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v.
Anupama Sapra

(Civil Appeal No. 6088 of 2024)

06 May 2024

[Vikram Nath and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether in the facts and circumstances of the case, was it a fit case for exercising jurisdiction under Article 142(1) of the Constitution of India and pass a decree of divorce on the ground of irretrievable breakdown of marriage?

Headnotes†

Factors to be considered by the Supreme Court while exercising jurisdiction under Article 142(1) of the Constitution of India and pass a decree for divorce on the ground of irretrievable breakdown of marriage – Explained:

Held: Both the Family Court and the High Court of Punjab and Haryana had dismissed the petition instituted by the Appellant under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of marriage by way of a decree of divorce. For passing a decree of divorce on the ground of irretrievable breakdown of marriage under Article 142(1) of the Constitution of India, the Supreme Court must be fully satisfied and convinced that the marriage is totally unworkable and beyond salvation. For this, the Supreme Court must consider the period of time the parties cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in legal proceedings from time to time; cumulative impact on the personal relationship; whether attempts were made to settle the disputes by intervention of court or through mediation, and when was the last attempt made. But these factors are not exhaustive but are rather illustrative. Reliance placed on *Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544. [Paras 2 and 5]

Case for exercising jurisdiction under Article 142(1) of the Constitution of India and passing a decree of divorce on the

* Author

ground of irretrievable breakdown of marriage – Whether made out?

Held: In the instant case, there was no possibility of the parties residing together and/or arrive at an amicable settlement. The parties married on 14.10.1991 and last cohabited in January 2002. Out of the wedlock, two children were born in 1993 and 1996 respectively. The Appellant alleged that the Respondent ill – treated the Appellant and constantly acted against him. The Respondent alleged cruelty and torture at the hands of the Appellant. Both their children are majors now and are gainfully employed. Thus, the facts on record establish beyond doubt that the marriage between the parties has broken down and that there is no possibility of the parties cohabiting ever in the future. Therefore, the Supreme Court considered it to be a fit case for exercising its jurisdiction under Article 142(1) of the Constitution and passed a decree of divorce on the ground of irretrievable breakdown of marriage. [Paras 3, 4, 6, 7 and 8]

Permanent Alimony payable when decree of divorce passed in exercise of jurisdiction under Article 142(1) of the Constitution:

Held: The Appellant has been gainfully employed by various multinational corporations previously and is presently endowed with a respectable estate. Accordingly, the Supreme Court deemed it fit and proper that the Appellant pays an amount of Rs. 50,00,000/- to the wife as permanent alimony in five monthly instalments. [Para 9]

Case Law Cited

Shilpa Sailesh v. Varun Sreenivasan [2023] 5 SCR 165 : **2023 SCC OnLine SC 544 – followed.**

List of Acts

Constitution of India; Hindu Marriage Act, 1955.

List of Keywords

Divorce, Irretrievable Breakdown, Cruelty, Permanent Alimony, Cohabit, Decree of Divorce.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6088 of 2024

From the Judgment and Order dated 26.07.2019 of the High Court of Punjab & Haryana at Chandigarh in FAO No. 146 of 2005

Appearances for Parties

Tapan Bijoy Deb Choudhury, Tapan Choudhury, Advs. for the Appellant.

Md. Shahid Anwar, Mohd Shahzeb Khan, Mayank Kaushik, Amir Naseem, Ajay Amritraj, Hareesh Ahmad Minhaj, Vipul Singhal, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. Leave granted.

2. The instant appeal assails the correctness of an order dated 26.07.2019 passed by the High Court of Punjab and Haryana (the "**High Court**") in FAO-146-M-2005 (O&M) (the "**Impugned Order**"). Pertinently, *vide* the Impugned Order, the High Court dismissed the appeal; and accordingly upheld the correctness of an order dated 09.12.2004 passed by the Ld. Additional District Judge (Ad. Hoc), Faridabad (the "**Family Court**") whereunder the Family Court dismissed a petition instituted by the Appellant herein under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage by way of a decree of divorce (the "**Underlying Order**").

3. The Appellant and the Respondent before this Court were married on 14.10.1991 as per *Hindu* rites and rituals, at Faridabad, Haryana. Out of the wedlock two children were born on 25.08.1993 and 02.05.1996.

4. Despite being together for approximately 14 (fourteen) years, bitterness crept into the relationship between the parties. Whilst on one hand, it is alleged that the Respondent ill-treated the Appellant; and constantly acted against the Appellant at the behest of her parents. On the other hand, the Respondent Wife alleged cruelty and torture at the hands of the Appellant Husband.

5. Despite our best effort(s), the parties were adamant on parting ways - citing an irretrievable breakdown of their marriage. Accordingly, it was submitted that the marriage between the parties be dissolved on the aforesaid ground. Reliance in this regard was placed on a decision of this Court in ***Shilpa Sailesh v. Varun Sreenivasan***, *2023 SCC Online SC 544* wherein it was observed that a marriage

may be dissolved on the ground of an irretrievable breakdown in exercise of the jurisdiction of this Court under Article 142(1) of the Constitution of India. This Court in ***Shilpa Sailesh (Supra)*** delineated various factor(s) to be considered by this Court whilst exercising such jurisdiction. The relevant paragraph is reproduced below:

> *"41. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so*

as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration."

6. Having *prima-facie* satisfied ourselves that the present dispute met the aforenoted parameters, we requested Shri P.S. Patwalia, Learned Senior Counsel, to assist this Court in putting a quietus to the present *lis*. On 22.03.2024, we were informed by Mr. Patwalia that despite his best efforts, the parties were not willing to arrive at an amicable settlement and that there was no possibility of the parties residing together. At our request, Mr. Patwalia placed on a record a short note outlining the details of his efforts including *inter alia* the deliberations between the parties in respect of the quantum of permanent alimony to be paid by the Appellant towards the Respondent.

7. We have given due consideration to submissions made by the respective counsels and the materials placed on record. The undisputed facts of the case reveal that the parties have separated 22 (twenty-two) years ago i.e., having cohabited last in January 2002. The children are now major and gainfully employed; elder son is an associate in a dental clinic; and younger son is a video/film editor. Thus, keeping in view the totality of circumstances, we are satisfied that the facts on record establish that the marriage between the parties has broken down and that there is no possibility that the parties would cohabit together in the future. Accordingly, we are of the considered opinion that the formal union between the parties is neither justified nor desirable.

8. Thus, without expressing any opinion on the merits of the allegations levelled *inter se* the parties, we deem it appropriate to exercise our discretion under Article 142(1) of the Constitution of India and pass a decree of divorce on the ground of irretrievable breakdown of marriage.

9. However, considering the fact that the Appellant has previously been employed by various multinational corporations in managerial post(s); and the fact that the Appellant is presently endowed with a respectable estate; we deem it fit and proper that the Appellant pays an amount of Rs. 50,00,000/- (Rupees Fifty Lakh Only) to the Respondent Wife as permanent alimony. The aforesaid amount shall be paid to the Respondent Wife as per the following schedule:

Date	***Amount***
May 15, 2024	Rs. 10,00,000/- (Rupees Ten Lakh Only)
June 15, 2024	Rs. 10,00,000/- (Rupees Ten Lakh Only)
July 15, 2024	Rs. 10,00,000/- (Rupees Ten Lakh Only)
August 15, 2024	Rs. 10,00,000/- (Rupees Ten Lakh Only)
September 15, 2024	Rs. 10,00,000/- (Rupees Ten Lakh Only)

10. The appeal stands allowed in the aforesaid terms. The Registry is directed to prepare a decree of divorce accordingly. The decree shall be handed over to the parties, only after proof of payment of the full amount as indicated by us above is furnished to the Registry.

11. Before parting, we place on record our gratitude to Shri P.S. Patwalia, Learned Senior Counsel for the assistance rendered to this Court.

12. Pending application(s) (if any), shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Raghav Bhatia, Hony. Associate Editor
(*Verified by:* Liz Mathew, Sr. Adv.)

[2024] 5 S.C.R. 885 : 2024 INSC 374

Kanihya @ Kanhi (Dead) Through LRS.
v.
Sukhi Ram & Ors.

(Civil Appeal No. 3990 of 2011)

03 May 2024

[Rajesh Bindal* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

Whether the High Court erred in not exercising the discretion to extend the time for deposit under Section 148 of the Code of Civil Procedure, 1908 in a pre-emption suit.

Headnotes†

Section 148 of the Code of Civil Procedure, 1908 – Extension of time for deposit in pre-emption suit – The court can allow such an extension when there is a bona fide mistake and the deficiency is minor – law laid down in *Johri Singh v. Sukh Pal Singh and Others,* [1989] Supp. 1 SCR 17 – Followed – Non-deposit of a relatively small fraction of money due to inadvertent mistake – Court can exercise discretion under Section 148 CPC to extend the time even after the time fixed has expired.

Held: The Supreme Court reaffirmed that courts have the jurisdiction to extend the time for deposit of money in a pre-emption suit under Section 148 of the Code of Civil Procedure, 1908. Such an extension can be allowed when there is a bona fide mistake and the deficiency is minor. The Supreme Court held that the facts were similar to ***Johri Singh v. Sukh Pal Singh and Others*** [1989] Supp. 1 SCR 17 case wherein it was held that non-deposit of a relatively small fraction of the purchase money due to inadvertent mistake, allows the court discretion under Section 148 CPC to extend the time even after the time fixed has expired, provided the mistake is bona fide and not indicative of negligence or inaction. Accordingly, the Supreme Court set aside the impugned order of the High Court, allowing the appellants to deposit the balance amount of ₹14/- by 20.05.2024. [Paras 15-18]

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* Author

Costs for prolonged litigation – Appellants to pay costs to the respondents – Respondents were compelled to litigate for an extended period due to the appellants' minor error.

Held: The Supreme Court directed the appellants to pay costs of ₹ 1,00,000/- to the respondents, recognizing that the respondents were compelled to litigate for an extended period due to the appellants' minor error. This amount was to be deposited in the Trial Court within the stipulated time for the respondents to withdraw. [Para 19]

Case Law Cited

Johri Singh v. Sukh Pal Singh and Others **[1989] Supp. 1 SCR 17**; *Jang Singh v. Brij Lal and Others* **[1964] 2 SCR 145** – **followed.**

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Extension of time; Pre-emption suit; Deposit; Bonafide; Section 148 CPC.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3990 of 2011

From the Judgment and Order dated 26.10.2009 of the High Court of Punjab & Haryana at Chandigarh in RA No.2-C11 of 2009 in CR No. 1645 of 1992

Appearances for Parties

J. B. Mudgal, Ms. Vanshika Mudgil, R. C. Kaushik, Advs. for the Appellants.

S.P. Laller, Anil Hooda, Priyank, Rameshwar Prasad Goyal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. The case in hand is an example of a party suffering on account of total casualness in dealing with the matter. An avoidable litigation.

2. The challenge is to the order[1] passed by the High Court[2] in Review Application[3]. By the said order the Review Application filed by the respondents was allowed. As a result, the earlier order[4] passed by the High Court in revision[5] was recalled. By the said order, the revision filed by the present appellants was allowed, permitting them to make good the deficit of ₹14/-.

3. The facts as available on record are that part of land comprising of 1/4th share land in Khewat No.236 and Khatoni No.258 situated in Village Samchana, District Rohtak, Haryana, was sold by Jai Singh, Jai Kishan, Randhir, Shamsher Singh sons of Balbir Singh son of Dariyav Singh to Sukhi Ram, Ram Pal, Hari Om, Mahabir Singh (respondents-defendants). The predecessor in-interest of the appellants filed a suit for pre-emption. The same was decreed by the Trial Court on 11.08.1988. The predecessor in-interest of the appellants/plaintiffs was required to deposit a sum of ₹ 9,214/- minus 1/5th of the pre-emption amount already deposited, on or before 10.10.1988, failing which the suit shall stand dismissed.

   3.1 Predecessor in-interest of the appellants filed an application on 19.09.1988 along with Treasury Challan in triplicate, seeking permission to deposit the amount as directed by the Trial Court. On the application the Trial Court passed the order for deposit of ₹ 7,600/-. It was claimed that the application and the challans were handed over in original to the appellant(s). The amount was deposited on the same day i.e. 19.09.1988.

