

A NAGPUR IMPROVEMENT TRUST

v.

SHEELA RAMCHANDRA TIKHE

(Civil Appeal No. 10853 of 2018)

B OCTOBER 31, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Nagpur Improvement Trust Disposal Rules, 1988:

C s.5(2) – Disposal of surplus land – Policy decision in the year 1968 by appellant-Trust to dispose of 44.61 acres of land to the owners of the land from whom it was acquired by way of acquisition proceedings – Respondent (the owner from whom the land was acquired) filed application dated 3.9.1975 for re-allotment of entire 44.16 acres – On 6.10.1975 decision was taken to re-allot the 44.61 acres of land on lease to the respondent on certain terms and conditions – The decision was communicated to the respondent on 16.10.1975 – The respondent requested to reduce the amount of premium – Appellant on 9.6.1982 allocated to the respondent 24 acres out of 44.61 acres – Respondent acknowledged the allotment – Possession of the land was handed over on 11.11.1982 – The respondent thereafter requested the appellant to release remaining 20.61 acres of land to her – On 9.2.1989 appellant executed lease in favour of respondent in respect of 24 acres of land – Respondent filed suit seeking declaration that she was entitled to re-allotment of 20.61 acres of land – Trial court decreed the suit – Appellate court held that the respondent was not entitled for allotment – High Court, held that respondent was entitled for allotment of 20.61 acres of land – On appeal, held: Allotment of land was subject to statutory Rules – When policy decision was taken to dispose of surplus land (44.61 acres) and when 24 acres of land was allotted Land Disposal Rules, 1955 were applicable – Thereafter Land Disposal Rules, 1983 came into force and r. 5(2) thereof became applicable for disposal of land – Earlier resolution no longer could have been availed, after enforcement of 1983 Rules – Respondent's claim for allotment of 20.61 acres was not covered by r.5(2) of 1983 Act – Hence no decree could have been passed contrary to statutory Rules – Nagpur Improvement Trust Land Disposal Rules, 1955.

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Limitation Act, 1963:

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s.3(1) – Consideration of issue of limitation by appellate court – When such issue was not before trial court – Propriety of – Held: In view of s.3(1) entering into issue of limitation (when the same was not before trial court) was permissible.

Allowing the appeal, the Court

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HELD: 1.1 The allotment of land of the appellant-Trust was subject to statutory Rules, namely, Nagpur Improvement Trust Land Disposal Rules, 1955. The Resolution dated 03.05.1968 was passed by the Board for disposal of surplus land acquired for the drainage and sewage disposal scheme, during the period of enforcement of 1955 Rules. The allotment letter dated 16.10.1975 to the plaintiff of 44.61 acres of land was in furtherance of Resolution dated 03.05.1968. The plaintiff after receipt of the letter dated 16.10.1975 prayed for reduction of amount of premium demanded. Several letters were written by the plaintiff regarding premium and allotment, last being letter dated 02.03.1982 in which the plaintiff herself was not ready to accept the terms as communicated by letter dated 16.10.1975. The Trust on 09.06.1982, thus, has allotted only 24 acres out of 44.61 acres of land. [Paras 13 and 15] [1087-A, E-G]

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1.2 The facts of the case and correspondence clearly indicate that at no point of time allotment of 44.61 acres was made in favour of the plaintiff. The decision to allot 44.61 acres was communicated on 16.10.1975 on terms and conditions mentioned therein. The plaintiff having expressed certain reservation with the conditions and asked for relaxation of conditions and the Trust after taking into consideration the entire facts and circumstances took a decision to allot only 24 acres of land out of 44.61 acres on 09.06.1982, there was never any firm allotment of 44.61 acres of land to the plaintiff giving any indefeasible right of allotment of 44.61 acres of land and the plaintiff herself has to be blamed for not getting allotment of entire 44.61 acres of land. [Para 15] [1087-G-H; 1088-A-B]

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1.3 After the allotment of 24 acres of land on 09.06.1982, a new set of Rules for disposal of land of Nagpur Improvement

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A Trust was framed, namely, Nagpur Improvement Trust Land Disposal Rules, 1983 which came into force w.e.f. 18.05.1983. Part III of the Rules dealt with manner of disposal of land. [Para 16] [1088-C]

1.4 The present is a case where for the disposal of the land in question, Rule 5(2) of 1983 Rules became applicable from 18.05.1983. The earlier Resolution of the Board dated 03.05.1968 would no longer have been availed after the enforcement of 1983 Rules for allotment of land. Sub-rule (2) of Rule 5 which provides for no exception except as otherwise provided in sub-rule (1) and Part VI of these Rules. Hence, after the enforcement of the Rules the land vested and acquired by the Trust was to be disposed of only in the manner as indicated in sub-rule (2) of Rule 5. [Para 17] [1089-B, C-D]

1.5 Admittedly 24 acres out of 44.61 acres of land was already allotted to the plaintiff on 09.06.1982 and Trust has taken a decision not to allot any further land in view of its subsequent decision dated 24.04.1983 to keep the remaining 20.61 acres of land for Department of Social Forest Trees for Central Nursery and for Nursery of the Nagpur Improvement Trust was taken by the Board. After enforcement of Rules, 1983 which were brought into force on 18.05.1983, 20.61 acres of land could not be allotted to the plaintiff except by following Rule 5 of the Rules, 1983. [Para 17] [1084-D-E]

