesh M. v. P. Rajalakshmi (since dead) by LRs., is hereby allowed. The portion of judgment awarding 30 per cent of the compensation amount for the sites allotted to the private Defendants by Defendant No.1- Society concerning the suit property is set aside. However, the

private Defendants are at liberty to seek any remedy as may be available to them under the law for compensation, if they choose to do so.

[21] There shall be no orders as to costs

2024(2)GLPJ527

IN THE SUPREME COURT OF INDIA

[Before Vikram Nath; Prasanna Bhalachandra Varale]

Civil Appeal No 2809 of 2024, 2810 of 2024, 6344 of 2024 **dated 06/09/2024**

Dharmendra Sharma

Versus

Agra Development Authority

APARTMENT POSSESSION

Limitation Act, 1963 Sec. 19, Sec. 18 - Consumer Protection Act, 1986 Sec. 23, Sec. 24A, Sec. 21 - Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 Sec. 4 - Real Estate (Regulation and Development) Act, 2016 Sec. 19 - Apartment Possession - Appellant booked an apartment from respondent but was denied possession for years due to incomplete construction - Possession offered in 2014 was invalid as completion and firefighting certificates were not provided - Appellant made several payments, but final payment was delayed - NCDRC ruled for partial refund with interest from date of complaint - Supreme Court held delay was caused by both parties - Appellant awarded additional compensation for respondent's failure to provide requisite certificates - Respondent's plea on limitation and jurisdiction rejected - Directed refund of deposit, interest from complaint, and Rs.15 lakhs compensation. - Appeal Partly Allowed

Law Point: Possession of property cannot be validly offered without completion and firefighting certificates; delays caused by both parties can affect compensation determination.

મુદત અધિનિયમ, ૧૯૬૩ સેક. ૧૯, સેક. ૧૮ - ગ્રાહક સુરક્ષા અધિનિયમ, ૧૯૮૬ સેક. ૨૩, સે. ૨૪એ, સેક. ૨૧ - ઉત્તર પ્રદેશ એપાર્ટમેન્ટ (બાંધકામ, માલિકી અને જાળવણીનું પ્રમોશન) અધિનિયમ, ૨૦૧૦ સેક. ૪ - રિયલ એસ્ટેટ (રેગ્યુલેશન એન્ડ ડેવલપમેન્ટ) એક્ટ, ૨૦૧૬ સેક. ૧૯ - એપાર્ટમેન્ટનો કબજો - અપીલકર્તાએ પ્રતિવાદી પાસેથી એપાર્ટમેન્ટ બુક કરાવ્યું હતું પરંતુ અધૂરા બાંધકામને કારણે વર્ષો સુધી કબજો આપવાનો ઇનકાર કરવામાં આવ્યો હતો - ૨૦૧૪ માં ઓફર કરાયેલ કબજો અમાન્ય હતો કારણ કે

પૂર્ણતા અને અગ્નિશામક પ્રમાણપત્રો પ્રદાન કરવામાં આવ્યા ન હતા - અપીલકર્તાએ ઘણી ચૂકવણી કરી, પરંતુ અંતિમ ચુકવણીમાં વિલંબ થયો - NCDRCએ ફરિયાદની તારીખથી વ્યાજ સાથે આંશિક રિફંડનો ચુકાદો આપ્યો - સુપ્રીમ કોર્તે જાણ્યું કે વિલંબ બંને પક્ષકારો દ્વારા કરવામાં આવ્યો હતો - અરજદારને જરૂરી પ્રમાણપત્રો પ્રદાન કરવામાં પ્રતિવાદીની નિષ્ફળતા માટે વધારાનું વળતર આપવામાં આવ્યું - સમય મર્યાદા અને અધિકારક્ષેત્ર પર પ્રતિવાદીની અરજી નકારી કાઢવામાં આવી - ડિપોઝિટનું ડાયરેક્ટ રિફંડ, ફરિયાદનું વ્યાજ અને રૂ. ૧૫ લાખ વળતર. - અપીલ આંશિક રીતે મંજૂર

કાયદાનો મુદ્દો: પૂર્ણતા અને અગ્નિશામક પ્રમાણપત્રો વિના મિલકતનો કબજો માન્ય રીતે ઓફર કરી શકાતો નથી; બંને પક્ષો દ્વારા થતા વિલંબથી વળતરના નિર્ધારણને અસર થઈ શકે છે.

Acts Referred:

Limitation Act, 1963 Sec. 19, Sec. 18

Consumer Protection Act, 1986 Sec. 23, Sec. 24A, Sec. 21

Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 Sec. 4

Real Estate (Regulation and Development) Act, 2016 Sec. 19

Counsel:

Vipin Sanghi (Senior Advocate), Om Prakash, Vikas Singh Jangra, Sudhir Kulshreshtha

JUDGEMENT

Vikram Nath, J.- [1] Civil Appeals 2809-2810 of 2024, by the appellant filed under Section 23 of the Consumer Protection Act, 1986 [CPA, 1986], read with Order XXIV of the Supreme Court Rules, assail the correctness of the final judgment and order dated 15.09.2023 passed by the National Consumer Disputes Redressal Commission [NCDRC] in CC No.600/2020 as also the order dated 30th October, 2023 passed on the Review Application No.335/2023. By the aforesaid orders, the NCDRC allowed the CC No.600/2020 partly to the extent that it directed refund of the entire amount deposited by the Complainant (appellant) (except non-judicial stamp paper worth Rs.3,99,100/- deposited on 15.02.2014) along with interest @9% p.a. from the date of the complaint i.e. 11.07.2020 till the date of refund within a period of two months from the date of the order.

[2] Further, Civil Appeal No. 6344 of 2024 has been filed by the Agra Development Authority [ADA] assailing the correctness of the same judgment of the NCDRC dated 15.09.2023 partly allowing the complaint.

[3] The appellant -Dharmendra Sharma had applied for allotment and purchase of an apartment (residential flat) in the category of Super Deluxe 2 on 28.07.2011 and had deposited the booking amount of Rs.4,60,000/- along with the application. This application was submitted pursuant to an advertisement issued by the ADA for a group housing project lodged in the name of ADA Heights, Taj Nagari, Phase II at Fatehabad Road, near Taj Express Way, Ring Road, Agra. The allotment was done by lottery system on 29.08.2011 whereby the appellant was allotted Flat No.DT-1/1204 which was communicated vide letter dated 19.09.2011, according to which the tentative price of the apartment was Rs.56,54,000/- which could be deposited in 24 equal quarterly instalments or could be paid in full with certain other relaxations. The appellant, opted for full payment and accordingly vide letter dated 21.10.2011, attached two cheques, one by the appellant of Rs.6.94 lakhs and the other of Rs.45 lakhs issued by the LIC Housing Finance Limited. Possession was to be given within six months under the scheme.

[4] Upon completion of six months, the appellant requested for possession vide communication dated 03.04.2012. Apparently, the construction was not completed and, in any case, not ready for delivery of possession, as such no possession was delivered even after six months. The appellant thereafter received a communication dated 04.02.2014 offering possession subject to further payment of Rs.3,43,178/- along with non-judicial stamp paper for execution of the deed amounting to Rs.3,99,100/-. The demand so raised was under the following three heads:

i) Rs.84,300/- for solar system;

ii) Rs.46,878/- as leased premium; and

iii) Rs.2,12,000/- for covered parking area.

[5] On receipt of the said letter, the appellant visited the site as also the office of ADA on 15.02.2014. He deposited the non-judicial stamp papers as required of Rs.3,99,100/-. But after inspection of the site, he found various deficiencies in the construction which were reported to the Assistant Engineer of the ADA with the request that once the deficiencies are removed, he may be communicated for taking over possession. ADA sent reminders dated 22.09.2014 and 20/21.11.2014 for depositing the balance amount of Rs.3,82,748/-. The appellant, on the other hand, was demanding for completion certificate. There is a further communication by the ADA dated 17.01.2018 demanding an amount of Rs.6,11,575/- and for taking possession after depositing the same and getting the deed executed. On the other hand, the appellant, vide communication dated 02.04.2018, requested for waiver of interest on

the balance amount and also sought confirmation whether the flat was ready for physical possession.

[6] It was thereafter that the appellant along with letter dated 04.06.2019, sent a cheque dated 01.06.2019 for Rs.3,43,178/- and again requested for confirmation of the date of possession. The ADA encashed the said cheque but did not inform any date for handing over possession. It looks like the appellant got the loan transferred to the State Bank of India [SBI] whereupon the SBI is writing letters demanding the title deed of the apartment vide communications dated 14.03.2017, 25.06.2019 and 19.10.2019. These communications further mention that in case the title deed is not deposited, then penal interest @2% p.a. would be levied. The appellant again reiterated his earlier request for waiver of interest on balance amount vide reminder dated 18.09.2019 and again requested for confirmation whether the flat was ready for physical possession. The appellant again visited the office of ADA on 23.11.2019 and requested for completion certificate and firefighting clearance certificate, which were not provided. He again visited the site and found that the apartment was not in a habitable condition. The appellant thus proceeded to institute a complaint before the NCDRC on 10.07.2020 alleging deficiency in service as also unfair trade practice on the part of ADA.

[7] The ADA filed its reply in which the amounts as deposited by the appellant, as noted above, were admitted. Further, according to ADA, the construction was ready and possession was offered on 04.02.2014 along with demand of Rs.3,43,178/- which the appellant did not pay and continued to claim for waiver of interest and had ultimately paid the said amount on 04.06.2019 vide cheque dated 01.06.2019. According to ADA, after adjustment there was still an outstanding amount of Rs.4,71,159/- as on 05.02.2021. It was also stated in the written statement that in 2011, at the time of allotment, the tentative price was Rs.56,54,000/- and under Clause 45 of the Registration and Allotment Rules, it was clearly mentioned that the price could vary upto 10%. Further, according to ADA, the demand raised by the letter dated 04.02.2014 of solar system, lease premium and car parking were apart from the cost of the flat and not due to increased cost. The appellant had unnecessarily delayed payment of the demand raised on 04.02.2014. It was also stated in the written statement that out of the 582 apartments built under the project in question, except for 20 allottees, all other allottees had taken possession. The ADA further pleaded that the complaint was barred by time and secondly, that as the total payment made by the appellant was Rs.59,97,178/-, as such it would not fall within the pecuniary limit of the NCDRC, and therefore, the complaint was liable to be dismissed for the above two reasons also.