   3.2 On 06.12.1988, an application was moved by the judgment-debtor (defendant-respondent) seeking permission to withdraw the amount deposited by the appellant-plaintiff on which a report was submitted by the office on the same day. It was found that the amount deposited by the appellant-plaintiff was less by ₹ 14/-.

   3.3 On 23.02.1989 the judgment-debtor (defendant-respondent) filed an application seeking dismissal of the suit on account of non-compliance of the direction given in the judgment and

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1 Dated 26.10.2009

2 High Court of Punjab & Haryana at Chandigarh

3 R.A. No.2-C-II of 2009

4 Dated 04.12.2008

5 Civil Revision No.1645 of 1992

decree of the Trial Court, as there was failure on behalf of the appellant-plaintiff to deposit full amount within the time granted by the Trial Court. While the aforesaid application was pending, the appellant-plaintiff filed an application on 05.03.1991 seeking permission of the court to deposit deficit amount of ₹ 14/-. Subsequent to the filing of the aforesaid application, an application dated 25.05.1991 was also filed by the appellant-plaintiff seeking condonation of delay in filing the application seeking permission to make good the deficiency in deposit of the amount as per the decree of the Trial Court.

3.4 *Vide* order dated 09.01.1992, the application filed by the appellant seeking permission to deposit ₹ 14/- was dismissed by the Trial Court. Aggrieved against the same, the appellants preferred Revision Petition before the High Court which was initially allowed on 04.12.2008. However, on a Review Application filed by the respondents, the order passed by the High Court on 04.12.2008, was recalled and Civil Revision No.1645 of 1992 was dismissed *vide* order dated 26.10.2009. It is the aforesaid order which is under challenge in the present appeal.

4. Impugning the aforesaid order, the learned counsel for the appellants submitted that the appellants are illiterate. In the case in hand, decree was passed in favour of the predecessor in-interest of the appellants on 11.08.1988 and the time was granted for deposit of the balance amount upto 10.10.1998 after reducing 1/5th of the amount already deposited in court. Accordingly, an application was moved seeking permission of the court to deposit the balance amount. On that application, order was passed by the court directing deposit of ₹ 7,600/- and the Treasury Challan was also annexed with the application. Immediately, the amount was deposited. It was found that there was an error in the calculation of the amount. As a result of which the deposit was short by ₹ 14/-. It was not intentional but due to a calculation error. Appellants cannot be said to be at default as even the court also directed for deposit of ₹ 7,600/- instead of ₹ 7,614/-.

4.1 An application was filed by the judgment-debtor (respondent-defendant) for dismissal of the suit on account of the non-deposit of the amount as per the decree within the time granted by the court.

4.2 The Trial Court, without appreciating the facts and circumstances of the case wrongly rejected the application moved by the appellant-plaintiff seeking permission of the Court to deposit the deficit amount of ₹ 14/-. The aforesaid order was challenged before the High Court. Initially, the Revision Petition was allowed *vide* order dated 04.12.2008. However, in the Review Application filed by the respondent, the order passed in the Revision Petition was recalled and the same was dismissed *vide* order dated 26.10.2009.

4.3 The Trial Court as well as the High Court have failed to appreciate the issue that the court is empowered to extend the time for deposit of the amount in case there was any error. In the case in hand there was a *bona fide* error. The parties should not be made to suffer on account of any error in the judicial proceedings. The amount was too meagre. In support of the arguments, reliance was placed on the judgments of this Court in **Johri Singh v. Sukh Pal Singh and Others**[6] and **Jang Singh v. Brij Lal and Others**[7].

5. On the other hand, learned counsel for the respondents submitted that the appellants having failed to comply with the terms of the decree passed in their favour, do not deserve any relief from this Court. The appellant-plaintiff had purchased the property by paying the full market price. A suit for pre-emption was filed by the appellant-plaintiff which was decreed. The decreetal amount was to be deposited by 10.10.1988. The appellant-plaintiff moved an application before the Trial Court along with pre-filled Treasury Challan seeking permission to deposit ₹ 7,600/-. It was on that application moved by the appellant-plaintiff, the court ordered for depositing of ₹ 7,600/-, which was deposited by the appellant-plaintiff. The amount as such was not calculated by the court as it was the duty of the appellant-plaintiff to deposit the correct amount in terms of the decree, which was explicit.

5.1 On an application moved by the respondent-defendant for withdrawal of the amount of ₹ 9,214/- in terms of the decree, the office reported on 06.12.1988 that the amount deposited

6 [1989] Supp. 1 SCR 17 : (1989) 4 SCC 403 : 1989 INSC 265

7 [1964] 2 SCR 145 : AIR 1966 SC 1631: 1963 INSC 42

was merely ₹ 9,200/-. Immediately, thereafter an application was filed on 23.02.1989 by the respondent-defendant for dismissal of the suit on account of the non-compliance of the terms of the decree by the appellant-plaintiff. More than two years thereafter, the appellant-plaintiff moved an application seeking permission to deposit the balance amount of ₹ 14/- without explaining any reason for moving such an application at a belated stage. More than two months thereafter, an application was filed seeking condonation of delay in deposit of the amount. Even that also did not contain any reason.

5.2 *Vide* order dated 09.01.1992, the Trial Court dismissed the application filed by the appellant-plaintiff seeking leave to deposit ₹ 14/- on account of non-deposit of the whole amount within the time permitted. The order passed by the Trial Court was challenged by the appellants before the High Court. Initially, on a wrong premise the High Court allowed the revision petition and set aside the order of the Trial Court. However, there being error apparent on the record, the Review Application filed by the respondents was allowed and after recalling the earlier order passed in the Revision Petition, the High Court dismissed the same.

5.3 There is no error in the order passed by the High Court. Even if the time granted by the court for deposit of the amount can be extended but there has to be sufficient reason for the same. In the case in hand, there is no reason, what to talk about sufficient reason. There was no fault of the Trial Court as the order for deposit was passed on the same line as was prayed for by the appellants.

6. We have heard learned counsel for the parties and perused the paper book.

7. The respondents purchased the property in dispute from Jai Singh, Jai Kishan, Randhir and Shamsher Singh sons of Balbir Singh son of Dariyav Singh *vide* registered sale deed dated 06.08.1985. The appellants filed a suit for possession by way of preemption claiming that they being the co-sharers in the Joint Khewat had preferential right to purchase the property. The suit was filed on 11.08.1986. The suit was decreed on 11.08.1988. The appellants were directed to

deposit a sum of ₹ 9,214/- minus 1/5th preemption amount already deposited, on or before 10.10.1988 failing which the suit was to be dismissed with costs.

8. The appellants moved an application dated 19.09.1988 before the court seeking permission to deposit the sum due as per the direction of the court. It was specifically mentioned in the application that as per the decree the appellants were required to deposit a sum of ₹ 9,214/- less 1/5th already deposited along with the application. Treasury Challan was also annexed mentioning the amount to be deposited by the appellants, i.e. ₹ 7,600/-. The court *vide* endorsement in the application itself on 19.09.1988 permitted the appellants to deposit ₹ 7,600/-. The amount was deposited by the appellants in the bank on the same day.

9. The respondents moved an application seeking permission to withdraw the amount deposited by the appellants in terms of the decree. The report dt. 06.12.1988 was submitted by the registry, that initially a sum of ₹ 1,600/- was deposited by the appellants on 09.09.1986 and subsequently after passing of a decree a sum of ₹ 7,600/- was deposited on 19.09.1988. Immediately thereafter the respondents moved an application dated 23.02.1989 before the court for passing further order and for dismissal of the suit as the appellants had failed to comply with the terms of the decree. The same was directed to be put up on 20.03.1989, 07.04.1989, 19.04.1989 and thereafter on 26.04.1989 for consideration. From the record, nothing is available as to what happened to this aforesaid application after the aforesaid date. Nothing is clearly evident regarding that from the records.

10. Thereafter, at page 75 of the original record, there is another application filed by the respondents with similar prayer. It was directed by the court *vide* order dated 23.04.1990 to be put up on 25.04.1990, then on 30.04.1990. On that date, notice was directed to be issued to the other side for 12.05.1990. On the next date, the learned counsel appearing for the non-applicant/appellants sought time to file reply to the application. After seeking adjournment, reply was filed on 02.06.1990 taking the stand that the remaining amount was deposited after obtaining prior permission of the court and whatever direction was issued by the court the same was complied

with. It was stated that whatever amount was payable was deposited, however, if there is any deficiency the appellants are ready to make the same good.

11. After filing of reply by the appellants the matter remained under consideration before the court.

12. On 05.03.1991, the appellants filed an application before the court seeking permission to deposit the balance sum of ₹ 14/- in which notice was issued to the other side for 23.03.1991. While the aforesaid application was pending, another application was filed by the appellants on 25.05.1991 seeking condonation of delay in depositing of ₹ 14/-. It was pleaded in the application that ₹ 14/- remained unpaid due to clerical mistake. The mistake was not intentional. Hence, delay be condoned.

13. Finally, the application was taken up for consideration by the court and *vide* order dated 09.01.1992 the same was rejected.

14. Against the aforesaid order, the appellants preferred Revision Petition before the High Court, which was initially allowed *vide* order dated 04.12.2008. The High Court noticed the argument raised by learned counsel for the respondents therein namely the respondents herein that in preemption matter the court cannot extend the time for deposit of money. However, the Court went on to invoke its inherent jurisdiction for correction of error of the court. The revision was allowed. The appellants were granted time to deposit the balance sum of ₹ 14/-. The respondents filed the Review Application against the order of the High Court. The same was allowed and *vide* impugned order dated 26.10.2009, the earlier order passed by the High Court on 04.12.2008 was recalled and the revision was dismissed.

15. As far as the position of law and the question whether the court can extend the time for deposit of money in a pre-emption suit is concerned, this court in **Johri Singh's** case (supra) considered a similar issue. In that case, the deposit was less by ₹ 100/-. The application filed by the decree holder therein seeking permission to deposit to make the deficiency good, after expiry of the time granted by the court, was allowed. The order was upheld by this court. In para 21, this court opined that the Trial Court in the decree only mentioned a sum to be deposited by the decree holder minus the amount of "zare-panjum". The amount was not specified in the judgment. Error

in calculation occurred, as a result of which ₹ 100/- was deposited less. The application filed by the decree holder therein with challan annexed was allowed by the court without pointing out the error. After deposit of the amount though little deficient, even the possession of the property was delivered to the decree-holder. Relevant paras 20, 21, 25 and 26 are extracted below:

> "20. In the third category of cases, namely, non-deposit of only a relatively small fraction of the purchase money due to inadvertent mistake whether or not caused by any action of the court, the court has the discretion under Section 148 CPC to extend the time even though the time fixed has already expired provided it is satisfied that the mistake is bona fide and was not indicative of negligence or inaction as was the case in Jogdhayan [(1983) 1 SCC 26 : (1983) 1 SCR 844] . The court will extend the time when it finds that the mistake was the result of, or induced by, an action of the court applying the maxim "actus curiae neminem gravabit" — an act of the court shall prejudice no man, as was the case in Jang Singh [AIR 1966 SC 1631 : (1964) 2 SCR 145] . While it would be necessary to consider the facts of the case to determine whether the inadvertent mistake was due to any action of the court it would be appropriate to find that the ultimate permission to deposit the challaned amount is that of the court.
>
> 21. Proceeding as above, in the instant case we find that the decree did not quantify the purchase money having only said "Rs 41,082 less the amount of 'zare panjum' ". Of course, 'certum est quod certum reddi potest'— that is certain which can be rendered certain. The amount of 'zare-panjum' was not specified. Parties do not controvert that it was one fifth. But the amount was not calculated by the court itself. Inadvertent error crept in arithmetical calculation. The deficit of Rs 100 was a very small fraction of the total payable amount of Rs 33,682 which was paid very much within the fixed time, and there was no reason, except for the mistake, as to why he would not have paid this Rs 100 also within time. The appellants' application with the challan annexed was allowed by court officials without pointing out the mistake. The amount

was deposited and even possession of the property was delivered to the appellant. The Senior Subordinate Judge allowed the application made by appellant in exercise of the discretion vested in him apparently on the view that sufficient cause had been out for non-deposit of Rs 100. This order, however, as seen above, was set aside by the High Court in a civil revision under Section 115 CPC.

xx xx xx

25. In this view of the matter there seems to be no manner of doubt that the Senior Subordinate Judge had jurisdiction to extend the time under Section 148 CPC on sufficient cause being made out. The first condition precedent to enable the High Court to exercise its revisional jurisdiction under Section 115 CPC was, therefore, lacking. Likewise, nothing has been brought to our notice on the basis of which it could be said that the discretion exercised by the Senior Subordinate Judge was in breach of any provision of law or that he committed any error of procedure which was material and may have affected the ultimate decision. That being so, the High Court had no power to interfere with the order of the Senior Subordinate Judge, however profoundly it may have differed from the conclusions of that Judge on questions of fact or law.