1.6 The First Appellate Court has categorically made note of the Rules, 1983 and held that the plaintiff was not entitled for any further allotment. Rules, 1983 were also relied by the appellant before the High Court in the Second Appeal filed by the plaintiff. The High Court took the view that since the decision to allot 44.61 acres of land was taken on 06.10.1975 and 16.10.1975 i.e. prior to Rules, 1983, the Rules had no retrospective effect which shall not nullify the actions taken in accordance with the earlier Rules then prevailing. There is no question of nullifying the decision taken on 06.10.1975 and 16.10.1975 which was taken earlier to the subsequent Rules, 1983. In pursuance of earlier decision i.e. taken on 06.10.1975 and 16.10.1975 the entire allotment which took place prior to Rules, 1983 were completely saved but allotment which could not culminate before enforcement

of Rules, 1983, would not have been made after the enforcement of Rules, 1983 except in accordance with Rules, 1983. [Paras 17, 18 and 19] [1089-E-F, H; 1090-E-G] A

1.7 There being no allotment of rest 20.61 acres of land prior to 18.05.1983 on the basis of earlier decision no allotment would have been made after the enforcement of the Rules in disregard to the statutory Rules. The statutory Rules enforced w.e.f 18.05.1983 substantially changed the manner of allotment and more rigorous conditions were put on the land of the Trust. There cannot be any dispute with the proposition that after the land is acquired for public purpose it vests in the acquiring body and the land holder has no right to claim the land acquired. [Para 19] [1090-H; 1091-A-B] B C

State of Kerala and others v. M. Bhaskar Pillai and another (1997) 5 SCC 432 : [1997] 1 Suppl. SCR 87;
Sulochana Chandrakant Galande v. Pune Municipal Transport and others (2010) 8 SCC 467 : [2010] 9 SCR 476 – relied on. D

1.8 At best the application for re-allotment of 20.61 acres of land can be said to be pending at the time when new Rules came in force. New Rules, thus, were fully attracted for any further disposal of land by the Trust as per Rule 5 and as per sub-Rule (2) of Rule 5 the land would have been disposed of except as otherwise provided in sub-Rule (1) only by holding public auction; inviting tenders by public advertisement; making offers to or accepting offers from any Government, Local Authority, Public Sector Undertaking or a body corporate which is owned or controlled by Government; inviting applications from persons or bodies of persons who are eligible for allotment of plots under Rule 4, by public advertisement and land for public amenities such as for primary school, vehicle stand, public latrine or urinal, public library, reading room, hospital, dispensary or such other purpose, etc. Plaintiff's claim is not covered in any manner of disposal under Rule 5(2), hence no decree would have been passed by the trial court contrary to the statutory Rules as envisaged by Rule 5(2). [Para 21] [1092-C-F] E F G

1.9 The view of the High Court that Rules, 1983 are prospective and shall not effect the allotment made in favour of H

A the plaintiff on 06.10.1975 and 16.10.1975 was erroneous. The allotments which were finalised in pursuance of Resolution dated 06.10.1975 and 16.10.1975 were saved, but allotment of any land which could not take place finally before enforcement of Rules, 1983 has to be in accordance with the Rules, 1983. [Para 21] [1092-F-G]

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State of Tamil Nadu v. M/s. Hind Stone and others (1981)
2 SCC 205 : [1981] 2 SCR 742 – relied on.

1.10 Thus, the claim of plaintiff for allotment of additional land of 20.61 acres which can be at best said to be pending on the date of enforcement of Rules, 1983 would have been only dealt with in accordance with Rule 5 of Rules, 1983 and disregard of said Rules the trial court would not have decreed the suit directing the Trust to execute lease in favour of the plaintiff of 20.61 acres of land. The decree of the trial court was clearly in the teeth of the statutory Rules and the High Court committed error in taking the view that Rules, 1983 were not applicable in the present case. Plaintiff was not entitled for the decree as has been granted by the trial court and affirmed by the High Court. [Paras 23 and 27] [1094-G-H; 1097-A]

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E *Transport Nagar Free Zone Co-operative Society Limited v. Nagpur Improvement Trust*, 2005 (3) Bom.C.R. 485 – referred to.

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2. Lower Appellate Court has held that suit of the plaintiff was barred by time it having been filed more than three years after the refusal to allot the land. The High Court has held that the Appellate Court has committed error of law in considering the issue of limitation which was not the question raised before the trial court. In view of section 3(1) of the Limitation Act no error was committed by the Appellate Court in entering into the issue as to whether application was barred by time. The Appellate Court was well within its jurisdiction in considering the question of limitation. [Paras 24, 25 and 27] [1095-A-B, E; 1096-G-H]

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Foreshore Cooperative Housing Society Limited v. Praveen D. Desai (dead) through Legal Representatives and Others (2015) 6 SCC 412 : [2015] 5 SCR 1075 – relied on.

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NAGPUR IMPROVEMENT TRUST v. SHEELA RAMCHANDRA 1079
TIKHE

<u>Case Law Reference</u>			A
2005 (3) Bom.C.R. 485	referred to	Para 5	
[1997] 1 Suppl. SCR 87	relied on	Para 19	
[2010] 9 SCR 476	relied on	Para 20	
[1981] 2 SCR 742	relied on	Para 21	
[2015] 5 SCR 1075	relied on	Para 26	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10853 of 2018.

From the Judgment and Order dated 14.03.2017 of the High Court of Judicature of Bombay, Nagpur Bench at Nagpur in Second Appeal No. 122 of 2015.