[8] The parties led their evidence. The NCDRC rejected technical objections raised by the ADA regarding limitation as also the pecuniary jurisdiction. In so far as the limitation is concerned, the NCDRC held that as subsequent demand and reminders

were sent by the ADA and the ADA even accepted the cheque of Rs.3,43,178/- in 2019, it was not open for the ADA to raise the plea of limitation. In so far as the pecuniary jurisdiction is concerned, the NCDRC held that the claim was of more than Rs.2 crores as such the said objection was also not sustainable. The NCDRC, however, held that the additional demand made by the ADA vide communication dated 04.02.2014 although was other than additional cost of 10% which was permissible but, in any case, it was within the 10% admissible clause, as such could not be held to be illegal. The NCDRC also held that if the possession was delayed beyond two years, the appellant would be entitled for a refund but in the present case, Clause 27 of the Registration and Allotment Rules would not be applicable. The NCDRC further held that although the appellant had deposited the nonjudicial stamps worth Rs.3,99,100/- on 15.02.2014 but he continued to delay payment of additional demand of Rs.3,43,178/- and was continuously requesting for waiver of interest resulting into the presumption that he was avoiding payment of the balance amount. On such finding the NCDRC denied to grant interest from the date of deposit but made it applicable from the date of the filing of the complaint. In so far as the deficiency in construction was concerned, the NCDRC found that only bald allegations have been made by the appellant and he never made any effort to get a report from the Commissioner and allowed the apartment in question to remain locked for six years.

[9] After considering the pleadings and evidence on record and in view of the above findings, the complaint was partly allowed by the NCDRC on 15.09.2023.

[10] The appellant preferred a Review Application which was dismissed by the NCDRC by its order dated 30th October, 2023. In the Review Application also, the NCDRC reiterated that the review was liable to be rejected as while offering possession, the ADA vide letter dated 04.12.2014 had made a further demand which amount was not deposited within the time and it was only deposited in 2019 and that too without interest and the complaint was made after six years and, therefore, the appellant would not be entitled to interest from the date of deposit.

[11] In the two appeals filed by the appellant, the relief claimed is to the extent that the payment of interest be awarded from the date of deposit while refunding the same and not from the date of the complaint. Whereas in the appeal filed by the ADA, it is submitted that in view of the fact that the petition had been filed after six years from the date of offering possession, as such it was barred by limitation and also as the amount deposited was only Rs.59,91,000/- i.e. less than Rs.1 crore, the complaint ought to have been filed before the State Consumer Disputes Redressal Commission and the NCDRC would have no pecuniary jurisdiction to entertain the complaint with a value of less than Rs.1 crore.

[12] We have heard Shri Vipin Sanghi, learned senior counsel appearing for the appellant and Shri Sudhir Kulshreshtha, learned counsel for the ADA in all the three appeals.

[13] The facts as recorded above are not disputed. Even the NCDRC did not find any contradiction in the factual aspect. The only issue is as to whether the possession as offered on 04.12.2014 should be taken as a valid offer of possession even if there was no completion certificate and also whether the firefighting clearance certificate was available with the ADA or not. Despite specific requests and demands by the appellant for providing the completion certificate and firefighting clearance, the ADA failed to produce the same. Senior Counsel for the appellant has relied upon the following judgments in support of his submission that offer for possession would be invalid where the completion certificate and firefighting clearance certificate have not been obtained by the developer i.e. ADA:

(a) **Debashis Sinha & Ors. vs. R.N.R. Enterprise**, 2023 3 SCC 195.

(b) **Pioneer Urban Land and Infrastructure Limited vs. Union of India & Ors**, 2019 8 SCC 416.

(c) **Treaty Construction vs. Ruby Tower Cooperative Housing Society Ltd**, 2019 8 SCC 157.

It is then submitted that even before the NCDRC the completion certificate and the firefighting clearance certificate could not be produced by the respondent -ADA.

[14] It is also submitted on behalf of the appellant that under the provisions of RERA Act, 2016 as also the UP (Promotion of Apartment and Ownership and Maintenance) Act, 2010 offer of possession would be valid only after a developer obtains the completion certificate, which had not been done so far by the developer ADA in the present case. On behalf of the appellant, it is also argued that the demand of Rs.3,43,178/- along with alleged offer of possession dated 14.02.2014 was totally unjustified and illegal. It was also submitted that the appellant having deposited the amount of approximately Rs.60 lakhs and that too after taking loan from financial institutions, cannot be deprived of counting the interest from the date of deposit rather than from the date of filing of the complaint. In support of this submission, reliance has been placed upon the following judgments:

(a) **Ghaziabad Development Authority vs. Balbir Singh**, 2004 5 SCC 65.

(b) **Rishab Singh Chandel & Anr. vs. Parsvnath Developers Ltd. & Anr, [Civil Appeal No.3053 of 2023]**

(c) **Lucknow Development Authority vs. M.K.Gupta**, 1994 1 SCC 243.

(d) **Marvel Omega Builders Pvt. Ltd. vs. Shri Hari Gokhale & Ors**, 2020 16 SCC 226.

(e) **Experion Developers Pvt. Ltd. vs. Sushma Ashok Shierror**, 2022 6 SCALE 16.

[15] On such submissions it was prayed by the appellant that his appeals be allowed and the interest be awarded from the date of deposit and to that extent the

impugned judgment and order of NCDRC be modified. Further that the appeal filed by the respondent be dismissed.

[16] Having considered the submissions of both parties, we are of the opinion that both have contributed to delays at various stages. The respondent ADA raised an objection that the complaint was barred by limitation, claiming that the complaint was filed on 10.07.2020, well beyond the statutory limitation period prescribed under Section 24A of the Consumer Protection Act, 1986, which mandates that a complaint must be filed within two years from the date on which the cause of action arises. ADA argued that the offer of possession made on 04.02.2014 should have triggered the limitation period. However, the NCDRC, in its impugned order, rightly rejected this argument by considering that the respondent ADA issued reminders to the appellant on 22.09.2014, 21.11.2014, and 17.01.2018. Additionally, ADA accepted the appellant's payment of Rs. 3,43,178/- on 20.06.2019 without any reservations. Given these facts, the NCDRC correctly applied Sections 18 and 19 of the Limitation Act, 1963, which extend the limitation period where part payments or acknowledgments are made. Consequently, the cause of action continued to exist, and the filing of the complaint in July 2020 is within the limitation period.

[17] This Court concurs with the NCDRC's reasoning and affirms that the complaint was not barred by limitation. The ongoing interactions between the parties, including ADA's acceptance of part payment in 2019 and the reminders sent, effectively extended the limitation period under established legal principles. However, while the complaint is within limitation, we also recognize that the appellant delayed making the balance payment of Rs. 3,43,178/- for over five years, from 2014 to 2019. This delay was largely due to the appellant's requests for a waiver of interest, which, while understandable, contributed significantly to the delay in finalizing the transaction.

[18] In light of these circumstances, while the appellant is entitled to a refund along with interest, it would be inequitable to award interest from the date of the original payment in 2011 given the appellant's role in the delay.

[19] The respondent ADA has also challenged the pecuniary jurisdiction of the NCDRC, contending that the total payment made by the appellant amounted to Rs. 59,97,178/-, which was less than Rs. 1 crore. As such, ADA argued that the complaint should have been filed before the State Consumer Disputes Redressal Commission and not the NCDRC, which has jurisdiction over matters exceeding Rs. 1 crore as per Section 21(a)(i) of the Consumer Protection Act, 1986. This Court finds no merit in ADA's argument. The NCDRC, in its impugned order, correctly observed that the claim made by the appellant was not limited to the deposit amount alone but also included compensation for mental agony, harassment, and loss of income, which brought the total claim well above Rs. 1 crore. In consumer disputes, the value of the claim is determined not just by the amount deposited but by the aggregate relief

sought, which includes compensation and other claims. Therefore, the NCDRC rightly held that it had the requisite pecuniary jurisdiction to entertain the complaint, and this Court affirms that finding.

[20] The appellant's key contention regarding the absence of the completion certificate and firefighting clearance certificate merits serious consideration. The appellant consistently raised this issue, asserting that a valid offer of possession cannot be made without these documents. Section 4(5) of the UP Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 and Section 19(10) of the RERA Act, 2016 mandate that a developer must obtain these certificates before offering possession. Despite the appellant's repeated requests, ADA failed to produce these certificates, rendering its offer of possession incomplete and legally invalid.

[21] The appellant has rightly cited relevant precedents to bolster this argument. In **Debashis Sinha v. R.N.R. Enterprise**, 2023 3 SCC 195, this Court held that possession offered without the requisite completion certificate is illegal, and a purchaser cannot be compelled to take possession in such circumstances. The Court in that case held:

> "20. Finally, we cannot resist but comment on the perfunctory approach of Ncdrc while dealing with the appellants' contention that it was the duty of the respondents to apply for and obtain the completion certificate from KMC and that the respondents ought to have been directed to act in accordance with law. The observation made by Ncdrc of the respondents having successfully argued that it was not their fault, that no completion certificate of the project could be obtained, is clearly contrary to the statutory provisions.
>
> 21. Sub-section (2) of Section 403 of the KMC Act was referred to by Ncdrc in the impugned order [Debashis Sinha v. R.N.R. Enterprise,2020 SCCOnLineNCDRC 429] . Sub-section (1) thereof, which finds no reference therein, requires every person giving notice under Section 393 or Section 394 or every owner of a building or a work to which the notice relates to send or cause to be delivered or sent to the Municipal Commissioner a notice in writing of completion of erection of building or execution of work within one month of such completion/erection, accompanied by a certificate in the form specified in the rules made in this behalf as well as to give to the Municipal Commissioner all necessary facilities for inspection of such building or work.
>
> 22. Section 393 mandates every person, who intends to erect a building, to apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed together with such documents and plans. Similarly, Section 394 also mandates every person who intends to execute any of the works specified in clause (b) to clause (m) of sub-section (1) of Section 390 to apply for sanction by giving notice in writing of his intention to the Municipal

> Commissioner in such form and containing such information as may be prescribed.
>
> 23. It is, therefore, evident on a conjoint reading of Sections 403, 390 and 394 of the KMC Act that it is the obligation of the person intending to erect a building or to execute works to apply for completion certificate in terms of the Rules framed thereunder. It is no part of the flat owner's duty to apply for a completion certificate. When the respondents had applied for permission/sanction to erect, the Calcutta Municipal Corporation Buildings Rules, 1990 (hereafter "the 1990 Rules" for short) were in force. Rule 26 of the 1990 Rules happens to be the relevant Rule. In terms of subrules (1) to (3) of Rule 26 thereof, the obligation as cast was required to be discharged by the respondents. Evidently, the respondents observed the statutory provisions in the breach." This position is supported by other decisions, including **Pioneer Urban Land and Infrastructure Ltd.** (supra) and **Treaty Construction** (supra), where the absence of these certificates was found to constitute a deficiency in service. In the present case, the ADA's failure to provide the required certificates justifies the appellant's refusal to take possession. This strengthens the appellant's claim for additional compensation to compensate for the delay caused by ADA's breach of its statutory obligations.