26. On the facts and circumstances of the case we feel justified in allowing this appeal, setting aside the impugned judgment of the High Court, and in restoring that of the Senior Subordinate Judge allowing 10 days' time to deposit the balance of Rs 100 exercising power under Section 148 CPC on facts of the case. If the amount has not already been deposited, it shall be deposited within 30 days from today and the respondents shall withdraw the same according to law. The appeal is accordingly allowed, but under the facts and circumstances of the case, without any order as to costs."

16. The facts of the case in hand are identical. In the instant case as well the balance amount to be deposited by the appellant was not specified in the decree. The deficiency was only ₹ 14/-. The appellants had already deposited ₹ 9,200/- including the preemption amount

already deposited. When the application was filed seeking permission to deposit the amount along with the Treasury Challan, the error was not noticed by the Court. At the very first stage, in response to the application filed by the respondents to pass appropriate order on account of deficiency by the appellants to deposit the amount as directed by the court, the appellants stated that in case there is any deficiency, they are ready to make it good. The court could have considered the same and passed appropriate orders. However, the matter remained pending for this.

17. It is the pleaded case of the appellants in the application filed for permission to deposit the deficit balance of ₹ 14/- dated 05.03.1991, that the applicant (late Kanihya, predecessor in-interest of the appellants) is in possession of the property and mutation has already been entered in his name in the revenue record.

18. In view of the aforesaid discussions, the present appeal deserves to be allowed. Ordered accordingly. The impugned order passed by the High Court and the court below are set aside. The appellants are permitted to deposit a sum of ₹ 14/- to the court below on or before 20.05.2024. The respondents shall be entitled to withdraw the entire amount deposited in court, if not already done.

19. Though, we are allowing the appeal but on account of error on part of the appellants, the respondents were made to litigate for decades together upto this Court. We deem it appropriate to compensate them. Hence, we direct the appellants to pay a cost of ₹ 1,00,000/- to the respondents. The amount shall be deposited in the Trial Court within the time granted above, with liberty to the respondents to withdraw the same.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankitesh Ojha, Hony. Associate Editor
(*Verified by:* Abhinav Mukerji, Sr. Adv.)

[2024] 5 S.C.R. 896 : 2024 INSC 457

Alifiya Husenbhai Keshariya
v.
Siddiq Ismail Sindhi & Ors.

(Civil Appeal No. 6682 of 2024)

27 May 2024

[J.K. Maheshwari and Sanjay Karol,* JJ.]

Issue for Consideration

Whether a person being an award holder, of monetary compensation without actual receipt thereof, would be disentitled from filing an appeal seeking enhanced compensation as an indigent.

Headnotes

Motor Vehicle Act, 1988 – s.173 – Code of Civil Procedure, 1908 – Or. XXXIII and Or. XLIV – Appellant-original claimant was injured in an accident – She filed a claim of Rs. 10 lakhs before the Motor Accident Claims Tribunal – The Tribunal vide award dated 17.10.2016 awarded a sum of Rs. 2,41,745/- – Dissatisfied, the appellant-claimant approached the High Court and filed a Misc. Application for permission to file the said First Appeal as an indigent person – The said application was dismissed by the High Court as the Claim Tribunal had partly allowed the claim petition of appellant and awarded a sum of Rs. 2,41,745/- – In the light of the same, the High Court observed that appellant cannot be considered an indigent person – Correctness:

Held: The intent of Orders XXXIII and XLIV is unmistakable – They exemplify the cherished principle that lack of monetary capability does not preclude a person from knocking on the doors of the Court to seek vindication of his rights – The ground, upon which the claimant-appellant's application to file the appeal as an indigent person was rejected, was that she had received compensation by way of the Award of the Tribunal, and therefore, she was not indigent – This observation to be belied by the impugned order itself as the Single Judge of the High Court has recorded the submission of the counsel for the claimant-appellant that no money stood paid to her at that point in time – So even though she had been awarded a sum, her

* Author

indigency was not extinguished thereby – In considered view of this Court, the High Court was incorrect in rejecting the Misc. Application – Also, the Appellate Court, in accordance with the Order XLIV Rule 3(2), did not conduct any inquiry – The same was necessitated since nothing on record speaks of the claimant-appellant having filed the claim before the Tribunal as an indigent person, in which case she would be covered under Rule 3(1), which provides that no further inquiry would be required in respect of a person who was allowed to sue or appeal as an indigent person if they make an affidavit to the effect that they have not ceased to be an indigent unless the Government pleader objects or disputes such claim in which case an inquiry shall be held by the Appellate Court or under the orders thereof – Therefore on both counts, one, that she had not yet received the money and, therefore, at the time of filing the appeal she was arguably indigent; and second, that the statutory requirement under the C.P.C., as described, was not met – the order of the Single Judge of the High Court has to be set aside. [Paras 11, 15, 17, 18]

Case Law Cited

State of Haryana v. Darshana Devi [1979] 3 SCR 184 **: (1979) 2 SCC 236;** *Mathai M. Paikeday v. C.K. Antony* [2011] 7 SCR 230 **: (2011) 13 SCC 174;** *R.V. Dev v. Chief Secretary, Govt. of Kerala* [2007] 6 SCR 886 **: (2007) 5 SCC 698;** *Union Bank of India v. Khader International Construction & Ors.* [2001] 3 SCR 580 **: (2001) 5 SCC 22 – relied on.**

List of Acts

Motor Vehicle Act, 1988; Code of Civil Procedure, 1908.

List of Keywords

Award; Monetary compensation without actual receipt; Indigent person; Filing of appeal as an indigent; Order XLIV Rule 3(1) and Rule 3(2) of CPC.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6682 of 2024

From the Judgment and Order dated 07.08.2018 of the High Court of Gujarat at Ahmedabad in MCA No. 3 of 2018

Appearances for Parties

Ms. Aditi Anil Dani, Yashas R K, Advs. for the Appellant.

Ms. Nidhi Sahay, Shashank Manish, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol J.,

1. Leave granted.

At the outset, we may remind ourselves of what Krishna Iyer, J. had observed in **State of Haryana v. Darshana Devi**[1] that

> "2. The poor shall not be priced out of the Justice market by insistence on court-fee and refusal to apply the exemptive provisions of Order 33, CPC."

2. The sole point for our consideration is whether a person who is entitled to receive compensation by way of a claim before the Motor Accident Claims Tribunal can be said to have given up its status as an 'indigent person', by virtue of the amount slated to be received. In other words, whether a person being an award holder, of monetary compensation without actual receipt thereof, would be disentitled from filing an appeal seeking enhanced compensation as an indigent?

3. The factual scenario giving rise to this appeal is :-

3.1 The appellant, who was the original claimant before the Motor Accident Claims Tribunal, [Court of Motor Accident Claims Tribunal (Auxiliary) & 10th (Adhoc) Addl. District Court Jude, Jamnagar][2] in M.A.C.P.No.255 of 2011, was injured in an accident on 4th July 2010, while riding pillion on a bike, which was hit by a truck. Having sustained injuries, she was admitted for medical treatment at a hospital for a period of fourteen days and subsequently she underwent plastic surgery.

3.2 At the time of the accident, she was earning Rs.3,000/- per month, but, post the accident, she sustained permanent

1 [1979] 3 SCR 184 : (1979) 2 SCC 236

2 Hereafter, 'Tribunal'

disablement, and hence had not been able to work thereafter. A claim was filed for Rs.10 lakhs with 18% interest and costs.

3.3 The Tribunal vide Award dated 17th October 2016, awarded a sum of Rs.2,41,745/- with 9% interest from the date of claim petition till the date of realization and proportionate cost(s).

4. Dissatisfied thereby, the claimant-appellant approached the High Court of Gujarat by way of Regular First Appeal No. 2611/2017. Misc. Civil Application No.3/2018 was filed therein by which the claimant-appellant prayed for permission to file the said First Appeal as an indigent person.

5. The High Court vide judgment and order dated 7th August, 2018 dismissed the Misc. Civil Application observing as under :

> "….3. It is a matter of record that the claimants filed claim petition before the Tribunal and claimed Rs. 10,00,000/-, whereby the Tribunal by partly allowing the claim petition vide the impugned award, awarded a sum of Rs. 2,41,745/- along with 9% interest from the date of claim petition till its realization.
>
> 4. In light of the aforesaid, the applicant–appellant cannot be considered to be indigent person and therefore, he has to pay court fees first.
>
> 5. Ms. Rana, learned counsel for the applicant, however, submits that, till date, no amount is received by the applicant. It is open for the applicant to pursue the said remedy before appropriate forum.
>
> In view of the above, present application is not entertained. Time to deposit Court fees is granted for 8 weeks from today."
>
> (Emphasis supplied)

6. We may refer to this Court's decision in **Mathai M. Paikeday v. C.K. Antony**,[3] wherein the concept of an indigent person has been discussed at length. Relevant extracts are reproduced as follows:-

3 [2011] 7 SCR 230 : (2011) 13 SCC 174

"16. The concept of indigent person has been discussed in *Corpus Juris Secundum* (20 CJS Costs § 93) as following:

> "§ 93. *What constitutes indigency.*—The right to sue in forma pauperis is restricted to indigent persons. A person may proceed as poor person only after a court is satisfied that he or she is unable to prosecute the suit and pay the costs and expenses. A person is indigent if the payment of fees would deprive one of basic living expenses, or if the person is in a state of impoverishment that substantially and effectively impairs or prevents the pursuit of a court remedy. However, a person need not be destitute. Factors considered when determining if a litigant is indigent are similar to those considered in criminal cases, and include the party's employment status and income, including income from government sources such as social security and unemployment benefits, the ownership of unencumbered assets, including real or personal property and money on deposit, the party's total indebtedness, and any financial assistance received from family or close friends. Not only personal liquid assets, but also alternative sources of money should be considered."

17. The eligibility of person to sue in *forma pauperis* has been considered in *American Jurisprudence* (20 Am Jur 2d Costs § 100) as thus:

> "§ 100. *Eligibility to sue in forma pauperis; generally.*—The burden of establishing indigency is on the defendant claiming indigent status, who must demonstrate not that he or she is entirely destitute and without funds, but that payments for counsel would place an undue hardship on his or her ability to provide the basic necessities of life for himself or herself and his or her family. Factors particularly relevant to the determination of whether a party to a civil proceeding is

> indigent are: *(1)* the party's employment status and income, including income from government sources such as social security and unemployment benefits; *(2)* the ownership of any unencumbered assets, including real or personal property and monies on deposit; and finally *(3)* the party's total indebtedness and any financial assistance received from family or close friends. Where two people are living together and functioning as a single economic unit, whether married, related, or otherwise, consideration of their combined financial assets may be warranted for the purposes of determining a party's indigency status in a civil proceeding."

7. The Code of Civil Procedure, 1908[4] provides for mechanism by which a person who is indigent may file a suit or an appeal. Order XXXIII thereof pertains to filing of suits and Order XLIV deals with appeals by such persons.

8. In the present matter, we are concerned with an appeal envisaged under Section 173 of the Motor Vehicle Act, 1988.[5]

9. Rule 1 of Order XLIV dealing with appeal filed as an indigent person, reads as under :

> "1. **Who may appeal 3[as an indigent person. —** Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable."

10. The operation of the above two provisions has been noted by this Court in **R.V. Dev v. Chief Secretary, Govt. of Kerala**,[6] in para 8 whereof it was observed :

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4 Hereinafter C.P.C.