Shyam Divan, Huzefa Ahmadi, Sr. Advs., Satyajit A. Desai, Ms. Anagha S. Desai, Anshuman Singh,, Advs. for the Appellant.

Mukul Rohatgi, Sr. Adv., Abhishek Bhoot, Ravindra Khapre, Pratik R. Bombarde, Advs. for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

2. This appeal has been filed by Nagpur Improvement Trust, challenging the judgment dated 14.03.2017 of High Court of Judicature Bombay at Nagpur in Second Appeal No. 122 of 2015, by which judgment the Second Appeal filed by the respondent has been allowed by setting aside the judgment of lower appellate court and restoring the judgment of trial court decreeing the suit.

3. Brief facts of the case necessary to be noted for deciding this appeal are:-

The Nagpur Improvement Trust, the appellant has been constituted under the Nagpur Improvement Trust Act, 1936. For the purposes of Drainage and Sewerage Scheme Part-II, notification under Section 39 of the Nagpur Improvement Trust Act, 1936 was issued on 27.11.1953 for acquiring 44.61 acres of land of the respondent. An award was passed on 31.12.1962 determining the compensation of Rs.23,500/- on the basis of compromise, which compensation amount was paid to the respondent and possession was taken over by the appellant of the land. On taking up the possession, the land vested in the appellant, which

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- A became the absolute owner. A statutory rule namely, Nagpur Improvement Trust Land Disposal Rules, 1955 was framed in exercise of power under Nagpur Improvement Trust Act, 1936 for disposal of land by the Nagpur Improvement Trust. As per Rule 3 of the Statutory Rules, 1955, one of the mode of transfer of trust land was by direct negotiation with the party. With regard to land admeasuring 44.61 acres
- B as noted above, a policy decision was taken by the Board of the Trust dated 03.05.1968 for disposal of land to the owners on lease by charging the determined premium and the ground rent. The appellant accordingly invited application for re-allotment of the land on lease. The respondent filed an application dated 03.09.1975 for re-allotment of entire 44.61
- C acres of land. A decision dated 06.10.1975 was taken to re-allot the 44.61 acres to the respondent on the terms and conditions stipulated in the Board Resolution dated 03.05.1968. By letter dated 16.10.1975, the appellant informed the respondent in reference to her application dated 03.09.1975 that land acquired by the Trust may be allotted to her on the terms and conditions as mentioned in the letter. The letter dated 16.10.1975
- D communicated that amount of consideration for allotment would be 1.5 times of the amount received by them from the Land Acquisition Officer. The lessee can use the land only for Agriculture purposes and the amount of consideration will have to be made in maximum 10 installments. The respondent was required to deposit amount of Rs.3,525/- towards first
- E installment and sign the form of terms and conditions of the allotment, only after that the Trust would be able to take further action in the matter.

- The respondent in reply to the aforesaid letter wrote back to the appellant on 01.11.1975 requesting to revise the amount of premium payable by her. The respondent wrote further letters, lastly on 02.03.1982, again reiterating her request to reduce the amount. It was further
- F requested that she should be given the land measuring 44.61 acres at the cost of acquisition only. The letter dated 02.03.1982 was replied by the appellant vide letter dated 09.06.1982 allocating land measuring 24 acres out of 44.61 acres. The revised premium for allotment of 24 acres was fixed as Rs.19,230/- and first installment of 10% was requested to be
- G paid immediately and to further accept terms and conditions of allotment. The respondent acknowledged the allotment letter dated 09.06.1982 and communicated her acceptance on 15.06.1982. The respondent accepted the allotment on revised premium. In pursuance of the acceptance of allotment letter dated 09.06.1982 allotting 24 acres of land on terms and
- H conditions mentioned therein, the possession of 24 acres of land was

also handed over to the respondent on 11.11.1982. The respondent after taking possession of 24 acres of land again wrote a letter dated 17.06.1983 thanking the appellant for allotment of 24 acres of land and further requesting to release remaining 20.61 acres of land. The appellant wrote on 31.12.1986 to the respondent to pay Rs.4514.95 due from her. The respondent thereafter sent various representations for allotment of remaining 20.61 acres of land. On 09.02.1989, a lease was executed by the appellant in favour of respondent for 24 acres of land as was allotted by allotment letter dated 09.06.1982. The respondent filed a suit – Regular Civil Suit No. 2515 of 1989 against the Nagpur Improvement Trust, praying for following reliefs:-

- (a) Declare that the plaintiff is entitled to re-allotment of 20.61 acres of her land to her to the exclusion of anybody else as the acquisition of the plaintiff's land for the purpose of defendant's scheme is not required by the defendant for its scheme. C
- (b) Issue a mandatory injunction directing the defendant to re-allot 20.61 acres of land out of survey no.9/1, 11 and 9/2 of Mouza Godani, Umrer Road, Nagpur, to the plaintiff and execute a lease indenture accordingly in favour of the plaintiff. D
- (c) Issue mandatory injunction directing the defendant to make the offer of her land admeasuring 20.61 acres of suit land S/Nos.9/1, 11, 9/2 of Mouza Gondhani, Umrer Road, Nagpur to the plaintiffs land is not required by the defendant for its scheme and the defendant a permanently restrained from making offer of plaintiffs remaining suit land to anybody else in any manner and under any pretext. E F
- (d) Declare that the plaintiffs suit land i.e. 20.6 acres of land in Survey Nos. 9/1, 11, 9/2 of Mouza Godhani, Umrer Road, Nagpur, has been unnecessarily acquired with malafide intention and that it was never required and needed by the defendant for its drainage and Sewerage Disposal Scheme Part-II as firstly notified on 27.11.1983, as per award dated 31.12.1962. G
- (e) Saddle the costs of the suit on the defendant and

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- A (f) Grant any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case.