[22] This Court is of the considered view that both parties have exhibited lapses in their respective obligations. On the one hand, the appellant, despite having paid the tentative price of Rs. 56,54,000/- in 2012, failed to remit the additional amount of Rs. 3,43,178/-, as demanded by the ADA, even after being repeatedly reminded. Instead, the appellant persistently sought a waiver of the penal interest on the delayed payment, eventually settling the amount only on 04.06.2019, a significant delay that cannot be overlooked and that too without the interest component which had further accrued over a period of about five years. On the other hand, the ADA, despite making an offer of possession in 2014, did not fulfil its statutory obligations by providing the requisite completion certificate and firefighting clearance certificate, both of which are essential for a valid and lawful offer of possession. The absence of these documents, which were also not furnished before the NCDRC, unquestionably vitiates the offer of possession made by the ADA.

[23] In light of the aforementioned observations and taking into account the shortcomings on the part of both the appellant and the ADA, this Court deems it appropriate to provide a compensation of Rs. 15,00,000/- (Fifteen Lakhs only) apart from what was awarded by the NCDRC. Therefore, apart from the refund of the entire amount deposited by the appellant @ 9% interest per annum from 11.07.2020 till the date of refund, the ADA is directed to pay an additional amount of Rs. 15,00,000/- (Fifteen Lakhs only) to the appellant. The entire amount should be rendered to the

appellant within three months of this order. We also order the ADA to return the non-judicial stamp worth Rs. 3,99,100/- back to the appellant.

[24] Furthermore, we refrain from imposing any exemplary costs on either party, recognizing that both have contributed to the situation at hand. It is also to be noted that the ADA, being a civic body tasked with serving the public and operating on a non-profit basis, should not be unduly penalized in a manner that could impede its functioning.

[25] The Civil Appeals 2809-2810 of 2024 are disposed of accordingly.

[26] The appeal filed by the ADA i.e. Civil Appeal No.6344 of 2024 stands dismissed, as its primary arguments regarding both limitation and pecuniary jurisdiction are found to be without merit

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2024(2)GLPJ536

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[Before Biren Vaishnav; Nisha M Thakore]

First Appeal; Civil Application (For Stay) No 2308 of 2018; 1 of 2018

dated 17/09/2024

Tushar Naranbhai Alias Nalinbhai Patel

Versus

Kishorchand Kalidas Parekh & Ors

SUIT DISMISSED

Transfer of Property Act, 1882 Sec. 58 - Suit Dismissed - Appellant challenged the dismissal of his suit for specific performance and declaration regarding a land sale agreement, claiming the seller had legal ownership by virtue of a mortgage by conditional sale - Respondents argued the mortgage was not conditional, but usufructuary, and the seller lacked ownership rights - Trial court dismissed the suit under Order VII Rule XI, holding no cause of action existed based on the mortgage deed - Appellate court upheld the dismissal, confirming the mortgage was usufructuary, not conditional, and no right to sell existed - Appeal Dismissed

Law Point: Mortgage by conditional sale requires explicit provisions for automatic sale; absence of such provisions in a deed leads to its classification as a usufructuary mortgage, invalidating claims of ownership based on the mortgage

મિલકતનું ટ્રાન્સફર એક્ટ, 1882 કલમ 58 – દાવો બરતરફ – અપીલકર્તાએ જમીન વેચાણ કરાર સંબંધિત ચોક્કસ કામગીરી અને ઘોષણા માટે તેના દાવાની બરતરફીને પડકાર્યો હતો, દાવો કર્યો હતો કે શરતી વેચાણ દ્વારા ગીરોના આધારે વિક્રેતાની કાનૂની માલિકી હતી – પ્રતિવાદીઓએ દલીલ કરી

હતી કે ગીરો શરતી ન હતો, પરંતુ ફળદાયી હતો, અને વિક્રેતા પાસે માલિકીના અધિકારોનો અભાવ હતો – ટ્રાયલ કોર્ટે ઓર્ડર VII નિયમ XI હેઠળ દાવો ફગાવી દીધો, મોર્ટગેજ ડીડના આધારે કાર્યવાહીનું કોઈ કારણ અસ્તિત્વમાં નહોતું – એપેલેટ કોર્ટે બરતરફીને સમર્થન આપ્યું, પુષ્ટિ કરી કે ગીરો ઉપયોગી છે, શરતી નથી, અને વેચાણ કરવાનો કોઈ અધિકાર અસ્તિત્વમાં નથી – અપીલ બરતરફ

કાયદા નો મુદ્દો : શરતી વેચાણ દ્વારા ગીરો આપોઆપ વેચાણ માટે સ્પષ્ટ જોગવાઈઓ જરૂરી છે; ખતમાં આવી જોગવાઈઓની ગેરહાજરી તેના વર્ગીકરણને ફળદાયી ગીરો તરીકે તરફ દોરી જાય છે, ગીરોના આધારે માલિકીના દાવાઓને અમાન્ય બનાવે છે.

Acts Referred:

Transfer of Property Act, 1882 Sec. 58

Counsel:

Deven Parikh (Senior Advocate), S P Majmudar, H J Karathiya, Aditya R Parikh, Mihir Joshi (Senior Advocate), Amit V Thakkar

JUDGEMENT

Biren Vaishnav, J.- [1] This First Appeal is filed by the original plaintiff. The challenge is to the judgement and decree dated 25.04.2018 passed by the learned Principal Senior Civil Judge, Gandhinagar in Special Civil Suit No.178 of 2017. By the aforesaid judgement, the learned Trial Judge entertained an application under Order VII Rule XI(a) and (d) on behalf of the defendant nos.2 and 3 respondent nos.2 and 3 herein and dismissed the suit of the appellant.

[2] Facts IN BRIEF:

2.1 The appellant filed a Special Civil Suit for specific performance, permanent injunction and declaration. The narrative in the plaint was as under:

(a) The suit was filed for agricultural land at Ahmedabad, sub-district Gandhinagar, Taluka:Gandhinagar, Mouje Gam Zundal, Revenue Khata No.473, Block Survey No.483 admeasuring 10218 square meters.

(b) According to the plaintiff, during the course of negotiations, the defendant no.1 had confirmed that he was the sole and absolute owner of the suit land and therefore competent to sell.

(c) It was decided and agreed that the plaintiff will pay Rs.36,00,000/- in installments to the defendant no.1. Initially payment of the Rs.20,00,000/- in four equal installments and the balance of Rs.16,00,000/- would be paid. The case of the plaintiff was that four cheques of Rs.5,00,000/- each had duly been received by the defendant no.1.

(d) The parties decided to execute a sale deed for which a visit was made at the office of the sub-registrar where one Ghanshyamji Chamanji, defendant no.3/4 had lodged objections on 13.06.2017.

(e) Having come to know of some disputes pending between defendant no.1 and defendant nos.2 to 5, a Banakhat was thereafter executed on 25.06.2017 between defendant no.1 and the plaintiff.

(f) According to the plaintiff, the Banakhat made a clear disclosure on the part of the defendant no.1 that he had acquired the land as a legal heir of Nathiben who was a mortgagee. Late Ranaji Bhaluji Thakore, a mortgagor had entered into a mortgage by conditional sale on 27.04.1943, inter-alia, one of the conditions being that in the event the mortgagor fails to pay a debt of Rs.475/- within a period of five years then the mortgagee will be entitled to get the ownership of the mortgaged land. By virtue of this conditional sale, the defendant no.1 was the owner.

(g) The plaintiff's case further was that the defendant no.1, in collusion with defendant nos.2 to 5, executed a release deed dated 13.09.2017 on being paid Rs.21,00,000/-. Such a release deed was bad and the defendant No.1 had legal obligation to execute the Banakhat on the payment of remaining consideration of Rs.16,00,000/-.

2.2 The case of the defendant no.2 and 3 in the suit, through the written statement, after listing a chronology of events and dates was that the mortgage was not a mortgage by conditional sale. As the mortgage deed was not a mortgage by conditional sale, the defendant no.1 had no right to execute a Banakhat as he was not the owner of the property, land in question. That revenue entries made as a result of the execution of a mortgage deed did not confer ownership rights on defendant no.1.

2.3 The defendant nos.2 and 3 further stated that the suit filed by defendant no.1 being RCS No.171/2010 for a declaration that he is the owner of the land, was dismissed for want of prosecution on 31.08.2016.

2.4 The deed of 27.04.43 was not a mortgage by conditional sale as per Section 58(c) of the Transfer of Property Act. In fact, after the execution of the mortgage deed, the possession remained with the mortgagor Ranaji and Bai Nathu went abroad and in the year 2010 an amount of Rs.400/- was paid to her relative and as decided, the remaining amount of Rs.75/- would be paid to her on her return to India. Even after her death the disputed revenue entries in favour of the mortgagee were an issue of revenue litigation. The defendants also namely defendants 2 and 4 had filed a Regular Civil Suit No.146 of 2010. For a declaration that the land in question be declared as free from encumbrance and mortgage. That a release deed was signed on 23.08.2017 and therefore the defendant no.1 was no longer and never was the owner of the land in question.