5 Hereinafter the 'MV Act'

6 [2007] 6 SCR 886 : (2007) 5 SCC 698

> "8……When an application is filed by a person said to be indigent, certain factors for considering as to whether he is so within the meaning of the said provision are required to be taken into consideration therefor. A person who is permitted to sue as an indigent person is liable to pay the court fees which would have been paid by him if he was not permitted to sue in that capacity, if he fails in the suit at the trial or without trial. Payment of court fees as the scheme suggests is merely deferred. It is not altogether wiped off."
>
> (Emphasis supplied)

In regard to the application of Order XXXIII of the Code, a perusal of the decision in **Union Bank of India v. Khader International Construction & Ors.**[7] reveals the following principles :

(i) It is an enabling provision for filing of a suit by an indigent person without paying the court fee at the initial stage.

(ii) If the suit is decreed for the plaintiff, the court fee would be calculated as if the plaintiff had not originally filed the suit as an indigent person. The said amount is recoverable by the State in accordance with who may ordered to pay the same in the decree.

(iii) Even when a suit is dismissed, the court fee shall be recoverable by the State in the form of first charge on the subject-matter of the suit.

It was further held that –

> "**20**…So there is only a provision for the deferred payment of the court fees and this benevolent provision is intended to help the poor litigants who are unable to pay the requisite court fee to file a suit because of their poverty."

11. The intent of Orders XXXIII and XLIV is unmistakable. They exemplify the cherished principle that lack of monetary capability does not preclude a person from knocking on the doors of the Court to seek vindication of his rights.

7 [2001] 3 SCR 580 : (2001) 5 SCC 22

12. It is unquestioned that a person dissatisfied with the amount of compensation received can file an appeal. In the present case, for a claim of Rs.10 lakhs, the Tribunal awarded compensation which was less than Rs. 2.5 lakhs. Without commenting on the merits of the matter, we recognize the desire of the claimant-appellant to file an appeal.

13. Once again turning to **Darshana Devi** (supra)**,** we refer to certain observations made therein -

> "**5**……Our perspective is best projected by Cappelletti, quoted by the Australian Law Reform Commission:
>
> "The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement — the most 'basic human right' — of a system which purports to guarantee legal right." [M. Cappelletti, Rabels, (1976) 669 at 672]
>
> We should expand the jurisprudence of access to justice as an integral part of Social Justice and examine the constitutionalism of court-fee levy as a facet of human rights highlighted in our Nation's Constitution. If the State itself should travesty this basic principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved, a second look at its policy is overdue. The Court must give the benefit of doubt against levy of a price to enter the temple of justice until one day the whole issue of the validity of profit-making through sale of civil justice, disguised as court-fee, is fully reviewed by this Court…"

14. In the present case although the State is not the one in appeal, the observations in regard to the insistence upon court fees by the High Court to be taken from the meager amount awarded as compensation even after having recorded that she had not yet received the said amount, has prompted us to refer to the above extract.

15. The ground, upon which the claimant-appellant's application to file the appeal as an indigent person was rejected, was that she had received compensation by way of the Award of the Tribunal, and therefore, she was not indigent. We find this observation to be belied by the impugned order itself as the learned Single Judge has recorded the submission of the counsel for the claimant-appellant that no money stood paid to her at that point in time. So even though she had been awarded a sum, her indigency was not extinguished thereby. Any which way, in our considered view, the High Court was incorrect in rejecting the Misc. Application.

16. There is a further ground on which we find that the High Court erred in not allowing the claimant-appellant to file the appeal. The language used in Orders XXXIII and XLIV so far as deferring of payment of court fees is concerned, as was observed in **Khader International** (supra), that if the suit so filed, as an indigent person succeeds, the Court fee shall be deductible from the amount received as a result thereof as if the person who files the suit is not an indigent.

17. Order XLIV Rule 3(2) provides as under :

> "**3. Inquiry as to whether applicant is an indigent person.-**(1)……
>
> (2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred."

The Appellate Court, in accordance with the above, did not conduct any inquiry. The same was necessitated since nothing on record speaks of the claimant-appellant having filed the claim before the learned Tribunal as an indigent person, in which case she would be covered under Rule 3(1), which provides that no further inquiry would be required in respect of a person who was allowed to sue or appeal as an indigent person if they make an affidavit to the effect that they have not ceased to be an indigent unless the Government

pleader objects or disputes such claim in which case an inquiry shall be held by the Appellate Court or under the orders thereof.

18. On both counts, one, that she had not yet received the money and, therefore, at the time of filing the appeal she was arguably indigent; and second, that the statutory requirement under the C.P.C., as described above, was not met – the order of the learned Single Judge has to be set aside.

19. Having observed as above, we allow the appeal and set aside the impugned judgment and order dated 7th August, 2018 of the learned Single Judge passed in Misc. Civil Application No.3/2018 in Regular First Appeal No.2611/2017. It would have been ideal for us to have remanded the matter to the High Court for an inquiry to be conducted by its orders in accordance with Order XLIV, however, in the peculiar facts and circumstances of this case, keeping in view that considerable time has passed since the impugned order in the First Appeal, we grant liberty to the appellant to appeal as an indigent person observing that, at the relevant time, her application ought to have been looked into, verified and then ordered upon, which was not done.

20. While recognizing that in ordinary circumstances this Court should not impose timelines for disposal of cases, but considering the facts of this case, in particular, that the Award of the Tribunal is dated 17th October, 2016, and the rejection of Misc. Civil Application seeking permission to file the appeal as an indigent person before the High Court, is dated 7th August, 2018, we request the High Court that the appeal filed by the claimant-appellant be decided expeditiously, and preferably within a period of six months from the date of receipt of the copy of this judgment. We direct the Registry to immediately transmit the same to the learned Registrar General of the High Court of Gujarat for necessary follow-up action.

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

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 5 S.C.R. 906 : 2024 INSC 389

All India Bank Officers' Confederation
v.
The Regional Manager, Central Bank of India and Others

(Civil Appeal No. 7780 of 2014)
With
(Civil Appeal No. 18459 of 2017)
(Civil Appeal No. 18460 of 2017)
(Civil Appeal No. 18462 of 2017)
(Civil Appeal No. 18463 of 2017)
(Civil Appeal No. 18461 of 2017)
(Civil Appeal No. 18464 of 2017)
(Civil Appeal Nos. 18465-18466 of 2017)
(Civil Appeal Nos. 18457-18458 of 2017)
and
(Civil Appeal No. 18467 of 2017)

07 May 2024

[Sanjiv Khanna* and Dipankar Datta, JJ.]

Issue for Consideration

I. Does Section 17(2)(viii) of the Income Tax Act, 1961 and/or Rule 3(7)(i) of the Income Tax Rules, 1962 lead to a delegation of the 'essential legislative function' to the Central Board of Direct Taxes?

II. Is Rule 3(7)(i) of the Income Tax Rules, 1962 arbitrary and violative of Article 14 of the Constitution of India insofar as it treats the Prime Lending Rate of the State Bank of India as the benchmark?

Headnotes

Income Tax Act, 1961 – Section 17(2)(viii) – Income Tax Rules 1962 – Rule 3(7)(i) – Challenged before High Courts – High Courts dismissed the writ petitions – Several appeals were filed by staff unions and officers' associations of various banks, impugning judgments of High Courts before Supreme Court, challenging section 17(2)(viii) and rule 3(7)(i) on the grounds of excessive and unguided delegation of essential legislative function to the Central Board of Direct Taxes, furthermore, rule 3(7)(i) was also challenged as arbitrary and

* Author

violative of article 14 of the constitution insofar as it treats the Prime Leading Rate of SBI as the benchmark instead of the actual interest rate charged by the bank from a customer on a loan – Supreme Court uphold the impugned judgments of the High Courts – Appeals dismissed.

Held: When it comes to uniform approach the laws relating to fiscal or tax measures enjoy greater latitude than other statutes. [Paras 1, 3, 34, and 35]

Interpretation of Statute – Popular meaning makes the statute simpler and easier for the common people – After all, it is the common person who is concerned with the ramifications of a statute, and thus, the common man's understanding is the definitive index of the legislative intent – This rule equally applies to construing words or expressions in a taxation statute. Section 17(2(viii) is a residuary clause, enacted to provide flexibility – Since it is enacted as an enabling catch-within-domain provision, the residuary clause is not iron-cast and exacting – The expression 'perquisite' is well-understood by a common person who is conversant with the subject matter of a taxing statute.

Held: The legislature can and does delineate the meaning of terms through explicit definitions – Explicit definitions are useful, but it is wrong to state that all words or expressions must be explicitly defined – Popular meaning makes the statute simpler and easier for the common people – After all, it is the common person who is concerned with the ramifications of a statute, and thus, the common man's understanding is the definitive index of the legislative intent – The legislature is assumed to be aware of the well-understood meaning attributed to the word/expression, and by necessary implication the legislature by not prescribing a fixed and exact definition, ascribes the prevalent meaning assigned to the word/expression in common parlance or commercial usage – This would include meaning assigned to technical words in a particular trade, business or profession, etc – when the legislation is concerning a particular trade, business or transaction – This rule equally applies to construing words or expressions in a taxation statute. Section 17(2(viii) is a residuary clause, enacted to provide flexibility – Since it is enacted as an enabling catch-within-domain provision, the residuary clause is not iron-cast and exacting – A more pragmatic and commonsensical approach can be adopted

by locating the prevalent meaning of 'perquisites' in common parlance and commercial usage – The expression 'perquisite' is well-understood by a common person who is conversant with the subject matter of a taxing statute – New International Webster's Comprehensive Dictionary defines 'perquisites' as any incidental profit from service beyond salary or wages; hence, any privilege or benefit claimed due – Thus, 'perquisite' is a fringe benefit attached to the post held by the employee unlike 'profit in lieu of salary', which is a reward or recompense for past or future service – It is incidental to employment and in excess of or in addition to the salary. It is an advantage or benefit given because of employment, which otherwise would not be available – From this perspective, the employer's grant of interest-free loans or loans at a concessional rate will certainly qualify as a 'fringe benefit' and 'perquisite', as understood through its natural usage in common parlance. [Paras 13-15, 18, and 19]

Income Tax Act, 1961 – Section 17(2)(viii) – Rule 3(7)(i) – Income Tax Rules, 1962 does not lead to a delegation of the 'essential legislative function' to the CBDT.

Held: A Constitution Bench of Seven Judges of this Court in *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Another* (1968) SCC Online SC 13, has held that the legislature must retain with itself the essential legislative function – 'Essential legislative function' means the determination of the legislative policy and its formulation as a binding rule of conduct – Therefore, once the legislature declares the legislative policy and lays down the standard through legislation, it can leave the remainder of the task to subordinate legislation – The test, therefore, is whether the primary legislation has stated with sufficient clarity, the legislative policy and the standards that are binding on subordinate authorities who frame the delegated legislation. Subordinate authority's power under Section 17(2)(viii), to prescribe 'any other fringe benefit or amenity' as perquisite is not boundless – The express delineation does not take away the power of the legislature, as the plenary body, to delegate the rule-making authority to subordinate authorities, to bring within the ambit of 'perquisites' any other 'fringe benefit' or annuities' as 'perquisite' – An unlimited right of delegation is not inherent in the legislative power itself – The legitimacy of delegation depends upon its usage as an ancillary measure, which the legislature considers necessary for the complete and effective exercise of legislative

powers – Provided that the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case – An executive authority can be authorised by a statute to modify either existing or future laws but not in any essential feature – What constitutes an essential feature cannot be enunciated in exact terms – However, it was held that modification could not include a change in policy, since the 'essential legislative function' consists of the determination of legislative policy and its formulation as a binding rule of conduct – In the context of Section 17(2)(viii) and Rule 3(7)(i), we are of the opinion that main legislation does not fall foul of the essential feature test – They do not modify an essential feature nor do they violate the condition of determining legislative policy or a binding rule of conduct – A delegated legislation is not unconstitutional when the legislature leaves it to the executive to determine details relating to the working of taxation laws, such as selection of persons on whom the tax has to be levied, the rates at which it is to be charged in respect of different classes of goods and the like – The principal legislature has not given unqualified power to fix the rate of tax without guidance, control or safeguard – The power to decide who is to pay the tax is not an essential part of legislation, neither would the power to decide the rate of tax be so – The enactment of subordinate legislation for levying tax on interest free/concessional loans as a fringe benefit is within the rule making power under Section 17(2)(viii) of the Act – Section 17(2)(viii) itself, and the enactment of Rule 3(7)(i) is not a case of excessive delegation and falls within the parameters of permissible delegation. [Paras 21-25, 28, 30, and 31]

Income Tax Rules, 1962 – Rule 3(7)(i) – not arbitrary and violative of Article 14 of the Constitution insofar as it treats the PLR of SBI as the benchmark.