The trial court framed following issues:-

- B 1) Does the plaintiff prove by abuse of process of law, malafidely and under colorabale exercise of power that defendant has unnecessarily acquired her land?
- 2) Does she further prove that she has the preferential right to get reallotment of remaining 20.61 acres of land?
- C 3) Does she further prove that she had deposited Rs.4515.95 for allotment of remaining 20.61 acres of land?
- 4) Does she further prove that defendant is avoiding to re-allot her remaining 20.61 acres of land?
- 5) Whether plaintiff is entitled to get relief as prayed?
- D 6) What order and decree?

The trial court held that Issue No. 1 does not survive. Issue No.3 was decided against the plaintiff, however, trial court answered the Issue Nos. 2, 4 and 5 in favour of the plaintiff and decreed the suit holding that plaintiff is entitled for allotment of remaining 20.61 acres of land. Plaintiff was directed to deposit remaining premium amount of Rs.16,295/- along with 10% p.a. interest and the appellant was directed to execute the lease-deed of land admeasuring 20.61 acres in favour of the respondent.

The appellant aggrieved by the judgment and decree of the trial court filed a Regular Civil Appeal No. 632 of 2007. The District Judge, Nagpur formulated following points for consideration:-

- F 1) Whether respondent-plaintiff is entitled to allotment of the suit land?
- 2) Is the suit barred by time?
- 3) Is the judgment and decree impugned herein call for interference?
- G 4) What order?

The learned District Judge held that plaintiff was not entitled for allotment. The District Judge further held that suit filed by the plaintiff was virtually a suit for specific performance of the letter of allotment dated 16.10.1975 and suit having been filed beyond a period of 3 years is

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barred by time. The District Judge vide judgment dated 26.08.2014 allowed the appeal, set aside the decree of the trial court and dismissed the suit. Against the judgment of the Appellate Court, second appeal was filed by the respondent before the High Court. The High Court framed following two substantial questions of law in the appeal:- A

- (1) Whether the lower appellate Court erred in applying and relying on the Nagpur Improvement Trust Land Disposal Rules, 1983, when in fact what was sought to be enforced by the appellant was the order dated 16.10.1975 in consonance with letter/order dated 06.10.1975 passed in terms of Board Resolution dated 03.05.1968, i.e. decision taken by the respondent much prior to the framing of Rules of 1983? B C
- (2) Once the Nagpur Improvement Trust, the acquiring body chooses to re-allot the land acquired, whether such action of re-allotment can be enforced in the Court of Law? D

The High Court held that plaintiff was entitled for allotment of 20.61 acres of land in view of resolution of the Board dated 03.05.1968. The High Court also held that the Rules namely Nagpur Improvement Trust Land Disposal Rules, 1983 having come into force on 18.05.1983 was not applicable to the Board Resolution dated 03.05.1968 and the decision taken on 06.10.1975 and 16.10.1975. The High Court further held that trial court having not framed any issues regarding limitation, the first appellate Court committed error in holding that the suit was barred by limitation, consequently, the second appeal has been allowed by the High Court, restoring the judgment and decree of the trial court. The Nagpur Improvement Trust being aggrieved by the judgment of the High Court has come up in this appeal. E F

4. We have heard Shri Shyam Divan, learned senior counsel and Shri Huzefa Ahmadi, learned senior counsel for the appellant. We have also heard Shri Mukul Rohtagi, learned senior counsel, who has appeared for the respondent. G

5. Learned counsel for the appellant submitted that suit filed by the plaintiff was barred by limitation. The appellant had claimed re-allotment of 44.61 acres of land as per Resolution of the Board dated 03.05.1968. The Board having taken a decision to allot only 24 acres of land, which was communicated by letter dated 09.06.1982, the cause of H

- A action with regard to 20.61 acres of land arose on the said very date and suit having been filed in the year 1989 is barred by time. It is further submitted that after enforcement of Rules, 1983, Rule 5 provided for manner of disposal of land and there being no statutory provision for re-allotment of land to the land owner from whom land was acquired, the
- B suit filed by the plaintiff for claiming re-allotment could not have been decreed. Earlier Rules, 1955, which permitted allotment by direct negotiations having been rescinded and statutory Rules, 1983 created a prohibition for allotment of any land of the Trust except as Rule 5(2), the claim of the plaintiff was liable to be dismissed and the trial court committed error in decreeing the suit. It is further submitted that even
- C the Rules 1955, Rule 3(a), which provided for allotment of land by direct negotiations was struck down by a Division Bench of the Bombay High Court vide its judgment dated 7/20.09.2004 **Transport Nagar Free Zone Co-operative Society Limited Vs. Nagpur Improvement Trust, 2005(3) Bom.C.R.485**. The plaintiff could not have relied on Rules, 1955 claiming allotment. The High Court committed error in observing
- D that First Appellate Court erred in considering the question of limitation when no issue was framed by the trial court. It is submitted that suit having been barred by limitation, the Appellate Court was well within its jurisdiction to enter into the issue of limitation and hold that the suit was barred by time. The suit filed in the year 1989 was clearly barred by
- E time and was rightly dismissed by the First Appellate Court. The High Court committed error in holding that Statutory Rules, 1983 were not applicable.