2.5 The defendant nos.2 and 3 also filed an application under Order VII Rule XI(a) and (d) that in light of the fact that as the defendant no.2 and 5 had already entered into a release deed and even otherwise there was no mortgage by conditional sale, on reading the very document of 1943, no course of action was available to the plaintiff and moreover the deed of mortgage itself when read suggested otherwise. Not being the owner of land, the defendant no.1 had no right to sell and therefore the plaintiff could not seek specific performance and therefore the suit had an illusionary cause of action.

2.6 After exchange of arguments, the Trial Court, by the order under challenge, held that the deed of mortgage could not be read to be a mortgage by conditional sale but a usufructuary mortgage and accordingly allowed the defendant nos.2 and 3's application under Order VII Rule XI and dismissed the suit.

[3] Mr.Devan Parikh learned Senior Advocate assisted by Mr.S.P.Majmudar learned advocate with Mr.H.J.Karathia made the following submissions:

3.1 Mr.Parikh would submit that originally the land was owned by one Ranaji Bhaluji Thakore. He had mortgaged the land in question to the mother of the defendant no.1 Bai Nathi. This was done by mortgage deed dated 27.04.1943. Reading the mortgage deed, Mr.Parikh would submit that it was a mortgage by conditional sale for a period of five years. The period of five years and its meaning and the document in question was a subject matter of interpretation. The Trial Court therefore could not have entertained an application under Order VII Rule XI when the issue was triable.

3.2 Mr.Parikh would submit that the limitation would start running from the prescribed period of five years as so stipulated in the mortgage deed. Once the period of five years came to an end, the mortgagor gave up his right to redeem and therefore the original defendant no.1 became an owner of the property with full possession.

3.3 Mr.Parikh would submit that reading of the plaint would indicate that it is the case of the appellant plaintiff that the defendant no.1 had confirmed to the appellant plaintiff that he was the sole and absolute owner of the suit land and therefore, competent to sell and/or deal with the suit land. Even in the revenue records the name of the defendant no.1 was entered which would indicate the ownership of the defendant no.1. It was in light of this situation that the defendant no.1 as owner entered into a sale deed on 23.06.2016 only when one Ghanshyamji Chamanji, one of the legal heirs of the mortgagor M/s.Ranaji Bhaluji Thakore filed his written objection on 13.06.2017 that the sale deed could not be registered. It was on this count that a banakhat was entered into between the plaintiff and the defendant no.1 on 25.06.2017.

3.4 Mr.Devan Parikh would extensively refer to the recitals in the sale deed and submit that all these recitals would go to show that it was beyond doubt that the defendant no.1, the seller was the owner of the property. Once it was shown that proceedings under the revenue laws and including the Inam Act vested the title, the

title in the defendant no.1's mother, the ownership and therefore the right to deal with the property could not be disputed. 3.5 Mr.Parikh would submit that even the subsequent conduct of the defendants viz. that of the defendant no.1 and 2 to enter into a release deed within two months on 23.08.2017 was a mala-fide conduct which was a triable issue. It was a case where the conduct of the defendant no.1 was one where after the sale deed the money was pocketed by the defendant citing the release deed with original owner. It was a clearly collusive act which can be inferred from the fact that the Civil Suit filed by the mortgagee for a declaration that the mortgagor had no right, title or interest was a suit being Regular Civil Suit No.171 of 2009 which was dismissed for non-prosecution. Civil Suit No.146 of 2010 filed by the mortgagor against the mortgagee was also settled. This obviously indicated a collusion between the defendant no.1 and 2 which was a triable issue and could not have been summarily dealt with in an Order VII Rule XI application.

3.6 Taking us through the plaint of Regular Civil Suit No.146 of 2010 filed by the mortgagor, Mr.Parikh would submit that when the averments in the plaint are read, it would be preposterous to believe that for the land which was mortgaged for a loan of Rs.475/- would be redeemed on a condition that Rs.75/- would be paid later when Bai Nathi would return from abroad. The contents of the suit are completely different from the contents of the release deed. The release deed in fact was a sale. From the averments in the plaint filed by the appellant, it was clear that whether the release deed was in fact a sale and whether it defeated the rights of the appellant to enter into a sale was a triable issue as the documents in question has to be interpreted by leading evidence.

3.7 Mr.Parikh would submit that reading para 2 of the suit being Regular Civil Suit No.170 of 2010 filed by the mortgagee would indicate that there was a telltale evidence to suggest that the mortgagee was the owner post ending of the five year period stipulated in the mortgage deed. The suit of the year 2010 was clearly time barred and the defendant no.1 having acquired possession even by the principle of adverse possession and the conduct of the defendants to withdrew the RTS proceedings and the first suit would have to be issues which need to be gone into without shortcut under Order VII Rule XI.

3.8 Inviting our attention to the contents of the present suit and the prayers therein, Mr.Parikh would submit that apart from the prayers based on the mortgage deed, the prayers also were for specific performance and cancellation of the release deed which according to the appellantplaintiff was collusive. The prayer of specific performance could have been decreed under the discretion given to the Court under Section 19 of the Specific Relief Act. He would submit that the suit was not only based on the mortgage deed and the Trial Court in passing the impugned order has misconstrued the entire issue of holding that the deed was a deed by mortgage by conditional sale. That was only one of the issue. There was a complete wrong appreciation of the purported

suit. The interpretation and nature of the mortgage deed could not have been done because it involves merit which could be decided only at the stage of trial.

3.9 Relying on the provisions of Section 41 of the Transfer of Property Act, Mr.Parikh would submit that, it was a transfer of property by an ostensible owner since the mortgagee was in possession and therefore an ostensible owner.

3.10 Relying on the provisions of Article 61(a) of the Limitation Act, Mr.Parikh would submit that the mortgage deed was of the year 1943 and the subsequent suit filed in the year 2010 for redemption was too late in the day as the suit was time barred. 3.11 Mr.Parikh would rely on the following decisions:

(I) In case of Shirpur Power Private Limited v. State Bank of India,2020 3 GLR 2266 to submit that as held in the aforesaid decision, interpretation of documents is a mixed question of fact and law.

(II) In case of Krishnakant Manuprasad Trivedi v. Urvashiben W/o Chaitaniyabhai Chandulal Patel,2018 0 JX(Guj) 313 to submit that though a plaint may be cleverly drafted, it cannot be dismissed under Order VII Rule XI if the plaint has averments which can be established during the trial.

(III) In case of Mohd Ali Saraf Ali v. Jasabhai Lakhabhai Bharwad,2018 0 JX(Guj) 295 to submit that when the suit has multiple prayers as was the case on hand, there cannot be a part rejection of the plaint.

[4] Mr.Mihir Joshi learned Senior Advocate appearing with Mr.Amit Thakkar learned advocate for respondent nos.3.1 to 3.5 would make the following submissions:

4.1 Mr.Joshi would submit that the learned Senior Advocate for the appellant has gone much beyond the case pleaded in the plaint. He would take us through the plaint and submit that the plaintiff sought specific performance of the agreement to sell dated 25.06.2017. The principal prayer therefore was for specific performance. The other prayers being consequential directly be dependent on the principal prayer.

4.2 Mr.Joshi would submit that while deciding an application under Order VII Rule XI, only plaint has to be seen. He would take us through the contention raised in the plaint and submit that on the scrutiny thereof, it was apparent that it did not disclose a cause of action. Applying therefore the statutory provisions, the Trial Court committed no error in rejecting the plaint.

4.3 Mr.Joshi would further submit that reading the entire plaint would indicate that it was the case of the defendant no.1 that he was the sole and independent owner on account of the fact that he had acquired the suit land as a legal heir in lieu of a mortgage by conditional sale dated 27.04.1943. The case of the plaintiff therefore was that he was an ostensible owner by virtue of the mortgage by conditional sale. He would submit that the submission of the learned counsel for the appellant based on Section 41 of the Transfer of Property Act was misconceived. The reading of the plaint

and the cause of action based on a misconstruction of a document did not make him an owner as averred in para 11 of the plaint and on the plain reading of the document, it was evident that there was no automatic sale so as to make the plaintiff an owner.

4.4 Mr.Joshi learned Senior Advocate would submit that reading the provisions of Section 58(c) of the Transfer of Property Act, makes it clear that the ingredients of conditional sale were not satisfied. There was no ostensible sale which was apparent on reading the mortgage deed of 1943. Mr.Joshi would read the relevant portions of the deed and submit that it was beyond doubt a usufructuary mortgage as defined under Section 58(d) of the Transfer of Property Act. Reading the provisions of Section 60 of the Transfer of Property Act, Mr.Joshi would submit that a right to redeem a mortgage is available to a mortgagor at any time and such a right can only be extinguished by act of parties or by decree of Court. The Right to Redemption therefore in a given case can be foreclose by executing a registered instrument which was not the case. The argument of the learned counsel for the appellant therefore that the defendant no.1 was the owner either by virtue of the proceedings under the Inami Act and the Tenancy Law and/or by adverse possession or by expiry of period of limitation are misconceived. The contention that the period of five years having come to an end would foreclose the right was therefore misconceived. The foundation of the plaint for specific performance in the plaint on the basis that the defendant was the owner of the property was misconceived.

4.5 On the contention of the learned counsel for the appellant that the issue of interpretation of the documents was a triable issue is misconceived as under the provisions of Section 91 of the Evidence Act, the document itself proves its character and no other evidence is required except the document itself, Mr.Joshi would take us through the contents of the order impugned and submit that the Trial Court committed no error in determining the type of mortgage as on a plain reading of the mortgage deed it clearly revealed that the deed was not one of mortgage by conditional sale by usufructuary mortgage. A plain reading of the plaint along with the documents produced along with it indicated that the mortgagors were owners of the land and the facts stated in the plaint itself so made it evident. In support of his submissions, Mr.Joshi would rely on the following decisions:

(I) In case of **Narandas Karsondas v. S.A. Kamtam and another**, 1977 3 SCC 247, in support of his submission that the mortgagor has a right to redeem which will survive until there has been a completion of sale by a registered document.