Held: The fixation of SBI's rate of interest as the benchmark is neither an arbitrary nor unequal exercise of power – The rule-making authority has not treated unequal as equals – The benefit enjoyed by bank employees from interest-free loans or loans at a concessional rate is a unique benefit/advantage enjoyed by them – It is in the nature of a 'perquisite', and hence is liable to taxation – Rule 3(7)(i) is not arbitrary or irrational for the reason it benchmarks computation of the perquisite with reference to

the SBI's PLR – SBI is the largest bank in the country and the interest rates fixed by them invariably impact and affect the interest rates being charged by other banks – By fixing a single clear benchmark for computation of the perquisite or fringe benefit, the rule prevents ascertainment of the interest rates being charged by different banks from the customers and, thus, checks unnecessary litigation – Rule 3(7)(i) ensures consistency in application, provides clarity for both the assessee and the revenue department, and provides certainty as to the amount to be taxed – When there is certainty and clarity, there is tax efficiency which is beneficial to both the tax payer and the tax authorities – These are all hallmarks of good tax legislation – Rule 3(7)(i) is based on a uniform approach and yet premised on a fair determining principle which aligns with constitutional values – When it comes to uniform approach the laws relating to fiscal or tax measures enjoy greater latitude than other statutes – Commercial and tax legislations tend to be highly sensitive and complex as they deal with multiple problems and are contingent – To interfere with the legislation in question, which prevents possibilities of abuse and promotes certainty – It is not iniquitous, draconian or harsh on the taxpayers – A complex problem has been solved through a straitjacket formula, meriting judicial acceptance – To hold otherwise, would lead to multiple problems/issues and override the legislative wisdom – The universal test in the present case is pragmatic, fair and just – Therefore, Rule 3(7) is held to be intra vires Article 14 of the Constitution of India. [Paras 32-34]

Case Law Cited

Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Another **[1968] 3 SCR 251 : (1968) SCC Online SC 13;** *Pandit Banarsi Das Bhanot v. State of Madhya Pradesh* **[1959] 1 SCR 427 – relied on.**

Arun Kumar v. Union of India **[2006] Supp. 6 SCR 290** *:* **(2007) 1 SCC 732;** *Additional Commissioner of Income Tax v. Bharat V. Patel* **[2018] 7 SCR 1067 : (2018) 15 SCC 670,** *Govt. of A.P. v. P. Laxmi Devi* **[2008] 3 SCR 330 : (2008) 4 SCC 720,** *Swiss Ribbons (P) Ltd. v. UOI* **[2019] 3 SCR 535 : (2019) 4 SCC 17 – followed.**

Owen v. Pook **(1969) 2 WLR 775 (HL);** *Rendell v. Went* **(1964) 1 WLR 650 (HL);** *In Re.: The Delhi Laws Act, 1912* **[1951] 1 SCR 747 : (1951) SCC 568;** *Raj Narain Singh v. Chairman, Patna Administration Committee* **[1955] 1 SCR 290;** *Hari Shankar Bagla*

v. State of Madhya Pradesh **[1955] 1 SCR 380; *Western India Theatres Limited v. Municipal Corporation of the City of Poona,* AIR 1959 SC 586; *Powell v. Apollo Candle Company Ltd.,* 8 AC 282; *Devidas Gopal Krishnan v. State of Punjab,* AIR (1967) SC 1895; *Corporation of Calcutta v. Liberty Cinema* [1965] 2 SCR 477 – referred.**

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List of Acts

Income Tax Act, 1961; Income Tax Rules, 1962; Income Tax (First Amendment) Rules; 2004; Constitution of India.

List of Keywords

Perquisites; Fringe Benefits; Amenities; Prime Lending Rate; Concessional or Interest Free Loan Benefits; Salary; Residuary Clause; Essential Legislative Functions; Excessive Delegation; Delegation of Power; Ultra Vires; Intra Vires.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7708 of 2014

From the Judgment and Order dated 30.11.2009 of the High Court of M.P. at Jabalpur in WP No. 3963 of 2008

With

Civil Appeal Nos. 18459, 18460, 18462, 18463 18461, 18464, 18465-18466, 18457-18458 and 18467 of 2017

Appearances for Parties

N. Venkatraman, A.S.G., Pramod Swarup, Arvind P. Datar, Wasim Qadri, V. Chitambaresh, Sr. Advs., Abhishek Atrey, Ms. Pareena Swarup, Benny Joseph, Ms. Alka Sinha, Dr. Abhishek Atrey, Haris Beeran, Anand P. Menon, Sayid Marzook Bafaki, Azhar Assees, Rajesh Mahale, R. Chandrachud, Dhuli Venkata Krishna, Raj Bahadur Yadav, Shashank Bajpai, Prahlad Singh, Mrs. Gargi Khanna, Pratyush Srivastav, H.R. Rao, M/s. Mitter & Mitter Co., Harshad V. Hameed, Dileep Poolakkot, Mrs. Ashly Harshad, Shivam Sai, Ms. Mansha

Shukla, Rajesh Kumar Gautam, Anant Gautam, Samir Mudgil, Ms. Anani Achumi, Dinesh Sharma, Ms. Shivani Sagar, R.P. Daida, Ashish Wad, Mrs. Tamali Wad, Ms. Kirti Sharma, Ms. Akriti Arya, M/s. J.S. Wad And Co, Rajat Arora, Ravi Ranjan Mishra, Anuvrat Sharma, Badri Prasad Singh, Sanjay Kapur, Arjun Bhatia, Surya Prakash, Ms. Isha Virmani, Surya Nath Pandey, Satendra Tripathi, Aayush Kesarwani, Radha Shyam Jena, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Sanjiv Khanna, J.

This common judgment decides the appeals filed by staff unions and officers' associations of various banks, impugning judgments which dismiss their writ petitions, where the *vires* of Section 17(2)(viii) of the Income Tax Act, 1961[1] or Rule 3(7)(i) of the Income Tax Rules, 1962[2], or both, were challenged.

2. Section 17(2)(viii) of the Act includes in the definition of 'perquisites'[3], 'any other fringe benefit or amenity', 'as may be prescribed'.[4] Rule 3 of the Rules prescribes additional 'fringe benefits' or 'amenities', taxable as perquisites, pursuant to Section 17(2)(viii). It also prescribes the method of valuation of such perquisites for taxation purposes. Rule 3(7)(i) of the Rules stipulates that interest-free/concessional loan benefits provided by banks to bank employees shall be taxable as 'fringe benefits' or 'amenities' if the interest charged by the bank on such loans is lesser than the interest charged according to the Prime Lending Rate[5] of the State Bank of India[6].

1 For short, "Act".

2 For short, "Rules".

3 Section 17(2) of the Act defines perquisites. It specifies a list of benefits/advantages, incidental to employment, and received in excess of salary, which are made taxable as perquisites. Section 17(2)(viii) is a residuary clause that authorizes a subordinate rule-making authority to prescribe 'any other fringe benefits or amenities' that are liable to taxation as 'perquisites'.

4 Before amendments brought in by Finance (No.2) Act, 2009, with effect from 01.04.2010, Section 17(2)(vi) of the Act read: "*(vi) the value of any other fringe benefit or amenity (excluding the fringe benefits chargeable to tax under Chapter XIIH) as may be prescribed*". Post the amendment, Section 17(2)(viii), in effect contains the same stipulations as erstwhile Section 17(2)(vi), with some modifications. It states: "*(viii) the value of any other fringe benefit or amenity as may be prescribed.*" Thus, the present Section 17(2)(viii) contains similar stipulations as erstwhile Section 17(2)(vi), reference to Chapter XIIH only being deleted. To retain uniformity, we will be referring to it as Section 17(2)(viii).

5 For short, "PLR".

6 For short, "SBI".

3. Section 17(2)(viii) and Rule 3(7)(i) are challenged on the grounds of excessive and unguided delegation of essential legislative function to the Central Board of Direct Taxes[7]. Rule 3(7)(i) is also challenged as arbitrary and violative of Article 14 of the Constitution insofar as it treats the PLR of SBI as the benchmark instead of the actual interest rate charged by the bank from a customer on a loan.

4. Sections 15 to 17 of the Act relate to income tax chargeable on salaries.

   ⇒ Section 15 stipulates incomes that are chargeable to income tax as 'salaries'.

   ⇒ Section 16 prescribes deductions allowable under 'salaries'.

   ⇒ Section 17 defines the expressions 'salary', 'perquisites' and 'profits in lieu of salary' for Sections 15 and 16.

5. Section 17(1) includes in the definition of 'salary': wages, annuity or pension, gratuity, fee, commission, perquisites, or profits in lieu of or in addition to salary or wages, advance of salary, payments received by an employee in respect of leave not availed, annual accretion to the balance at the credit of the employee participating in a recognised provident fund, etc.

6. Section 17(2) relates to 'perquisites' and reads:[8]

   "*(2) "Perquisite" includes—*

   (i) the value of rent-free accommodation provided to the assessee by his employer computed in such manner as may be prescribed;

   (ii) the value of any accommodation provided to the assessee by his employer at a concessional rate.

   Explanation.— For the purposes of this sub-clause, it is clarified that accommodation shall be deemed to have been provided at a concessional rate, if the value of accommodation computed in such manner as may be prescribed, exceeds the rent recoverable from, or payable by, the assessee;

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7 For short, "CBDT".

8 Post 01.04.2010.

(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(a) by a company to an employee who is a director thereof;

(b) by a company to an employee being a person who has a substantial interest in the company;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds fifty thousand rupees:

Explanation.—For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place or work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee; and

(v) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund or a Deposit-linked Insurance Fund established under Section 3-G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or, as the case may be, Section 6-C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), to effect an assurance on the life of the assessee or to effect a contract for an annuity;

(vi) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

Explanation.— For the purposes of this sub-clause,—

(a) "specified security" means the securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme;

(b) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(c) the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from the assessee in respect of such security or shares;

(d) "fair market value" means the value determined in accordance with the method as may be prescribed;

(e) "option" means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;

(vii) the amount or the aggregate of amounts of any contribution made to the account of the assessee by the employer—

(a) in a recognised provident fund;

(b) in the scheme referred to in sub-section (1) of Section 80-CCD; and

(c) in an approved superannuation fund,

to the extent it exceeds seven lakh and fifty thousand rupees in a previous year;

(viia) the annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme referred to in sub-clause (vii) to the extent it relates to the contribution referred to in the said sub-clause which is included in total income under the said sub-clause in any previous year computed in such manner as may be prescribed; and

(viii) the value of any other fringe benefit or amenity as may be prescribed:

xx xx xx"

(emphasis supplied)

7. Rule 3(7)(i) of the Rules[9] reads:

"(7) In terms of provisions contained in Sub-Clause (vi) of Sub-Section (2) of Section 17,[10] the following other fringe benefits or amenities are hereby prescribed and the value thereof shall be determined in the manner provided hereunder:

(i) the value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the simple interest computed at the rate charged per annum by the State Bank of India Act, 1955

9 As it stands after amendment *vide* Income Tax (First Amendment) Rules, 2004, with effect from 01.04.2004.

10 See supra note 4.

(23 of 1955), as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household.

However, no value would be charged if such loans are made available for medical treatment in respect of diseases specified in Rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate of Rs.20,000:

Provided that where the benefits relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme."[11]

8. Section 17(1), provides a broad and inclusive definition of 'salary'. It states that salary, *inter alia*, includes wages as well as other payments paid to employees like perquisites. Thus, perquisites paid by the employer to the employee are taxable as 'salary'.

9. 'Perquisite' has been defined in Section 17(2) for clarity, and also, to include and widen its scope. Clauses (i) to (viiia) to Section 17(2) make the following taxable as 'perquisites':

   ⇒ Clause (i) – rent-free accommodation by employer.