6. Shri Mukul Rohatgi, learned senior counsel refuting the submission of counsel for the appellant contends that plaintiff was clearly
- F entitled for allotment of 20.61 acres of balance area of land as was already allotted by letter dated 16.10.1975. The allotment of land to the plaintiff was under Rule 5 of Rules, 1955. Hence, Division Bench judgment relied by the appellant in **Transport Nagar Free Zone Co-operative Society Limited (supra)** is not applicable. The resolution having been passed by the Board to re-allot area acquired from plaintiff, it was no
- G longer a matter of contract. The letter dated 09.06.1982 allotting 24 acres of land cannot be said to be letter denying allotment of 44.61 acres, hence no cause of action arose to the plaintiff in the year 1982 and first time cause of action arose in the year 1989 when lease-deed was executed. Hence, the suit of the plaintiff was not barred by limitation.
- H The suit of the plaintiff was filed under Section 39 of the Specific Relief

Act, 1963 by which plaintiff was enforcing her entitlement.

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7. Learned counsel for the respondent further contends that present is not a case where this Court may exercise its jurisdiction under Article 136 of the Constitution of India by interfering in the judgment of the High Court. The total area of land was 44.61 acres which was owned by the plaintiff and was acquired and Trust having taken a decision to return the land to land owner since it was no longer required for the scheme, the plaintiff has every right to receive acquired area of 44.61 acres and no error has been committed by the trial court in decreeing the suit.

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8. We have considered the submissions of the learned counsel for the parties and perused the records.

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9. The principal issue which needs to be decided is as to whether trial court was right in holding that plaintiff was entitled for allotment of 20.61 acres of land for which decree was granted. From the facts noticed above, there is no dispute between the parties that in pursuance of resolution dated 03.05.1968 of the Board, plaintiff had made an application on 03.09.1975 for allotment of entire 44.61 acres of land and a letter of allotment dated 16.10.1975 for 44.61 acres of land was issued. The allotment letter dated 16.10.1975 contains certain conditions. It is useful to extract the communication dated 16.10.1975 which is to the following effect:

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“With reference to the above application letter this is to inform you that under the drainage and sewage disposal scheme allotment of 44.61 acres land in Khasra NO.9-1,9-2 and 11 out of excess land acquired by the Trust may be allotted to you on the terms and conditions as mentioned in lease deed subjected to using it only for agricultural purpose.

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1. The amount of consideration for the above land would be 1.50 times of the amount received from Land Acquisition Officer.
2. The allotment from the Trust Layout would be done on the basis of lease for which Land Rent of 2% of the value of consideration will have to be paid.
3. The lessee can use the said land only for agricultural purpose. For irrigating the land the water of sewage flow

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A would be provided by Nagpur Improvement Trust and/or Nagpur Municipal Corporation as per the rate fixed up by Nagpur Municipal Corporation whenever possible.

4. The amount of consideration will have to be made in maximum 10 instalments and on the remaining unpaid amount of the consideration interest would be charged at the rate of 10% p.a.

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Hence you are required to deposit amount of Rs.3,525/- towards first instalment of the consideration in this office at the earliest and sign the form of terms and conditions of the allotment. Only after that the Trust would be able to take further action in the matter which please note.”

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10. On receipt of letter dated 16.10.1975 appellant requested for reduction of proportionate value of the premium from the total amount and further wrote on 02.03.1982 to the Trust wherein rate of 1.5 times of the amount of compensation was asked to be reduced. In the letter dated 02.03.1982 following request was made by the plaintiff:

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“Considering all the situation stated above, how can I give you more amount as cost of field which you acquired I would like to request you to give the same at the cost of acquisition only. Further terms are acceptable to me, at any time.

E If you do not consider my above request, I will have to move the Govt. for shelter.”

11. After receipt of the letter dated 02.03.1982 the Trust by letter dated 09.06.1982 made allotment of 24 acres out of 44.61 acres of land to the following effect:

F “With reference to your application mentioned above this is to inform that the Chairman is pleased to consider your request for allotment of land measuring about 24 acres out of 44.61 acres of land acquired under drainage and sewerage disposal scheme on the same terms and conditions informed to you vide No.ES/7821 dated 16.10.1975. The revised premium for allotment of 24 acres would be about Rs.19.230/- and you will have to pay 1st installment 10% of the premium immediately and accept the terms and conditions for allotment and sign necessary lease indenture etc.”

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12. The possession of 24 acres of land was also handed over to the respondent on 11.11.1982. The plaintiff thus was well aware that her

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request for allotment of entire 44.61 acres was not acceded to and only 24 acres have been allotted. Subsequent execution of the lease dated 09.02.1989 was in continuation of the allotment dated 09.06.1982. A

13. As noted above the allotment of land of the Trust was subject to statutory Rules, namely, Nagpur Improvement Trust Land Disposal Rules, 1955. Rule 3 of the Rules provides as follows: B

“Rule 3. The transfer of Trust land shall be-

- (a) by direct negotiation with the party; or
- (b) by public auction; or
- (c) by inviting tenders; pr
- (d) by concessional rated.” C