(II) In case of **Achaldas Durgaji Oswal (DEAD) THROUGH LRS. v. Ramvilas Gangabisan Heda (DEAD) THROUGH LRS. And others**, 2003 3 SCC 614 in support of his submission that the right of redemption of a mortgagor is a statutory right which can only be taken away in terms of the proviso appended to Section 60 of the Transfer of Property Act which is extinguished either by a decree or by act of parties viz. by a registered document of sale.

(III) In case of **Maharaj Shri Manvendrasinhji Jadeja v. Rajmata Vijaykunverba Wd/o Late Maharaja Mahendrasinhji**, 1999 1 GLR 261 in support of his submission that the provisions of Order VII Rule XI(a) is mandatory in nature and Courts are under obligation to reject plaint which does not disclose a real cause of action. Considering scope of Order VII Rule XI(a), the Court held that the Courts have to decide with reference to the averments made in the plaint and clever drafting creating illusions of cause of action are not permitted in law as clear right to sue has to be demonstrated in the plaint.

(IV) In case of **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (DEAD) THROUGH LEGAL REPRESENTATIVES And others** in support of his submission that a plaintiff by clever drafting attempted to make out a illusory cause of action. Reliance was placed on a decision in case of in the case of **T. Arivandandam v. T.V.Satyapal & Ors.**, 1977 4 SCC 467 to submit that interpretation of a nature of document is a question of law. In support of this submission reliance was also placed on the decision in case of **ITC Limited v. DRAT**, 1998 2 SCC 70.

[5] Mr.Devan Parikh in the rejoinder would submit that it was a case of claiming title under adverse possession. He would rely on a decision in case of Karupaathal and others v. Muthusami,2013 SCCOnLine(Mad) 2163 and submit that in a case where a time limit is fixed on the expiry of limitation of 30 years, the right to extinguishment shall expire. He also relied on a decision in case of **Singh Ram (D) Through L.R.S. v. Sheo Ram & Ors.**, 2014 9 SCC 185, wherein answering the issue the Court held that a usufructuary mortgagee is not entitled to file a suit for declaration that he had become owner merely on expiry of 30 years from the date of the mortgage. Mr.Joshi therefore prayed to dismiss the appeal.

ANALYSIS

[6] Having considered the submissions made by the learned counsels for the respective parties, the issue for consideration before us is, whether the Trial Court was right in entertaining an application under Order VII Rule XII and dismissing the plaint at threshold on the ground that it did not disclose a cause of action and whether the Trial Court was right in its perception that on reading of the plaint and without adding and/or subtracting anything, the documents produced and relied upon by the plaintiff itself suggested that the deed in question was a deed of usufructuary mortgage. According to the Trial Court, once that was established, the defendant no.1 being mortgagee had no right or ownership over the suit land.

6.1 Reading of the plaint would indicate that it was the case of the appellant-plaintiff that the land in question was of the sole and absolute ownership of the defendant no.1. That, it was so confirmed by the defendant No.1 during the negotiations. Accordingly, a final sale deed was entered into for a sale consideration of Rs.36 lakhs of which Rs.20 lakhs was already paid through cheques. The sale deed could not be executed as the defendant no.3/4, legal heir of the mortgagor filed written

objections on 13.06.2017 as being the land owner. Based on this objection, the defendant No.1 executed an agreement to sell dated 25.06.2017. That the defendant no.1 was the sole and independent owner of the land and was holding possession based on an averment which was the foundation of the plaint in para 11 of the plaint. Paras 11 to 17 read as under:

"11. It is pertinent to mention that the terms of the said Banakhat are very clear and discloses the fact that the Defendant No.1 had acquired the Suit land as a legal heir through his mother namely Late Nathiben wife of Kalidas Gopaldas Parekh. It is also stated that the Suit land was acquired by the mother of the Defendant No.1 from the Late Ranaji Bhaluji Thakore in lieu of a Mortgage by Conditional Sale Deed dated 27.04.1943 and one of the conditions enumerated therein is that in the event, the mortgagor fails to pay the debt of Rs.475/- within a period of five years, then the mortgagee shall be entitled to get, the ownership of the mortgaged land. The said Mortgage by Conditional Sale Deed dated 27.04.1943 which is in Gujarati, is reproduced herein below for ready reference of this Hon'ble Court:

Mortgage Deed of Rs.475/- for
the Farm at Moje: Zundal

The Party of the Second Part – Bai Nathi Raat w/o Kalidas Luhar, Age about – 28 years, Residing at -_____, Moje Zundal.

The Party of the First Part – Thakor Ranaji Bhaluji, Age about – 45 years, Caste – Thakarda, Occupation – Agricultre, Residing at – the said farm under our ownership and possession, which is located in the outskirt of Moje: Zundal, District, Sub-district – Ahmedabad and is under our possession from the beginning till this date. Details of its boundaries are as below.

Surve y No.	Acre Guntha	Assess ment	…..	…..	East	West	North	South
483	2-22	9-0-03 8-4-0 0-12-0	…..	With Jujube tree	Maneklal Chunilal	……	Small Rivulet	Barhmar Kaaram

We have mortgaged our farm with the aforesaid boundaries along with its trees, grass, hedge etc. with its original boundaries for Rs.475/- (Four Hundred Seventy Five only) received in cash without the interest and rent on the farm given in your possession for the term of 5 years. On completion of the said term, if we pay the mortgage amount, we will be released from the mortgage, and if we do not pay the same, you can recover it from the said farm, from us or from any other property, thus, we will not raise any objection if you sow or get sown, cultivate or get cultivated or submortgage it to anyone. We enter your name into the government record for the said farm, the government tax should be paid by you henceforth, the Taccavi loan has not been taken on this farm, further, there is no debt or right of any person on this farm. In this regard, I execute this mortgage

deed willingly and with wisdom. Samvat 1999, Chaitra Vad – 7, Tuesday, 27 April, 1943. Das Shantilal Motilal Bhau, Shahpur, Ahmedabad, Mangal Parghi No Khancho.

Signature	**Witness**
Thakor Ranaji Bhaluji Lallubhai	Bhaluji RaatNathibai Res. of Zundal.

*For the benefit of this order the above paragraph is translated into English.

The photocopy and the typed copy of the said Mortgage by Conditional Sale Deed dated 27.04.1943 are produced herewith by a separate list at Item No. 5 colly. The photocopy of the Banakhat dated 25.06.2017 executed by and between the plaintiff and the Defendant No.1 is produced herewith by way of separate list of document as Item No. 6. The Plaintiff craves the leave to refer to and rely upon the contents of the said Banakhat dated 25.06.2017 as and when the need be, in the interest of justice.

12. The Plaintiff further states that thereafter the Plaintiff was enquiring with the Defendant No.1 about the date to execute the Sale Deed but the Defendant No.1, under one pretext or the other, was avoiding to execute the Sale Deed. During the pendency, the Plaintiff, through his sources, had enquired about the status-title of the Suit land in the concerned Revenue Office at Gandhinagar. During the search, it was found that Ghanshyamji Chamanji (Defendant No.3/4), the legal heir of the prior owner, had filed some revenue litigation with the concerned Revenue Officer being RTS Appeal Case 210 of 2017. During the search in the Revenue Department, and having obtained the certified copy of Village Form No.6, it was found that the Entry No.8454 and 8456 both dated 13.07.2017 with regards to the suit land. The Plaintiff craves the leave to produce on record the photocopy of RTS Appeal-Case No.210/2017 and the Entry Nos. 8454 and 8456 by way of separate list of document as Item No.7, 8 and 9 respectively. Thereafter, the Plaintiff has also learnt from the sources that the said RTS Appeal No. 210/2017 (Entry No.8521 dated 12.09.2017) had been withdrawn by the Defendant No.3/4 being the original Applicant in the said RTS proceeding. The photocopy of the application for the withdrawal of the RTS Appeal No. 210 of 2017 is produced by a separate list at Item No. 10.

13. The Plaintiff further submits that during the course of an enquiry, it was found that the Defendant No.1 had executed some documents in favour of the Defendant No.2 to Defendant No.3/5, the legal heirs of the prior owner. Having made the search with concerned Revenue Office, it was found that the Entry No. 8525 (Kachi) dated 16.09.2017 came to be recorded on the basis of Giro Mukti (of Suit land) as per revenue record whereby the mortgage of late Ranaji Bhaluji Thakore was got released by the Defendant No.1 being the son of Late Nathiben widow of Kalidas Gopaldas Parekh, to which the Plaintiff has also filed its Objection dated 12.10.2017 in respect to the said Entry No. 8525 pending before the Mamlatdar Shree, at Gandhinagar for its

necessary adjudication. The photocopy of Entry No. 8525 and the objection dated 12.10.2017 filed by the Plaintiff in respect of Suit land are produced herewith by way of separate list of documents as Item No.11 and 12. deed

14. The Plaintiff further states that the Plaintiff thereafter had made a preliminary enquiry with the Sub-Registrar's Office, at Gandhinagar and it was found that a Release Deed dated 13/09.2017 (hereinafter referred to as alleged Release Deed) for the Suit land was executed by the Defendant No.1 in favour of the Defendant No.2 to Defendant No.3/5 in hand in gloves to cheat the Plaintiff. It was found that the Defendant No.3/4 has paid an amount of Rs. 21,00,000/- to the Defendant No.1 (as per paragraph no.6 of release deed) whereby the Defendant No.1 had released all his rights from the Suit land. The Plaintiff begs to produce on record of this Hon'ble Court the certified copy along with the photocopy of the alleged Release Deed dated 13.09.2017 by way of separate list of document as Item No.13 (Colly).

15. The Plaintiff submits the alleged release deed is null and void-ab-initio in the eye of law. Further, in view of the above referred Mortgage by Conditional Sale Deed dated 27.04.1943 and also in respect of said Banakhat dated 25.06.2017 executed by and between the Defendant No.1 and the Plaintiff, the Defendant No.1 has fraudulently, to deprive the legal rights and to defraud the Plaintiff has executed the alleged Release Deed in favour of the other Defendants. It is stated that the Defendant No.1 has failed to perform his part of obligation and has clandestinely executed alleged Release Deed in favour of the Defendant No.2 to 3/5. In view of the said Mortgage by Conditional Sale Deed and Banakhat, the Defendant No.1 is under the legal obligation to execute the Sale Deed in favour of the Plaintiff, for which the Plaintiff is ready and willing to perform his part of contract and is ready and willing to pay the remaining amount of Rs. 16,00,000/- at the time of execution of the Sale Deed to the Defendant No. 1 and is also ready to deposit the remaining amount of Rs. 16,00,000/- in this Hon'ble Court.