   ⇒ Clause (ii) – accommodation at a concessional rate by employer.

   ⇒ Clause (iii) – benefit of amenity provided free of cost/at a concessional rate, in specified cases.

   ⇒ Clause (iv) – sum paid by the employer for an obligation.

   ⇒ Clause (v) – sum payable by the employer through a fund (barring specified exceptions) to effect an assurance on the life of the assessee or to effect a contract for annuity.

   ⇒ Clause (vi) – specified security or sweat equity shares allotted/ transferred by employer at concessional rate/free of cost.

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11 It is relevant to state here that the appellants have not challenged Rule 3(7)(i) as it existed for the period 01.04.2001 to 31.03.2004, that is, prior to the amendment *vide* the Income Tax (First Amendment) Rules, 2004, with effect from 01.04.2004. We are thus referring to the said Rule.

⇒ Clause (vii) – specified amounts contributed to assessees' account by employer such as provident fund, superannuation fund etc.

⇒ Clause (viia) – annual accretion by way of interest, dividend or other similar amounts with respect to clause (vii).

10. After specifically stipulating what is included and taxed as 'perquisite', clause (viii) to Section 17(2), as a residuary clause, deliberately and intentionally leaves it to the rule-making authority to tax 'any other fringe benefit or amenity' by promulgating a rule. The residuary clause is enacted to capture and tax any other 'fringe benefit or amenity' within the ambit of 'perquisites', not already covered by clauses (i) to (viia) to Section 17(2).

11. In terms of the power conferred under Section 17(2)(viii), CBDT has enacted Rule 3(7)(i) of the Rules. Rule 3(7)(i) states that interest-free/concessional loan made available to an employee or a member of his household by the employer or any person on his behalf, for any purpose, shall be determined as the sum equal to interest computed at the rate charged per annum by SBI, as on the first date of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by interest, if any, actually paid. However, the loans made available for medical treatment in respect of diseases specified in Rule 3A or loans whose value in aggregate does not exceed Rs.20,000/- , are not chargeable.

12. The effect of the rule is twofold. First, the value of interest-free or concessional loans is to be treated as 'other fringe benefit or amenity' for the purpose of Section 17(2)(viii) and, therefore, taxable as a 'perquisite'. Secondly, it prescribes the method of valuation of the interest-free/concessional loan for the purposes of taxation.

13. While enacting laws, the legislature can and does delineate the meaning of terms through explicit definitions. Specific meanings are assigned for precision, to distinguish words/expressions from loose or popular meanings, expand or restrict the scope of words or expressions, or to designate 'terms of art', that is, words or phrases with specialized meanings. Explicit definitions are useful, but it is wrong to state that all words or expressions must be explicitly defined. Defining each word or expression that is part of normal or commercial

vocabulary is neither possible nor expedient. It would be a superfluous exercise, and make statutes voluminous. Instead, popular meaning makes the statute simpler and easier for the common people. After all, it is the common person who is concerned with the ramifications of a statute, and thus, the common man's understanding is the definitive index of the legislative intent. The reason is simple. The legislature is assumed to be aware of the well-understood meaning attributed to the word/expression, and by necessary implication the legislature by not prescribing a fixed and exact definition, ascribes the prevalent meaning assigned to the word/expression in common parlance or commercial usage. This would include meaning assigned to technical words in a particular trade, business or profession, etc. when the legislation is concerning a particular trade, business or transaction. This rule equally applies to construing words or expressions in a taxation statute.

14. In the present case, Section 17(2(viii) is a residuary clause, enacted to provide flexibility. Since it is enacted as an enabling catch-within-domain provision, the residuary clause is not iron-cast and exacting. A more pragmatic and commonsensical approach can be adopted by locating the prevalent meaning of 'perquisites' in common parlance and commercial usage.

15. The expression 'perquisite' is well-understood by a common person who is conversant with the subject matter of a taxing statute. New International Webster's Comprehensive Dictionary defines 'perquisites' as any incidental profit from service beyond salary or wages; hence, any privilege or benefit claimed due.[12] 'Fringe benefit' is defined as any of the various benefits received from an employer apart from salary, such as insurance, pension, vacation, etc. Similarly, Black's Law Dictionary defines 'fringe benefit' as a benefit (other than direct salary or compensation) received by an employee from the employer, such as insurance, a company car, or a tuition allowance.[13] The Major Law Lexicon has elaborately defined the words 'perquisite' and 'fringe benefit'.[14]

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12 The New International Webster's Comprehensive Dictionary, p.941.

13 Black's Law Dictionary, p.188 (10th Edition).

14 Perquisite means something gained by a place or office beyond the regular salary or fee. It is a gain or profit incidentally made from employment. P. Ramanatha Aiyar The Major Law Lexicon, Vol. 5, p. 5059-5069 (4th Edition).

16. 'Perquisites' has also been interpreted as an expression of common parlance in several decisions of this Court. For example, 'perquisite' was interpreted in ***Arun Kumar v. Union of India***,[15] with respect to Section 17(2) of the Act. The Court referenced its dictionary meanings and held that 'perquisites' were a privilege, gain or profit incidental to employment and in addition to regular salary or wages. This decision refers to the observations of the House of Lords in ***Owen*** v. ***Pook***,[16] where the House observed that 'perquisite' has a known normal meaning, namely, a personal advantage. However, the perquisites do not mean the mere reimbursement of a necessary disbursement. Reference was also made to ***Rendell*** v. ***Went***,[17] wherein the House held that 'perquisite' would include any benefit or advantage, having a monetary value, which a holder of an office derives from the employer's spending on his behalf.

17. Similarly, in ***Additional Commissioner of Income Tax v. Bharat V. Patel***,[18] this Court held that 'perquisite', in the common parlance relates to any perk or benefit attached to an employee or position besides salary or remuneration. It usually includes non-cash benefits given by the employer to the employee in addition to the entitled salary or remuneration.

18. Thus, 'perquisite' is a fringe benefit attached to the post held by the employee unlike 'profit in lieu of salary', which is a reward or recompense for past or future service. It is incidental to employment and in excess of or in addition to the salary. It is an advantage or benefit given because of employment, which otherwise would not be available.

19. From this perspective, the employer's grant of interest-free loans or loans at a concessional rate will certainly qualify as a 'fringe benefit' and 'perquisite', as understood through its natural usage in common parlance.

Fringe benefit is a term embracing a variety of employees' benefits, paid by the employers and supplementing the workers' basic wage or salary. P. Ramanatha Aiyarm The Major Law Lexicon, Vol. 3 (4th Edition).

15 [2006] Supp. 6 SCR 290 : (2007) 1 SCC 732

16 (1969) 2 WLR 775 (HL)

17 (1964) 1 WLR 650 (HL)

18 [2018] 7 SCR 1067 : (2018) 15 SCC 670

20. Two issues arise for consideration now: (I) Does Section 17(2)(viii) and/or Rule 3(7)(i) lead to a delegation of the 'essential legislative function' to the CBDT?; and (II) Is Rule 3(7)(i) arbitrary and violative of Article 14 of the Constitution insofar as it treats the PLR of SBI as the benchmark?

I. Does Section 17(2)(viii) and/or Rule 3(7)(i) lead to a delegation of the 'essential legislative function' to the CBDT?

21. A Constitution Bench of Seven Judges of this Court in ***Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Another***,[19] has held that the legislature must retain with itself the essential legislative function. 'Essential legislative function' means the determination of the legislative policy and its formulation as a binding rule of conduct. Therefore, once the legislature declares the legislative policy and lays down the standard through legislation, it can leave the remainder of the task to subordinate legislation. In such cases, the subordinate legislation is ancillary to the primary statute. It aligns with the framework of the primary legislation as long as it is made consistent with it, without exceeding the limits of policy and standards stipulated by the primary legislation. The test, therefore, is whether the primary legislation has stated with sufficient clarity, the legislative policy and the standards that are binding on subordinate authorities who frame the delegated legislation.

22. In our opinion, the subordinate authority's power under Section 17(2)(viii), to prescribe 'any other fringe benefit or amenity' as perquisite is not boundless. It is demarcated by the language of Section 17 of the Act. Anything made taxable by the rule-making authority under Section 17(2)(viii) should be a 'perquisite' in the form of 'fringe benefits or amenity'. In our opinion, the provision clearly reflects the legislative policy and gives express guidance to the rule-making authority.

23. Section 17(2) provides an 'inclusive' definition of 'perquisites'. Section 17(2)(i) to (vii)/(viia) provides for certain specific categories of perquisites. However, these are not the only kind of perquisites.

19 [1968] 3 SCR 251 : (1968) SCC OnLine SC 13

Section 17(2)(viii) provides a residuary clause that includes 'any other fringe benefits or amenities' within the definition of 'perquisites', as prescribed from time to time. The express delineation does not take away the power of the legislature, as the plenary body, to delegate the rule-making authority to subordinate authorities, to bring within the ambit of 'perquisites' any other 'fringe benefit' or annuities' as 'perquisite'. The legislative intent, policy and guidance is drawn and defined. Pursuant to such demarcated delegation, Rule 3(7)(i) prescribes interest-free/loans at concessional rates as a 'fringe benefit' or 'amenity', taxable as 'perquisites'. This becomes clear once we view the analysis undertaken in ***Birla Cotton 7J*** (supra) *viz*. the 'essential legislative function' test.

24. ***Birla Cotton 7J*** (supra) refers to ***In Re.: The Delhi Laws Act 1912***,[20] wherein this Court held that an unlimited right of delegation is not inherent in the legislative power itself. The legitimacy of delegation depends upon its usage as an ancillary measure, which the legislature considers necessary for the complete and effective exercise of legislative powers. Provided that the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case.

25. ***Birla Cotton 7J*** (supra) refers to ***Raj Narain Singh v. Chairman, Patna Administration Committee***,[21] wherein this Court held that an executive authority can be authorised by a statute to modify either existing or future laws but not in any essential feature. What constitutes an essential feature cannot be enunciated in exact terms. However, it was held that modification could not include a change in policy, since the 'essential legislative function' consists of the determination of legislative policy and its formulation as a binding rule of conduct. In the context of Section 17(2)(viii) and Rule 3(7)(i), we are of the opinion that main legislation does not fall foul of the essential feature test. They do not modify an essential feature nor do they violate the condition of determining legislative policy or a binding rule of conduct.

20 [1951] 1 SCR 747 : (1951) SCC 568

21 [1955] 1 SCR 290

26. ***Birla Cotton 7J*** (supra) also refers to ***Hari Shankar Bagla v. State of Madhya Pradesh***,[22] where the majority held that the legislature must declare the policy of law and legal principles which are to control any given cases and thereby provide a standard of guidance to the executive, empowered to execute laws.

27. In ***Western India Theatres Limited*** v. ***Municipal Corporation of the City of Poona***,[23] referred by ***Birla Cotton 7J*** (supra), the issue related to the power of the municipality to levy "*any other tax to the nature and object of which the approval of the Governor-in-Council shall have been obtained prior to the selection contemplated*". The delegated legislation was upheld on the ground that municipality was authorised by the principal enactment to impose the tax. The enactment defined the obligations and functions cast upon the municipality. The taxes could only be levied for implementing those specific purposes and not for any other purpose. Further, the section in the enactment laid down the procedure that the municipality had to follow for imposing the tax. Thus, the legislature had not abdicated its function in favour of the municipality. Same is true in the present case.

28. In ***Birla Cotton 7J*** (supra), the assessee had challenged a resolution passed by the municipal corporation to levy three taxes, including a levy of tax on consumption or sale of electricity. The challenge was that the levy of tax by the Corporation was by way of excessive delegation and was therefore *ultra vires*. This Court relied upon the judgment in ***Pandit Banarsi Das Bhanot v. State of Madhya Pradesh***,[24] to uphold the levy. In ***Pandit Banarsi*** (supra), this Court had observed that a delegated legislation is not unconstitutional when the legislature leaves it to the executive to determine details relating to the working of taxation laws, such as selection of persons on whom the tax has to be levied, the rates at which it is to be charged in respect of different classes of goods and the like. The principal legislature, it was held, has not given unqualified power to fix the rate of tax without guidance, control or safeguard.