14. Rule 5 of the 1955 Rules which has also been referred is as follows:

“Rule 5. The Trust may lease out on concessional rates any Trust land to any (i) Public institution or body registered under any law for the time being in force or to (ii) the evictees (which means persons whose lands in some locality have been compulsorily acquired by the Trust and includes tenants in occupation of such lands) which vests or is to vest in the Trust, or to (iii) the poor persons residing within the limits of the Nagpur Corporation who have no house of their own within the limits either individually or as a member of a joint family and whose annual income from all sources either individually or of the joint family, as the case may be does not exceed Rs.1,800/- per annum.” D E

15. The Resolution dated 03.05.1968 was passed by the Board for disposal of surplus land acquired for the drainage and sewage disposal scheme, during the period of enforcement of 1955 Rules. The allotment letter dated 16.10.1975 to the plaintiff of 44.61 acres of land was in furtherance of Resolution dated 03.05.1968. The plaintiff after receipt of the letter dated 16.10.1975 prayed for reduction of amount of premium demanded, several letters were written by the plaintiff regarding premium and allotment, last being letter dated 02.03.1982 as extracted above, in which the plaintiff herself was not ready to accept the terms as communicated by letter dated 16.10.1975. The Trust on 09.06.1982, thus, has allotted only 24 acres out of 44.61 acres of land. The facts of the F G

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- A case and correspondence as noticed above clearly indicate that at no point of time allotment of 44.61 acres was made in favour of the plaintiff. The decision to allot 44.61 acres was communicated on 16.10.1975 on terms and conditions mentioned therein. The plaintiff having expressed certain reservation with the conditions and asked for relaxation of conditions and the Trust after taking into consideration the entire facts and circumstances took a decision to allot only 24 acres of land out of 44.61 acres on 09.06.1982, there was never any firm allotment of 44.61 acres of land to the plaintiff giving any indefeasible right of allotment of 44.61 acres of land and the plaintiff herself has to be blamed for not getting allotment of entire 44.61 acres of land on account of she having raised request for the reduction of the premium and she having not communicated her consent to accede to the terms and conditions of allotment as proposed by the Trust.

16. After the allotment of 24 acres of land on 09.06.1982, a new set of Rules for disposal of land of Nagpur Improvement Trust was framed, namely, Nagpur Improvement Trust Land Disposal Rules, 1983 which came into force w.e.f. 18.05.1983. Part III of the Rules dealt with manner of disposal of land. Rule 5(1) & (2) which are relevant for the present case are as follows:

- “Rule 5. General.- (1) No piece of Government land vested in or managed by the Trust shall be transferred except with the general or special sanction of the Government given in that behalf.
- (2) Except as otherwise provided in sub-rule (1) and in Part VI of these rules, all other lands vested in and acquired by the Trust shall be disposed of by the Trust by -
- (i) holding public auction; or
 - (ii) inviting tenders by public advertisement; or
 - (iii) making offers to or accepting offers from any Government, Local Authority, Public Sector Undertaking or a body corporate which is owned or controlled by Government;
 - (iv) inviting applications from persons or bodies of persons who are eligible for allotment of plots under rule 4, by public advertisement to be published at least in one leading local news paper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both and deciding these applications by drawing lots, if necessary, as it

may determine, from time to time in accordance with the rules hereinafter appearing. A

(v) Land for public amenities such as for primary school, vehicle stand, public latrine or urinal, public library, reading room, hospital, dispensary or such other purpose may be transferred to the Corporation of the City of Nagpur, either free of premium and ground rent or at nominal premium and ground rent as the Trust may determine in each case.” B

17. The present is a case where for the disposal of the land in question Rule 5(2) became applicable from 18.05.1983. The earlier Resolution of the Board dated 03.05.1968 would no longer have been availed after the enforcement of 1983 Rules for allotment of land. Sub-rule (2) of Rule 5 which provides for no exception except as otherwise provided in sub-rule (1) and Part VI of these Rules. Sub-rule (1) of Rule 5 referred to general or special sanction of the Government which is not applicable in the present case. Part VI dealt with grant of land for religious, educational, charitable and public purposes which also is not applicable in the facts of the present case. Hence, after the enforcement of the Rules of land vested and acquired by the Trust was to be disposed of only in the manner as indicated in sub-rule (2) of Rule 5. Admittedly 24 acres out of 44.61 acres of land was already allotted to the plaintiff on 09.06.1982 and Trust has taken a decision not to allot any further land in view of its subsequent decision dated 24.04.1983 to keep the remaining 20.61 acres of land for Department of Social Forest Trees for Central Nursery and for Nursery of the Nagpur Improvement Trust was taken by the Board. Thus, there was decision of Trust to set apart land of 20.61 acres for Department of Social Forest Trees for Central Nursery and for Nursery of the Trust. After enforcement of Rules, 1983 which were brought into force on 18.05.1983, 20.61 acres of land could not be allotted to the plaintiff except by following Rule 5 of the Rules, 1983. The First Appellate Court has categorically made note of the Rules, 1983 and held that the plaintiff was not entitled for any further allotment. After referring to Rules, 1983 specifically Rules 5, 4 and 23, the First Appellate Court in paragraph 22 laid down following: C
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“22) In the present case, admittedly land adm.24 acres was already allotted to the respondent by the appellant before coming into force of the Rules of 1983 and therefore, the appellant is not even entitled to claim 500 sq. meter of land. Except the aforesaid H

A provision there is no other provision in these Rules empowering the Trust to allot land to the respondent without the sanction of State Government.”