16. The Plaintiff state and submits that the present Defendant No.2, 3/1 & 3/4 have filed suit before the Hon'ble Principal Senior Civil Judge Court (S.D.) at Gandhinagar bearing Regular Civil Suit No. 146 of 2010 (RCS 146 of 2010) against the present Defendant No.1 for declaration and injunction valued at Rs.600/- seeking various reliefs for suit land which is pending till date for its necessary adjudication. The photocopy of the RCS 146 of 2010 proceeding is produced herewith by way of separate list of document at Item No. 14.

17. The Plaintiff further submits that after filing of the above RCS 146 of 2010 by and between the Defendant No.2, 3/1 and 3/4 against the present Defendant No.1., the present Defendant No.1 had filed suit before the Hon'ble Principal Senior Civil Judge Court (S.D.) at Gandhinagar bearing Regular Civil Suit No. 171 of 2010 (RCS 171 of 2010) against the present Defendant No.3/1 and 3/4 for declaration and permanent injunction, seeking various reliefs for property lying and being at Moje: Zundal Gam,

of Revenue Survey No. 483 (present Suit land), 359/2, 359/5 & 359/8. During the ongoing proceeding in the said RCS 171 of 2010, the present Defendant No. I had filed a Pursis dated 23.08.2011 not pressing all his prayers against the present Defendant No.3/1 and 3/4 in regards to the other survey number property except the Suit land and subsequently the said suit came to be dismissed for default for want of prosecution on 31.08.2016. The photocopy of the RCS 171 of 2010 proceeding is produced herewith by way of separate list of document at Item No. 15."

6.2 Reading of the aforesaid averments from the plaint would indicate that (i) it is the case of the plaintiff that a registered mortgage deed dated 27.04.1943 was executed by predecessors of the defendant nos.3/1 to 3/5 in favour of the plaintiff's mother Nathiben Kalidas. (ii) The defendants viz. the heirs of the mortgagor filed a Regular Civil Suit No.146 of 2010 against the mortgagee defendant no.1 for declaration and redemption of mortgage. (iii) The mortgagee - defendant no.1 filed Regular Civil Suit No.171 of 2010 against the mortgagors-defendant no.3.1 to 3.4 for declaration and injunction. That suit was dismissed for default. (iv) Oral agreement was made between the plaintiff and the defendant no.1 for purchase of the property in September 2016. (v) Written objections were filed on 13.06.2017 by defendant no.3.4 before the subregistrar objecting to the registration for the sell deed. Despite this, an agreement to sale was executed by the plaintiff on 25.06.2017. (vi) Reading of the mortgage deed which is produced in the plaint would indicate that it was not a case where an automatic sale was contemplated. The deed only gave a right to recover the amount. In case of the failure to repay the amount after completion of the mortgage period.

6.3 The true translation of the mortgage deed reads as under:

Mortgage Deed of Rs.475/- for
the Farm at Moje: Zundal

The Party of the Second Part – Bai Nathi Raat w/o Kalidas Luhar, Age about – 28 years, Residing at -_____, Moje Zundal.

The Party of the First Part – Thakor Ranaji Bhaluji, Age about – 45 years, Caste – Thakarda, Occupation – Agricultre, Residing at – the said farm under our ownership and possession, which is located in the outskirt of Moje: Zundal, District, Sub-district – Ahmedabad and is under our possession from the beginning till this date. Details of its boundaries are as below.

Surve y No.	Acre Guntha	Assess ment	…..	…..	East	West	North	South
483	2-22	9-0-03 8-4-0 0-12-0	…..	With Jujube tree	Maneklal Chunilal	……	Small Rivulet	Barhmar Kaaram

We have mortgaged our farm with the aforesaid boundaries along with its trees, grass, hedge etc. with its original boundaries for Rs.475/- (Four Hundred Seventy Five only) received in cash without the interest and rent on the farm given in your

possession for the term of 5 years. On completion of the said term, if we pay the mortgage amount, we will be released from the mortgage, and if we do not pay the same, you can recover it from the said farm, from us or from any other property, thus, we will not raise any objection if you sow or get sown, cultivate or get cultivated or submortgage it to anyone. We enter your name into the government record for the said farm, the government tax should be paid by you henceforth, the Taccavi loan has not been taken on this farm, further, there is no debt or right of any person on this farm. In this regard, I execute this mortgage deed willingly and with wisdom. Samvat 1999, Chaitra Vad – 7, Tuesday, 27 April, 1943. Das Shantilal Motilal Bhau, Shahpur, Ahmedabad, Mangal Parghi No Khancho.

Signature	**Witness**
Thakor Ranaji Bhaluji Lallubhai	Bhaluji RaatNathibai Res. of Zundal.

6.4 Essentially therefore, on reading of the plaint, as it stands, indicates that it was the case of the plaintiff that the mortgage deed dated 27.04.1943 revealed an automatic sale. That therefore it was a mortgage by a conditional sale. Added support for the plaintiff on his reading of the deed was that on the expiry of a period of five years the mortgagee became the owner of the property. This, in the perception of the plaintiff, gave the defendant no.1 the right to sell the land in question to the plaintiff and therefore a legal right to him to seek specific performance of the agreement. Essentially therefore, if the plaint and the reliefs sought for are perused, apart from a declaration sought in the suit to grant permanent injunction restraining the defendant nos.2 to 3/1 to 3/5 from making any construction on the land or selling the land, a relief was sought to declare the alleged release deed dated 13.09.2017 by the defendant no.1 in the favour of defendant nos.2 to 3/1 to 3/5 as illegal and a decree of specific performance of Banakhat dated 25.06.2017 was pressed.

6.5 All these reliefs would revolve around the interpretation of mortgage deed dated 27.04.1943.

6.6 Coming to the submissions of learned counsel for the respective parties on whether the Trial Court was right in its perception in rejecting the plaint at the threshold based on holding whether the document was a document of mortgage by conditional sale or a usufructuary mortgage, the submission of the learned counsel of the appellant that the interpretation of a document is a mixed question of law and facts relying on the decision in case of **Shirpur** (supra), is misconceived. The decision in case of **Shirpur** (supra) was on the question whether there was any privity of contract between the banks and the borrower. So the question was whether a preliminary issue could be decided, it was a case where since the personal guarantees are executed between the borrowers and trustees and not in favour of the bank, the question of locus-standi of the banks to file such an application was under consideration. It was in

these set of facts that the contents of the documents had to be looked into for ascertainment of facts and then determine the rights of the parties and therefore it was held to be a mixed question of law and facts.

6.7 Perusal of the order of the Trial Court impugned before us, when read in context of the provisions of Sections 58(c) and 58(d) of the Transfer of Property Act, indicate that it is apparent on the plain reading of the document that it was a transaction of usufructuary mortgage. In other words therefore, in light of the decision in the case of **Maharaj Shri Manvendrasinhji Jadeja** (supra) where the issue was whether succession was governed by any rule or primogeniture, this Court opined that to find out whether a plaint discloses a cause of action or not can be looked into based on the averments made in the plaint. When a plaint is based on a document filed in it, the Court can consider whether based on such document the plaint discloses any cause of action and on such document being fully and meaningfully scrutinized if the Trial Court finds based on statutory provisions that the suit does not disclose a cause of action, Order VII Rule XI can be resorted to. Paras 19 and 20 of the decision read as under:

"19. The learned Judge, after considering the provisions of the Constitution of India, the Hindu Succession Act, 1956 and the law declared by the Supreme Court, has come to the conclusion that rule of primogeniture, as pleaded by the appellant in the plaint, stands abrogated and therefore the plaint is liable to be rejected, as it does not disclose any cause of action. Though in the reply to Exh.191, which was filed under the provisions of Order 7, R.11(a) of the CPC by the respondent, the appellant had pleaded that rule of primogeniture is applicable and though in the memorandum of first appeal, it is asserted that the learned Judge has committed an error in holding that rule of primogeniture came to an end in view of the provisions of Section 5(ii) of the Hindu Succession Act, no attempt was made on behalf of the appellant to submit before us that rule of primogeniture has not ceased to apply to the facts of the present case. The plea was not raised, on the ground that deciding the said question amounts to going into the merits of the case which is not permissible while hearing an application submitted under Order 7, R.11(a) of the CPC.

20. In our view, considering the question whether rule of primogeniture has ceased to apply or not cannot be termed as going into the merits of the case at all. On careful scrutiny of the plaint, it becomes evident that the whole case of the appellant in the plaint is based on the footing that deceased Mayurdhvajsinhji having expired intestate, the appellant is entitled to inherit all the properties left by him under the rule of primogeniture. Therefore, in order to find out whether the plaint discloses a cause of action or not, it becomes relevant to consider whether the rule of primogeniture still subsists or not. In fact, rule of primogeniture is the sole and entire basis of the plaint and therefore if the Court addresses itself to the question whether the said rule of primogeniture subsists or not, it cannot be said that the Court is deciding the matter on

merits. As observed earlier, while deciding application filed under Order 7, R.11(a) of the CPC, the Court has to apply the statutory law as well as case-law to the facts pleaded in the plaint and find out whether any cause of action is disclosed or not. If such an attempt is made, it can hardly be said that merits of the case are taken into consideration while deciding application for rejection of the plaint as not disclosing any cause of action."