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22 [1955] 1 SCR 380

23 AIR 1959 SC 586

24 [1959] SCR 427

29. ***Pandit Banarsi Das*** (supra) also refers to ***Powell*** v. ***Apollo Candle Company Ltd.***[25] which had upheld the power of delegation to levy duties by observing that there was complete guidance in the manner of fixing the rate of duty and finally the order passed by the Governor had to be laid before both Houses of the Parliament without unnecessary delay.

30. In ***Devidas Gopal Krishnan*** v. ***State of Punjab***,[26] this Court distinguished its earlier decision in ***Corporation of Calcutta v. Liberty Cinema***[27] where the majority upheld the fixation of tax on cinema shows, albeit the Calcutta Municipal Act, 1951 had failed to prescribe a limit to which tax could go. The majority in ***Liberty Cinema*** (supra) had referred to ***Pandit Banarsi Das*** (supra) and held that there is no in-principle distinction between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter; if power to fix rates in some cases can be delegated then equally the power to fix rates generally can be delegated. The Court held that if the power to decide who is to pay the tax is not an essential part of legislation, neither would the power to decide the rate of tax be so. The Court thus held that fixation of tax rate was not unqualified as the legislature had stipulated the maximum rate. The guidance rule was held as satisfied.

31. We are of the opinion that the enactment of subordinate legislation for levying tax on interest free/concessional loans as a fringe benefit is within the rule-making power under Section 17(2)(viii) of the Act. Section 17(2)(viii) itself, and the enactment of Rule 3(7)(i) is not a case of excessive delegation and falls within the parameters of permissible delegation. Section 17(2) clearly delineates the legislative policy and lays down standards for the rule-making authority. Accordingly, Rule 3(7)(i) is *intra vires* Section 17(2)(viii) of the Act. Section 17(2)(viii) does not lead to an excessive delegation of the 'essential legislative function'.

II. Is Rule 3(7)(i) arbitrary and violative of Article 14 of the Constitution insofar as it treats the PLR of SBI as the benchmark?

25 8 AC 282

26 AIR (1967) SC 1895

27 [1965] 2 SCR 477

32. Rule 3(7)(i) posits SBI's rate of interest, that is the PLR, as the benchmark to determine the value of benefit to the assessee in comparison to the rate of interest charged by other individual banks. The fixation of SBI's rate of interest as the benchmark is neither an arbitrary nor unequal exercise of power. The rule-making authority has not treated unequal as equals. The benefit enjoyed by bank employees from interest-free loans or loans at a concessional rate is a unique benefit/advantage enjoyed by them. It is in the nature of a 'perquisite', and hence is liable to taxation.

33. Rule 3(7)(i), it can be hardly argued, is arbitrary or irrational for the reason it benchmarks computation of the perquisite with reference to the SBI's PLR. SBI is the largest bank in the country and the interest rates fixed by them invariably impact and affect the interest rates being charged by other banks. By fixing a single clear benchmark for computation of the perquisite or fringe benefit, the rule prevents ascertainment of the interest rates being charged by different banks from the customers and, thus, checks unnecessary litigation. Rule 3(7)(i) ensures consistency in application, provides clarity for both the assessee and the revenue department, and provides certainty as to the amount to be taxed. When there is certainty and clarity, there is tax efficiency which is beneficial to both the tax payer and the tax authorities. These are all hallmarks of good tax legislation. Rule 3(7)(i) is based on an uniform approach and yet premised on a fair determining principle which aligns with constitutional values.

34. It is also apposite to note that when it comes to uniform approach the laws relating to fiscal or tax measures enjoy greater latitude than other statutes.[28] The Legislature should be allowed some flexibility in such matters and this Court would be more inclined to give judicial deference to legislative wisdom.[29] Commercial and tax legislations tend to be highly sensitive and complex as they deal with multiple problems and are contingent. This Court would not like to interfere with the legislation in question, which prevents possibilities of abuse and promotes certainty. It is not iniquitous, draconian or harsh on the taxpayers. A complex problem has been solved through a

28 *Govt. of A.P. v. P. Laxmi Devi* (2008) 4 SCC 720

29 *Swiss Ribbons (P) Ltd. v. Union of India* (2019) 4 SCC 17

straitjacket formula, meriting judicial acceptance. To hold otherwise, would lead to multiple problems/issues and override the legislative wisdom. The universal test in the present case is pragmatic, fair and just. Therefore, Rule 3(7) is held to be *intra vires* Article 14 of the Constitution of India.

35. We, accordingly, dismiss the appeals and uphold the impugned judgments of the High Courts of Madras and Madhya Pradesh. No order as to costs.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Himanshu Rai, Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)

[2024] 5 S.C.R. 927 : 2024 INSC 383

Amanatullah Khan
v.
The Commissioner of Police, Delhi & Ors.

Criminal Appeal No. 2349 of 2024
(Arising out of SLP (Crl.) No. 5719/2023)

07 May 2024

[Surya Kant* and K.V. Viswanathan, JJ.]

Issue for Consideration

Whether the names of the Appellant's minor children and his wife against whom there is no adverse material should be included in the History Sheet of the Appellant.

Headnotes†

Punjab Police Rules 1934 (As applicable to NCT of Delhi), rule 23.8 and rule 23.9 – Format of history sheet – Need to revisit archaic rules – Amended Standing Order issued on 21.03.2024 – In column on 'relations and connections' only those persons who can provide shelter to history sheeter to be reflected – Names of associates in crime, abettors and receivers to be included – No details of minor relatives shall be recorded anywhere in History Sheet – Unless there is evidence that minor has afforded shelter – Value for human dignity and life deeply embedded in Article 21 of Constitution – Expression 'life' unequivocally includes the right to live a life worthy of human honour and all that goes along with it.

Held: Writ Petition filed by Appellant under A. 226 Constitution r/w s. 482 CrPC for quashing of 'History Sheet' opened against him – Petition dismissed by High Court – Judgment challenged – original Standing Order of 10.06.2022 under 'preparation of History Sheet' replicated from archaic Punjab Police Rules 1934 – Amended Standing Order issued on 21.03.2024 – Provides certain safeguards: inclusion of names of only such persons who can afford history sheeter shelter when on the run from police – Names of associates in crime, abettors and receivers to be included – No details of any minor relatives, i.e., son, daughter, siblings shall be recorded anywhere – Unless there is evidence that such minor has afforded shelter – s.74 of Juvenile Justice (Care and Protection of Children) Act, 2015 to be meticulously followed – Clarifies 'History

* Author

Sheet' is an internal police document, not a publicly accessible report. [Paras 6-7]

Appeal partly allowed – Impugned High Court judgment stands modified – Amended Standing Order will prevent undesirable exposure of Appellant's minor children – Amended Standing Order to be given effect forthwith in Appellant's case – Direction given to Commissioner of Police, Delhi to designate a senior police officer of the rank of Joint Commissioner of Police or above, to periodically audit contents of History Sheets, ensure confidentiality, and delete names of persons/children found innocent during investigation from "relations and connections" category in History Sheet – Prompt action to be taken against any police officer acting contrary to amended Standing Order. [Paras 9-13]

Exercising *suo moto* powers, scope of proceedings expanded to police authorities in other states and UTs – To consider undesirability of the practice of mechanically including names of innocent individuals, by virtue of hailing from a particular socially, economically and educationally disadvantaged background – Allegation of police diaries being maintained selectively of individuals of *vimukta jatis*, based solely on caste bias – State Governments to take necessary preventive measures to safeguard such communities – Pre-conceived notions render them 'invisible victims' – May often impede their right to live a life with self-respect – value for human dignity and life is deeply embedded in Article 21 – Expression 'life' under a. 21 includes right to live a life worthy of human honour – Self-regard, social image, honest space for oneself in surrounding society, just as significant to dignified life as are adequate food, clothing and shelter. [Paras 14-15]

Periodic audit mechanism overseen by senior police officer as directed for NCT of Delhi – Critical tool to review and scrutinize entries to check for biases and discriminatory practice – Can help eliminate such deprecated practices – States/Union Territories not before the Court – No positive mandamus can be issued – Urged to revisit their policy-regime and consider whether suitable amendments on pattern of 'Delhi Model' are required to be made. [Paras 16-17]

List of Acts

Constitution of India; Juvenile Justice (Care and Protection of Children) Act, 2015; Punjab Police Rules 1934.

Amanatullah Khan v. The Commissioner of Police, Delhi & Ors.

List of Keywords

History Sheet; 'Relations and connections'; Article 21; Right to live with dignity; Right to live a life worthy of human honour.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2349 of 2024

From the Judgment and Order dated 19.01.2023 of the High Court of Delhi at New Delhi in WPCRL No. 1326 of 2022

Appearances for Parties

Wajeeh Shafiq, Naman Jain, Ms. Ramsha Shan, Advs. for the Appellant.

Sanjay Jain, Sr. Adv. (A.S.G.), Saransh Kumar, Shubhendu Anand, Umesh Babu Chourasia, Kritagya Kait, Mukesh Kumar Maroria, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

1. Leave granted.

2. The appellant approached the High Court of Delhi through a writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for quashing of the 'History Sheet' opened against him and the proposal to declare him as 'Bad Character' with the entry of his name in the Surveillance 'Register-X, Part II, Bundle A' at Police Station Jamia Nagar, District: South-East, Delhi. The Single Judge of High Court has, vide the impugned judgment dated 19.01.2023, dismissed the appellant's writ petition, giving rise to these proceedings.

3. Upon notice, the Delhi Police entered appearance through Mr. Sanjay Jain, learned senior counsel, who was apprised of some disturbing contents of the History Sheet to the extent it pertained to the school going minor children of the appellant and his wife, against whom there was apparently no adverse material whatsoever for inclusion in the History Sheet. It was then apprised that the format of the history sheeters was prescribed following Rule 23.8 and Rule 23.9

of the Punjab Police Rules 1934 (in short, the "1934 Rules") as were applicable in the NCT of Delhi. Mr. Jain, learned senior counsel for the respondents, however, fairly agreed to re-visit the archaic rules with a view to ensure that the dignity, self-respect and privacy of the innocent people, who incidentally happen to be the family members of a suspect, is not compromised at any cost.

4. Mr. Sanjay Jain, learned senior counsel has today placed on record the amended Standing Order No.L&O/54/2022 issued by the Commissioner of Police, Delhi. The aforesaid Standing Order pertains to 'Surveillance of History Sheeters and Bad Characters'. It appears that the Original Standing order was issued on 10.06.2022 and paragraph 9(2) thereof titled as "Preparation of History Sheet" was replicated from provisions of the 1934 Rules.

5. With the amended Standing Order issued on 21.03.2024, the Commissioner of Police has provided as follows:

> "The space for "relation and connection" should be filled in with a view to afford clues about those persons with whom the criminal is likely to harbour when wanted by the police, including relations or friends living at a distance from his home, and his associates in crime, abettors and receivers. It may be noted that the space for "relations and connections" in the history sheet should reflect identities of those persons who can afforded him shelter when the offender is running/wanted by the police (in general) and should include his associates in crime, abettors and receivers (in particular) and no details of any minor relatives i.e. son, daughter, siblings should be recorded anywhere in the History Sheet unless there is evidence that the minor under question can, or has earlier had, afforded shelter to the offender, "while he was on run from police".
>
> While preparing History Sheet, it may also be kept in mind that as per Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015, there is a prohibition on disclosing the Identity of a child in conflict with law or a child in need of care and protection of a child victim or witness of a crime through a report etc. Even though the History Sheet is an internal Police document and not a publicly

> accessible report, care must be taken that identities of only those minor relatives are entered into the History Sheet against whom evidence exists that minor in question has earlier had, afforded shelter to the offender, while he was on run from police". In addition to above, the particular nature of each person's connection should be noted against each, and, when persons shown as connections themselves have history sheets, a cross reference with those History Sheets should be given. Maximum phone numbers/ mobile numbers or associates/relatives/acquaintances of BCs should be collected and placed for record. Aadhar Number, EPIC number, e-mail ID, social media accounts/ profiles viz, facebook, Instagram ID, Twitter ID etc. to be placed on file. Further mobile numbers & other available details of associates/relatives/acquaintance of BC should be collected and placed on record."