B 18. Rules, 1983 were also relied by the appellant before the High Court in the Second Appeal filed by the plaintiff. The High Court held that Rules, 1983 had no retrospective effect so as to nullify the actions taken in accordance with the earlier Rules, hence, Rules, 1983 were not relied. The High Court held that lower Appellate Court committed error in relying on Rule 5 of Rules, 1983. The High Court in paragraph 18 of the judgment has held following:

C “18. The lower Appellate Court has committed an error in holding that the defendant-NIT could not have disposed of the land in favour of the appellant-plaintiff without there being any authority of law. The reliance was placed by the lower Appellate Court on the provision of Rule 5 of the Nagpur Improvement Trust Land Disposal Rules, 1982 to hold that there was no compliance and the allotment was not in conformity with it. In my view, such reliance was misplaced. The reason being that the said Rules were brought in force on 18.05.1983 and the decision to re-allot 44.61 acres of land to the appellant-plaintiff was taken on 6.10.1975 and 16.10.1975, i.e. prior to coming into force of these Rules. The Rules had no retrospective effect so as to nullify the actions taken in accordance with the earlier Rules prevailing. The substantial question of law at serial No.(I) is, therefore, answered accordingly.”

F 19. The High Court took the view that since the decision to allot 44.61 acres of land was taken on 06.10.1975 and 16.10.1975 i.e. prior to Rules, 1983, the Rules had no retrospective effect which shall not nullify the actions taken in accordance with the earlier Rules then prevailing. There is no question of nullifying the decision taken on 06.10.1975 and 16.10.1975 which was taken earlier to the subsequent Rules, 1983. In pursuance of earlier decision i.e. taken on 06.10.1975 and 16.10.1975 the entire allotment which took place prior to Rules, 1983 were completely saved but allotment which could not culminate before enforcement of Rules, 1983, would not have been made after the enforcement of Rules, 1983 except in accordance with Rules, 1983. We have already noticed that the plaintiff was allotted only 24 acres of land in pursuance of decision dated 06.10.1975 and 16.10.1975 and request of the plaintiff to allot

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entire 44.61 acres of land was not acceded to and only 24 acres of land was allotted possession of which was handed over to the plaintiff on 11.11.1982. There being no allotment of rest 20.61 acres of land prior to 18.05.1983 on the basis of earlier decision no allotment would have been made after the enforcement of the Rules in disregard to the statutory Rules. The statutory Rules enforced w.e.f 18.05.1983 substantially changed the manner of allotment and more rigorous conditions were put on the land of the Trust. There cannot be any dispute with the proposition that after the land is acquired for public purpose it vests in the acquiring body and the land holder has no right to claim the land acquired. In this context reference has been made to **State of Kerala and others vs. M. Bhaskar Pillai and another, (1997) 5 SCC 432**. In paragraph 4 following has been laid down:

“4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value. “

20. This Court again in **Sulochana Chandrakant Galande vs. Pune Municipal Transport and others, (2010) 8 SCC 467**, held that after vesting of land in State free from all encumbrances after acquisition, landowner becomes persona non grata after vesting and has right to compensation only and cannot claim right of restoration of land

A on any ground, whatsoever. In paragraph 22 following has been laid down:

B “22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever. “

C 21. The plaintiff’s case at the highest is that her application for allotment of 20.61 acres of land was pending consideration when Rules, 1983 were enforced. The plaintiff’s own case is that refusal to allot 20.61 acres of land took place only on 09.02.1989 when the Trust executed lease of 24 acres of land only. Thus, at best the application for re-allotment of 20.61 acres of land was pending at the time when new Rules came in force. New Rules, thus, were fully attracted for any further disposal of land by the Trust as per Rule 5 and as per sub-Rule (2) of Rule 5 the land would have been disposed of except as otherwise provided in sub-Rule (1) only by holding public auction; inviting tenders by public advertisement; making offers to or accepting offers from any Government, Local Authority, Public Sector Undertaking or a body corporate which is owned or controlled by Government; inviting applications from persons or bodies of persons who are eligible for allotment of plots under Rule 4, by public advertisement and land for public amenities such as for primary school, vehicle stand, public latrine or urinal, public library, reading room, hospital, dispensary or such other purpose, etc. Plaintiff’s claim is not covered in any manner of disposal under Rule 5(2), hence no decree would have been passed by the trial court contrary to the statutory Rules as envisaged by Rule 5(2). The view of the High Court that Rules, 1983 are prospective and shall not effect the allotment made in favour of the plaintiff on 06.10.1975 and 16.10.1975 was erroneous. As observed above the allotments which were finalised in pursuance of Resolution dated 06.10.1975 and 16.10.1975 were saved, but allotment of any land which could not take place finally before enforcement of Rules, 1983 has to be in accordance with the Rules, 1983. In this context, reference is made to the judgment

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of this Court in **State of Tamil Nadu vs. M/s. Hind Stone and others, (1981) 2 SCC 205**. In that case, the applications by various persons desirous of taking mining lease were pending when the Rules for grant of lease were amended. The Rules were amended on 02.12.1977 by introducing Rule 8-C, it was contended by several applicants that Rule 8-C was not applicable to the applicants whose applications were pending. The relevant facts were mentioned in paragraph 4 which are to the following effect:

“4. Several persons who held leases for quarrying black granite belonging to the State Government and whose leases were about to expire, applied to the Government of Tamil Nadu for renewal of their leases. In some of the cases applications were made long prior to the date of G.O. Ms. No. 1312 by which Rule 8C was introduced. Some applications were made after Rule 8C came into force. There were also some applications for the grant of fresh leases for quarrying black granite. All the applications were dealt with after Rule 8C came into force and all of them were rejected in view of Rule 8C Several Writ Petitions were filed in the High Court questioning the vires of Rule 8C on various grounds. Apart from canvassing the vires of Rule 8C, it was contended that Rule 8C did not apply to grant of renewals of lease at all. It was also argued that in any event, in those cases in which the applications for renewal had been made prior’ to the coming into force of Rule 8C, their applications should have been dealt with without reference to Rule 8C. The Madras High Court while not accepting some of the contentions raised on behalf of the applicants, struck down Rule 8C on the ground that it exceeded the rule making power given to the State Government under Section 15 which, it was said, was only to regulate and not to prohibit the grant of mining leases. As a consequence all the applications were directed to be disposed of without reference to Rule 8C. It was also observed that even if Rule 8C was valid it applied only to the grant of fresh leases and not to renewals. It was also held that it was not open to the Government to keep the applications pending for a long time and then to dispose them of on the basis of a rule which had come into force later. The State Government has come in appeal against the judgment of the Madras High Court while the respondent-applicants have tried to sustain the judgment of the Madras High Court on grounds

A which were decided against them by the Madras High Court. “

22. Rejecting the argument that Rule 8-C is not attracted on the applications which were pending on date of amendment, it was held that applications were required to be disposed of on the basis of the Rules in force at the time of the disposal of the applications. Following was laid down in paragraph 13:

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“13. Another submission of the learned Counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O. Ms. No. 1312 (December 2, 1977) should be dealt with as if Rule 8C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned Counsel that applications for the grant or renewal of leases made long prior to the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8-C did not exist.”

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23. We, thus, are of the considered opinion that the claim of plaintiff for allotment of additional land of 20.61 acres which can be at best said to be pending on the date of enforcement of Rules, 1983 would have

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been only dealt with in accordance with Rule 5 of Rules, 1983 and disregard of said Rules the trial court would not have decreed the suit directing the Trust to execute lease in favour of the plaintiff of 20.61 acres of land. The decree of the trial court was clearly in the teeth of the statutory Rules and the High Court committed error in taking the view that Rules, 1983 were not applicable in the present case.

24. It is also relevant to notice that lower Appellate Court has held that suit of the plaintiff was barred by time it having been filed more than three years after the refusal to allot the land. The High Court has held that the Appellate Court has committed error of law in considering the issue of limitation which was not the question raised before the trial court. In paragraph 17 of the judgment following has been held:

“17. Though the allotment of 44.61 acres of land was on 16.10.1975, the lease-deed in respect of 24 acres of land was executed on 09.02.1989. Thus, there was refusal on 09.02.1989 to execute the lease-deed in respect of 20.61 acres of land. Hence, the cause of action in terms of Article 54 of the Limitation Act would start running from 09.02.1989 when the defendant-NIT refused to execute the lease-deed. The suit in question having filed on 15.12.1989 was not, therefore, barred by the law of limitation. In fact, this was not the question raised before the trial court and no issue was framed in respect of it. The lower Appellate Court has committed an error of law in considering such issue and holding that the suit in question was barred by the law of limitation. The finding of the lower Appellant Court, therefore, needs to be set aside.”

25. In so far as view of the High Court that Appellate Court committed error in entertaining the question of limitation which was not the issue framed by the trial court, suffice is to refer the provision of Section 3 of the Limitation Act, 1963. Section 3(1) of the Limitation Act provides as follows:

“Section 3. Bar of limitation.-(1) Subject to the provisions contained in sections 4 to 24(inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

- A 26. This Court in **Foreshore Cooperative Housing Society Limited vs. Praveen D. Desai(dead) through Legal Representatives and others, (2015) 6 SCC 412**, had considered the question of jurisdiction of Court in reference to provisions of Limitation Act. Noticing Section 3 of the Act following was observed:
- B “48. Section 3 of the Limitation Act, 1963 clearly provides that every suit instituted, appeal preferred and application made after the prescribed period of limitation, subject to the provisions contained in Sections 4 to 24, shall be dismissed although the limitation has not been set up as a defence.
- C 49. A Constitution Bench of five Judges of this Court in the case of *Pandurang Dhondi Chougule v. Maruti Hari Jadhav*, AIR 1966 SC 153, while dealing with the question of jurisdiction, observed that a plea of limitation or plea of *res judicata* is a plea of law which concerns the jurisdiction of the court which tries the proceeding. The Bench held(AIR p.155, para 10):
- D 10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction Under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As Clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity
- E that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of *res judicata* is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction
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of that court, cannot be corrected by the High Court Under A
Section 115. “

27. No error was committed by the Appellate Court in entering into the issue as to whether application was barred by time. The Appellate Court was well within its jurisdiction in considering the question of limitation. We, however, for the present case need not express any opinion B with regard to the question of limitation in view of we having held that plaintiff was not entitled for the decree. Thus, even without entering into the question of limitation we are of the clear opinion that plaintiff was not entitled for the decree as has been granted by the trial court and affirmed by the High Court.

28. In the result, the appeal is allowed, the judgment of the High Court is set aside and the suit of the plaintiff stands dismissed.

Kalpana K. Tripathy

Appeal allowed.