6.8 Reading the ingredients of Sections 58(c) and 41 of the Transfer of Property Act, what is evident is that a mortgage deed which is to satisfy the test of being (I) as a mortgage by conditional sale, there has to be an ostensible sale in the document. Reading of the document would indicate that it nowhere reveals automatic sale nor does it suggest that the defendant no.1 become an owner after a period of five years. On a clear and an unambiguous reading of the document it was clear that the mortgage deed only indicated that in case of a failure to pay the debt after five years, the mortgagee will have a right to recover the amount. In light of the terms of the documents being evidently clear, there was no need for the parties to lead evidence. The plaint itself based on the nature of the document and on the law that can be applied to it would obviously make the suit frivolous and as held by the Supreme Court in the case of **T. Arivandandam** (supra) in para 5 as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his power under Or. VII r. 1 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

6.9 In case of ITC Limited (supra), the Court held as under:

"16. The question 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 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and

a clear right to sue should be shown in the plaint. (See T. Arivandandam vs. T.V. Satyapal.)

25. Learned counsel for the respondent Bank contended that the case before us Page 45 of 60

which is concerned with an application under Order 7 Rule 11(a) CPC for rejecting a plaint on the basis of "absence of cause of action from a reading of the plaint" was identical with the Sztejn case and hence what Megarry, J. stated Discount Records Ltd. directly applies.

26. It is true, we are also dealing with a question whether the plaint disclosed a cause of action. But here the allegation in the plaint is only one relating to absence of movement of goods by the seller. As pointed in the decided cases and in particular in the U.P. Cooperative Federation Case and other cases decided by this Court and also Courts elsewhere, mere absence of movement has never been, in this branch of law, treated as amounting to fraud, Such non- movement, even if the allegation is to be treated as true, could be for goods reasons or for reasons which were not good. But that is not 'fraud'. In Sztejn (See law relating to commercial credit by A.G. Davis (2nd Ed, 1954) (p160-61 for facts of this case) the position was different. There the complaint was that the sellers who were to ship complaint was that the sellers who were to ship 'bristles' deliberately placed 50 cases of material on board a steamship, procured a bill of loading from a steamship company and obtained customary invoices. The documents described the goods as bristles as per the letter of credit. In fact, the Indian sellers had filled the 50 crates with 'Cowhair' and other worthless material and rubbish with intent to simulate genuine merchandise and so 'defraud' the plaintiff, the buyers - who has instructed the defendants to issue the letter of credit. The sellers then drew a draft under the letter of credit to the order of the Chartered bank of India, Australia and China and delivered the draft and the 'fraudulent documents' to the chartered Bank at Cawnpore for collection on account of the sellers. The buyer brought the action which succeeded, to restrain the defendants from paying the draft. The Learned Judge said (p.634):

> "It must be assumed that the seller has intentionally failed to ship any gods ordered by the buyer. In such a situation, where the seller's fraud has been called to the bank's attention before the draft and documents have been presented for payment, the principle of the independence of the bank's obligation under the letter of credit should not be extended to protect the unscrupulous seller. It is true that even though the documents are forged or fraudulent, if the issuing bank has already paid the draft before receiving notice of the seller's fraud, it will be protected if it exercised reasonable diligence before making such payment. However, in the instant action Schroder had received notice of Transea's active fraud before it accepted or paid the draft. The Chartered Bank, which stands in no better position than

> Transea, should not be heard to complain because Schroder is not forced to pay the draft accompanied by documents covering a transaction which it has reasons to believe is fraudulent"

It will be noticed that Sztejn was a case where 'fraudulent documents' were presented which simulated shipping of goods which were not only not shipped but on the other hand the seller shipped some rubbish deliberately. Therefore the allegations in the complaint filed by the buyers in that case were based upon the above facts - which as per the legal position in this branch of law - i.e. presentation of 'fraudulent document's where goods were deliberately not shipped and an attempt was made to pass off 'rubbish' as the goods ordered for - amounted to 'fraud'.

27. As stated above non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer,J. In T.Arivandandam's case, the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on 'fraud', the Bank cannot take shelter under the words 'fraud' or 'misrepresentation' used in the plaint."

6.10 The above would suggest that the plaint really pointed out that the cause of action that was set out in the plaint was purely illusory. The document not being one of the conditional sale but being a usufructuary mortgage would render the averments in the plaint with regard to the right and title and the ownership of the defendant no.1 being illusory as no ownership vested in the defendant no.1-mortgagee. Consequentially therefore, when the owner had no right to sell, the appellant-plaintiff had no right to a specific performance and admittedly therefore, the contention raised by the learned counsel for the appellant relying on section 19(c) of the Specific Relief Act would also be of no avail.

6.11 That brings us to decide on the issue of right to redemption in context of the prayer made in the plaint that the release deed dated 13.09.2017 was clearly barred against the defendant no.1 mortgagor since he had no right of redemption. According to the submission of the learned counsel for the appellant relying on the provisions of Articles 61(a) of the Limitation Act, 1963, it was submitted that since there was no right exercised by the mortgagee within five years from the year 1943, by virtue of adverse possession, the mortgagee became absolute owner of the property. It was submitted by the learned counsel for the appellant that the right to redeem had been extinguished after a period of five years based on the condition of the deed.

6.12 We would therefore consider this argument in light of Section 60 of the Transfer of Property Act which deals with the right of the mortgagor to redeem. Section 60 reads as under:

> **"60. Right of mortgagor to redeem.** At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court. The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption. Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.
>
> **Redemption of portion of mortgaged property.** Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

6.13 Reading of the Section would indicate that the mortgagor has a right to redeem at any time provided his right is so extinguished by act of parties. The act of parties means that the parties have to foreclose such a right of redemption by execution of a registered document. We agree to the submission of learned Senior Advocate Mr.Mihir Joshi to the principle that "Once a mortgage always a mortgage" and the right to redemption would subsists as long as the mortgage subsists. It will be in the fitness of things to reproduce paras 34 to 38 of **Narandas Karsondas** (supra) which read as under:

> "34. The right of redemption which is embodied in section 60 of the Transfer of Property Act is available to the Mortgagor unless it has been extinguished by the Act of parties. The combined effect of section 54 of the Transfer of Property Act and section 17 of the Indian Registration Act is that a contract

for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without intervention of the Court in a Mortgage Deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption.

36. It is erroneous to suggest that the mortgagee is acting as the agent of the mortgagor in selling the property. The mortgagor exercises his right under a different claim. The mortgagee's right isdifferent from, the mortgagor's. The mortgagee exercises his right under a totally superior claim which is not under the mortgagor, but against him. In other words, the sale is against the mortgagor's wishes. Rights and interests of the mortgagor and the mortgagee in regard to sale are conflicting.

37. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act.

38. The decision in **Abraham Ezra Issac Mansoor v. Abdul Latiff Usman**, 1967 1 SCR 293. is correct law that the right to redeem a mortgage given to a mortgagor under section 60 of the Transfer of Property Act, is not extinguished by a contract of sale of the mortgaged property entered into by a mortgagee in exercise of the power of sale given to him under the mortgage deed. Until the. sale is completed by a registered instrument, the mortgagor can redeem the mortgage on payment of the requisite amount."

6.14 It will also be in the fitness of things to reproduce paras 12, 15 and 22 of Achaldas Durgaji Oswal (supra) which read as under:

> "12. A right of redemption, thus, was statutorily recognized as a right of a mortgagor as an incident of mortgage which subsists so long as the mortgage itself subsists. The proviso appended to Section 60, as noticed hereinbefore, however, confines that said right so long as the same is not extinguished by act of the parties or by decree of court.
>
> 15. In 'Fisher and Lightwood's Law of Mortgage', the nature of the right of redemption is stated thus:-
>
> "The rights of redemption. The right to redeem a mortgage was formerly conferred on the mortgagor by a proviso or condition in the mortgage to the effect that, if the mortgagor or his representative should pay to the mortgagee the principal sum, with interest at the rate fixed, on a certain day, the mortgagee, or the person in whom the estate was vested, would, at the cost of the person redeeming, reconvey to him or as should direct (a). This is still the practice in the case of a mortgage effected by an assignment of the mortgagor's interest (b). A proviso for reconveyance was no longer appropriate after 1925 for a legal mortgage of land (which has to be made by demise (c)), and it is not necessary to have a proviso for surrender of the term in such a mortgage, since the term ceases on repayment (d). Nevertheless, in order to define the rights to the mortgagor and the mortgagee, a proviso is inserted expressly stating that the term will ceased the date fixed (e).

It has been seen (f) that, at law, whatever, form the mortgage took, upon non-payment by the appointed time, the estate of the mortgagee became absolute and irredeemable, but that equity intervened to enable the mortgagor to redeem after the date of repayment.

> There are, therefore, two distinct rights of redemption-the legal or contractual right to redeem on the appointed day and the equitable right to redeem thereafter (g). The equitable right to redeem, which only arises after the contractual date of redemption has passed, must be distinguished from the equity of redemption, which arises when the mortgage is made (g)."
>
> 22. The right of redemption of mortgagor being a statutory right, the same can be taken away only in terms of the proviso appended to Section 60 of the Act which is extinguished either by a decree or by act of parties. Admittedly, in the instant case, no decree has been passed extinguishing the right of the mortgagor nor such right has come to an end by act of the parties."

6.15 In context of Order 34 Rule 7 and 8 of the Code of Civil Procedure would indicate that a right to redemption of a mortgagor is a statutory right and can be taken away only in terms of a proviso appended to Section 60 of the Act. In the facts of the

case, in absence of a positive act of parties by a registered instrument in extinguishing the right of a mortgagor, the limitation shall not begin to run. Therefore, the argument of the learned counsel for the appellant that under Article 61(a) of the Limitation Act by virtue of adverse possession, the defendant no.1 would become an owner is an argument that has to be shelved at the threshold.

6.16 It is in light of these findings, if we assess the order under challenge passed by the Civil Court entertaining application under Order VII Rule XI of the Code of Civil Procedure, we find that on the interpretation of the provisions of Transfer of Property Act, the Trial Court observed thus;

> "On a plain reading of the deed in question, it is absolutely clear that the mortgagee had no right or ownership either at the time of execution of the deed or on some future date. Moreover, even if mortgagor failed to repay the mortgage money, mortgagee had right to recover money only.
>
> The defendant no.1 does not seem to be an absolute owner of a suit land on strength of the fact that the mortgage deed at mark 3/5 is not established to be a "mortgage by conditional sale" by which the original mortgagee, or her legal heir shall become an absolute owner of the suit land. It requires to be recorded here that the instrument of mortgage on the face of it must appear to be a sale."

6.17 Since the Trial Court in our opinion rightly interpreted the document in light of the provisions of the Transfer of Property Act when the document on the face of it was not a mortgage by conditional sale, we are of the opinion that the Trial Court committed no error.

6.18 To conclude, we summarize that in the Special Civil Suit, the principal prayer of the plaintiff-appellant of specific performance which was based on the perception of the appellant plaintiff that the deed of mortgage was a mortgage by conditional sale and there was an ostensible sale was misconceived. That was a specific case made in the plaint in para 11 which was the entire foundation of the plaint for specific performance against a person claiming to be the owner of such land. Reading of the mortgage deed dated 27.04.1943 when read reveals that there is nothing in the deed to suggest the automatic sale. In fact, it is a clear case of a document of mortgage being that a one which can be termed as usufructuary mortgage.

[7] In light of the aforesaid reasons, we find no merit in the appeal and the same is accordingly dismissed

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2024(2)GLPJ557

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[Before Pranav Trivedi; Sunita Agarwal]

Writ Petition (Pil); Civil Application (For Joining Party); Civil Application (For Direction); Civil Application (For Amendment); Civil Application (For Stay) No 350 of 2013, 8 of 2012; 1 of 2016, 2 of 2016, 20 of 2015; 1 of 2017, 3 of 2016, 4 of 2016, 5 of 2016, 10 of 2016, 12 of 2016, 13 of 2015, 14 of 2015, 19 of 2015; 1 of 2020, 15 of 2015; 11 of 2015 **dated 06/09/2024**

Bhavik Shaileshbhai Shah

Versus

State of Gujarat & Ors

MIXED-USE PROPERTY

Mixed-Use Property - Petition filed in public interest seeking a ban on commercial use and construction in residential areas of Manekchowk, Ahmedabad - Petitioner claimed unauthorized commercial activities causing pollution - Court observed that Manekchowk area is of mixed use with both residential and commercial properties - Relief sought to stop all commercial activities and remove illegal constructions was considered vague and impractical - No recent status of the area provided by petitioner - Petition dismissed due to lack of specific evidence and failure to update the case. - Petition Dismissed

Law Point: Mixed-use areas cannot be restricted to residential purposes, and vague petitions without updated evidence cannot justify judicial intervention in long-standing civil matters.

મિશ્ર-ઉપયોગની મિલકત - અમદાવાદના માણેકચોકના રહેણાંક વિસ્તારોમાં કોમર્શિયલ ઉપયોગ અને બાંધકામ પર પ્રતિબંધની માંગ કરતી જાહેર હિતમાં દાખલ કરાયેલી અરજી - અરજીકર્તાએ દાવો કર્યો હતો કે અનધિકૃત વ્યાપારી પ્રવૃત્તિઓ પ્રદૂષણનું કારણ બને છે - કોર્ટે અવલોકન કર્યું કે માણેકચોક વિસ્તાર રહેણાંક અને કોમર્શિયલ બંને મિલકતો સાથે મિશ્ર ઉપયોગનો છે - તમામ કોમર્શિયલ પ્રવૃતિઓને રોકવા અને ગેરકાયદે બાંધકામો દૂર કરવાની માંગ કરવામાં આવેલી રાહતને અસ્પષ્ટ અને અવ્યવહારુ ગણવામાં આવી હતી - અરજદાર દ્વારા વિસ્તારની કોઈ તાજેતરની સ્થિતિ પ્રદાન કરાયેલ નથી - ચોક્કસ પુરાવાના અભાવે અને કેસ અપડેટ કરવામાં નિષ્ફળતાને કારણે પિટિશન બરતરફ કરી દેવામાં આવી. - અરજી બરતરફ

કાયદાનો મુદ્દો : મિશ્ર-ઉપયોગના વિસ્તારોને રહેણાંક હેતુઓ માટે પ્રતિબંધિત કરી શકાતા નથી, અને તાજેતરની સ્થિતિ પુરાવા વિનાની અસ્પષ્ટ અરજીઓ લાંબા સમયથી ચાલતી સિવિલ બાબતોમાં ન્યાયિક હસ્તક્ષેપને યોગ્ય ઠેરવી શકતી નથી.

Counsel:

Yogesh G Kanade, G H Virk, Nancy Sheth, Apurva R Kapadia, A R Thacker, Chetan K Pandya, P J Mehta, Prafull K Pathak, S P Majmudar, Dharmishta Raval, Ramnandan Singh, Dharitri Pancholi, Trivedi & Gupta

JUDGEMENT

Sunita Agarwal, C.J.- [1] The present petition filed in the nature of Public Interest Litigation is pending since more than 10 years. The reliefs sought in the Writ petition are pertinent to be noted hereinunder:-

A) To put complete ban on the any construction without parking facility, "Change of Use Permission", "Business Use Permission" from Respondents and without permission from respective authority in the residential zone Manekchowk of Ahmedabad City.

B) To establish parking center for the illegal commercial buildings from the fine-penalty recovered from the persons who had constructed building without complying the law and from the Respondents, to solve the problem of traffic and parking.

C) Pending hearing, admission and final disposal of this petition be pleased to direct authorities to inquiry and take legal action on the addresses mentioned in Annexure "B" herewith by Petitioner and other victim's affidavit."

[2] The petitioner is raising dispute with respect to Manekchowk area, which is located in old walled city known as old city in Ahmedabad. The issue, however, gradually boiled down to addressing the grievances pertaining to the units engaged in making gold and silver ornaments in the old walled city of Ahmedabad, known as Manekchowk area.

[3] Vide order dated 02.05.2016, taking note of the list of different manufacturing units, broadly categorised in three parts, the Court has sought the response of the Gujarat Pollution Control Board. As noted from the order dated 02.05.2016, a total of 70 units were categorised in the first category where according to the Corporation, the nature of activity was innocuous and, therefore, would not require any licensing control by such units. The second category was pertaining to the units were licences subject to verification can be granted. The Corporation has clubbed 2063 units in the said category. Third category included 88 units, which according to the Corporation, due to some reason or the other, may not be permitted to operate. The reasons pointed out by the Corporation with respect to the said units are noted in the order dated 02.05.2016 as under:-

"(i) In units where silver/gold melting is being carried out through electric furnace, the said unit/units require NOC from GPCB/Appropriate Authority.

(ii) In units where silver/gold melting is being carried out through diseal and/or charcoal, the said unit/units must be sealed.

(iii) In case of units where small amount of acid/chemical is being used, the said unit/units need to obtain NOC from appropriate committee (which is formed as per the order issued from Honourable High Court.)"

[4] The learned advocate appearing for the GPCB, however, in response would submit that none of the units were required any license from the Pollution Control Board. In order to bring the response of GPCB, time was granted to file affidavit to narrate as to whether any of the activities by 88 units falling in the third category would require consent, no objection or license from GPCB.

[5] It seems that on a Civil Application (For Direction) No. 8762 of 2016, seeking direction to the respondents to open the seal of the House bearing No. 1317, Raja Mehta-ni-Pol, Kanji Divan no Khancho, Ahmedabad by order dated 19.09.2016, a direction was issued to the Corporation to remove the seal on the premises in question subject to the conditions that the applicant therein shall file an undertaking before the Court that the premises in question would be used only for residential purposes and no commercial or nonresidential activities would be carried out and in case of any breach of the said condition, it would be open for the Corporation to seal the premises in question in addition to taking further steps for breach of such undertaking.

[6] It was noted by this Court in the order dated 19.09.2016 that the petitioner herein filed the Writ petition in the nature of PIL with a prayer to put complete ban on construction and usage of such premises for commercial use, inasmuch as, many buildings which are constructed for residential use, according to the petitioner, are being unauthorisedly used for commercial purposes, mainly for making jewelry. The main grievance raised by the petitioner was that such activities of commercial use was causing pollution.

[7] It seems that pursuant to the orders passed by this Court, Ahmedabad Municipal Corporation has effected seal on buildings which were used unauthorized for commercial purposes and the buildings in question were sealed only on the ground that there were shops on the ground floor, which were used for commercial purposes for the manufacture of jewelry.

[8] Taking note of the above facts and the main prayer made in the Writ petition, we may note that the petitioner has filed the instant petition with the wrong premise that the area which is known as Manekchowk existing in walled city known as Pole is an area of purely residential use and the commercial activities in the constructions which were raised initially for residential purposes cannot be carried out.

[9] We may note that as per the assertion made by Mr. G.H. Virk, learned counsel appearing for the Ahmedabad Municipal Corporation, the area known as Manekchowk in the old city, which is old walled city is of mixed use and contains many heritage structures. There are residences and shops of the people in the locality. There are many structures where people have shops at the ground floor and residing on the first or second floor. In such scenario, a vague prayer made by the petitioner to remove all illegal construction for providing parking facility in the Manekchowk area or to address the parking problem, cannot be granted.

[10] In the connected PIL being Writ Petition (PIL) No. 8 of 2012, filed by one person stated to be the President of the Society known as Khadia Jan Seva Samiti, a registered society under the Societies Act, 1860, prayer has been made to issue directions to the respondents to take necessary action either to demolish the construction of commercial premises on House Nos. 129, 139, 154/2, 158 and 248 in Gusa Parekh ni Pol, Khadia, Ahmedabad or to take any other legal action where under direction be issued not to use the newly constructed premises for any commercial activity. The area known as Gusa Parekh ni Pol, Khadia, Ahmedabad is also located inside the walled city and as per the submission of Mr. G.H. Virk, learned advocate appearing for the Municipal Corporation, the area is of mixed use. For any particular constructions raised by any one illegally, it would always be open for the Corporation to initiate action by issuance of a proper notice.

[11] Vague assertions made in the Writ petition with regard to constructions raised by the owners of the houses in question and using the premises for commercial purposes cannot be a reason to grant any relief.

[12] Moreover, the last order in the PIL is of the year 2016. For more than 8 years, the petitioner has not pressed the prayer in the PIL into service. The current status and position of the area has not been brought on record by means of any affidavit filed in the recent past. We, therefore, dismiss both the PILs on the ground that the reliefs prayed therein cannot be granted. Interim relief, if any, granted earlier shall stand vacated.

[13] All pending Civil Applications stand disposed of