6. We find from the amended Standing Order that in the column "relations and connections", it has been decided that identities of only those persons shall be reflected who can afford the history sheeter/bad character shelter, when the offender is running/wanted by the police and it shall also include names of his associates in crime, abettors and receivers. The amended Standing Order emphatically says that no details of any minor relatives, i.e., son, daughter, siblings shall be recorded anywhere in the History Sheet unless there is evidence that such minor, has or earlier had, afforded shelter to the offender.

7. Secondly, the amended provision now mandates that Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall be meticulously followed, whereunder there is a prohibition on disclosing the identity of a child in conflict with law or a child in need of care and protection or a child victim or a witness of a crime through a report etc.

8. The amended Standing Order further clarifies that 'History Sheet' is an internal police document and not a publicly accessible report. It has cautioned the police officers that care must be taken to ensure that identities of only those minor relatives are entered in the History Sheet against whom evidence exists that such minor had earlier afforded shelter to the offender, while he was on the run from the

police. The safeguard with regard to the details of phone numbers, Aadhar Card, EPIC number, e-mail I.D., social media accounts etc., have also been suggested in the amended Standing Order.

9. It seems that so far as the case in hand is concerned, the decision taken by the respondents to the effect that the History Sheet is only an internal police document and it shall not be brought in public domain, largely addresses the concern expressed by us in the beginning. Secondly, the extra care and precaution, to be now observed by a police officer while ensuring that the identity of a minor child is not disclosed as per the law too, is a necessary step to redress the appellant's grievances. It will surely prevent the undesirable exposure that has been given to the minor children in this case.

10. All that we propose to direct the police authorities is that the amended Standing Order dated 21.03.2024 be given effect forthwith in the appellant's case also.

11. In addition, we also direct the Commissioner of Police, Delhi to designate a senior police officer, in the rank of Joint Commissioner of Police or above, who shall periodically audit/review the contents of the History Sheets and will ensure confidentiality and a leeway to delete the names of such persons/juvenile/children who are, in the course of investigation, found innocent and are entitled to be expunged from the category of "relations and connections" in a History Sheet.

12. It goes without saying that if a Police Officer of Delhi Police is found to have acted contrary to the amended Standing Order and or the directions given herein above, prompt action against such delinquent officer shall be taken.

13. The impugned judgment of the High Court dated 19.01.2023 stands modified and the instant criminal appeal is disposed of in the above terms.

14. Having partially addressed the grievance of the appellant, we now, in exercise of our *suo motu* powers, propose to expand the scope of these proceedings so that the police authorities in other States and Union Territories may also consider the desirability of ensuring that no mechanical entries in History Sheet are made of innocent individuals, simply because they happen to hail from the socially, economically and educationally disadvantaged backgrounds, along

with those belonging to Backward Communities, Scheduled Castes & Scheduled Tribes. While we are not sure about the degree of their authenticity, but there are some studies available in the public domain that reveal a pattern of an unfair, prejudicial and atrocious mindset. It is alleged that the Police Diaries are maintained selectively of individuals belonging to *Vimukta Jatis,* based solely on caste-bias, a somewhat similar manner as happened in colonial times. All the State Governments are therefore expected to take necessary preventive measures to safeguard such communities from being subjected to inexcusable targeting or prejudicial treatment. We must bear in mind that these pre-conceived notions often render them 'invisible victims' due to prevailing stereotypes associated with their communities, which may often impede their right to live a life with self-respect.

15. The value for human dignity and life is deeply embedded in Article 21 of our Constitution. The expression 'life' unequivocally includes the right to live a life worthy of human honour and all that goes along with it. Self-regard, social image and an honest space for oneself in one's surrounding society, are just as significant to a dignified life as are adequate food, clothing and shelter.

16. It seems that a periodic audit mechanism overseen by a senior police officer, as directed for the NCT of Delhi, will serve as a critical tool to review and scrutinize the entries made, so as to ascertain that these are devoid of any biases or discriminatory practices. Through the effective implementation of audits, we can secure the elimination of such deprecated practices and kindle the legitimate hope that the right to live with human dignity, as guaranteed under Article 21, is well protected.

17. We are conscious of the fact that States or Union Territories, other than the NCT of Delhi, are not before us. They have not been heard. No positive mandamus can thus be issued to them. Further, we are not aware of the existing Rules/Policies or Standing Orders in vogue in different States/Union Territories. We, therefore, deem it appropriate, at this stage, to direct all the States/Union Territories to revisit their policy-regime and consider whether suitable amendments on the pattern of the 'Delhi Model' are required to be made so that our observations made in paragraphs 14 to 16 of this order can be given effect in true letter and spirit.

18. The Registry is, accordingly, directed to forward a copy of this judgement to the Chief Secretary and Director General of Police of all States and Union Territories to enable them to consider and comply with what has been held above, as early as possible but not later than six months.

19. All pending applications, if any, also stand disposed of.

Result of the case: Appeal partly allowed with directions.

†*Headnotes prepared by:* Aandrita Deb, Hony. Associate Editor
(*Verified by:* Shibani Ghosh, Adv.*)*

[2024] 5 S.C.R. 935 : 2024 INSC 453

Ali Hossain Mandal & Ors.
v.
West Bengal Board of Primary Education & Ors.

(Civil Appeal No. 1873 of 2024)

09 May 2024

[Hrishikesh Roy* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the manner of shortlisting candidates for appointment to the posts of primary teacher as directed by the Division Bench was in departure from the procedure envisaged under Rule 8 of the West Bengal Primary School Teachers Recruitment Rules, 2016; whether the remaining 3929 vacancies of primary school teachers were to be treated exclusively as part of 16,500 vacancies for which the recruitment process commenced via Notification dated 23.12.2020, or whether such vacancies can be carried forward to the next recruitment cycle that commenced via Notification dated 29.09.2022 instead.

Headnotes†

West Bengal Primary School Teachers Recruitment Rules, 2016 – rr.8, 12 – Procedure for selection of candidates – No vested right to be appointed against notified vacancies – Division Bench vide impugned judgment directed that appointments against the unfilled 3929 vacancies be made in a descending order of candidates' respective *inter-se* positions in Teacher Eligibility Test List 2014 – Aforesaid 3929 vacancies if to be treated exclusively as a part of the recruitment process initiated through Notification dated 23.12.2020 and appointments against them if to be made from the already-expired panel or Merit List notified on 15.02.2021:

Held: No – The selection process for appointment to the posts of primary teacher was to be made by assessment of merit by the Selection Committee as notified under Rule 8 of the Recruitment Rules, 2016 – The recruitment process initiated on 23.12.2020 cannot continue indefinitely – The 2020 recruitment process had concluded and thereafter, the fresh recruitment process

* Author

commenced vide notification dated 29.09.2022 – The Panel or Merit List as notified on 15.02.2021 stood extinguished after expiry of one year on 15.02.2022, as per Rule 12 of the Recruitment Rules, 2016 as no extension was granted to the 15.02.2021 Panel by any competent authority and therefore no relief can be granted to candidates who approached the court in May 2022, i.e., long after the panel stood extinguished – Not appropriate to direct appointments to be made against the remaining 3929 vacancies, from the already-expired Merit List – A panel or a Merit List cannot be treated as if it exists in perpetuity, which will facilitate making appointments as and when required – When the panel expires or after the selection process is over with most posts being filled, the benefit of appointments cannot be given unless the panel's validity is legally extended – However, no such extension of the panel's validity was granted – In conclusion of the earlier process, a fresh recruitment process was undertaken vide Notification dated 29.09.2022 – Furthermore, even when vacancies are notified and an adequate number of candidates are shortlisted, these candidates do not acquire an indefeasible right to be appointed against those vacancies – Multiple factors are to be taken into account by the Board – For such reasons 3929 vacancies remained unfilled by the time the panel's validity expired – No further appointments permissible from the recruitment process initiated on 23.12.2020 when a fresh recruitment process had commenced – Impugned judgment of the Division Bench and the earlier direction given by the Single Judge, set aside. [Paras 25-27, 29, 30]

Case Law Cited

State of Orissa & Anr. v. Raj Kishore Nanda & Ors. [2010] 7 SCR 301 **: (2010) 6 SCC 777;** *Union of India v. B. Valluvan* [2006] Supp. 7 SCR 755 **: (2006) 8 SCC 686;** *Girdhar Kumar Dadhich v. State of Rajasthan* [2009] 1 SCR 585 **: (2009) 2 SCC 706;** *State of Bihar v. Mohd. Kalimuddin* [1996] 1 SCR 314 **: (1996) 2 SCC 7 – relied on.**

Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Ors. [2018] 14 SCR 947 **: (2019) 12 SCC 798 – distinguished.**

List of Acts

West Bengal Primary School Teachers Recruitment Rules, 2016.

Ali Hossain Mandal & Ors. v. West Bengal Board of Primary Education & Ors.

List of Keywords

Primary school teachers; Teacher Eligibility Test 2014; TET 1014; Remaining/balance/unfilled vacancies/left over vacancies; Cutoff marks; Panel or Merit List; Next recruitment cycle; Fresh recruitment cycle; Vacancies not carried forward; Shortlisted candidates; Recruitment process concluded; Fresh recruitment process; Panel/Merit List extinguished after expiry; Already-expired panel/Merit List; No extension granted to the Panel by competent authority; Selection process over; Validity of the panel; Panel's validity not legally extended; Life of the panel/Merit List; Notified vacancies; No indefeasible/vested right to be appointed against notified vacancies; No right of appointment; Candidate's suitability; Evaluation criteria; District Primary School Councils.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1873 of 2024

From the Judgment and Order dated 11.11.2022 of the High Court at Calcutta in MAT No.1734 of 2022

With

Civil Appeal Nos. 1874 and 1875-1876 of 2024

Appearances for Parties

Ms. Meenakshi Arora, Vinay Navare, Jaideep Gupta, Dr. Menaka Guruswamy, Rauf Rahim, Dama Seshadri Naidu, Sr. Advs., Gohlam, Ranjan Mukherjee, Anindo Mukherjee, Dr. Ram Kishore Choudhary, Mohammad Usman Siddiqui, Mrs. Aisha Siddiqui, Ms. Sakeena Quidwai, Chand Qureshi, Amit Pawan, Abhishek Amritanshu, Hassan Zubair Waris, Aakarsh, Ms. Suchit Singh Rawat, Ms. Shivangi, Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, Ms. Kshitij Singh, Soumik Ghosal, Ms. Madhumita Bhattacharjee, Ms. Srija Choudhury, Ms. Osheen Bhat, Ms. Nitipriya Kar, Ms. Anju Thomas, Ms. Astha Sharma, Shreyas Awasthi, Ms. Manisha T. Karia, Rohan Trivedi, Ms. Swapnil Baudh, Deepin Shani, Ms. Ananya Arora, M/s. Equity Lex Associates, Salman Khurshid, Mrs. Naghma Imtiaz, Zargham Ahmed, Ms. Sidra Khan, Ms. Riddhi Goyal, Ms. Sonika Choudhary, Chanchal Kumar Ganguli, Ms. Neha Rathi, Kamal Kishore, Ms. Kajal Giri, Lavkesh Bhambhani, Utkarsh Pratap, Harshwardhan Thakur, Parminder Singh Bhullar, Dibyadyuti Banerjee, Ms. Sumedha Halder, Ali Ahasan Alamgir, Asif Iqbal, Rohit Jaiswal, Srikanth Reddy

Gopavaram, Samreddy Bharath Simha Redd, Abhijit Sengupta, Bijay Kumar Chatterjee, Hitesh Kumar Sharma, Amit Kumar Chawla, Ms. Suhasni Bangopadhyaya, Tejasavni Ghose, Binay Kumar Das, Rameshwar Prasad Goyal, Arvind Gupta, Anindya Ghosh, Raghavendra Pratap Singh, Amit Suden, M/s. Mukesh Kumar Singh and Co., Mukesh Kumar Singh, Pawan Kumar Dhiman, Ikshit Singhal, Ms. Kajal Rani, Ms. Sujata K Muni, J S Maratha, Rahul Maratha, Subhasish Bhowmick, Ms. Manisha Pandey, Rahul Kushwaha, Ms. Neerja Sharma, Sohit Bhardwaj, Ashutosh Singh, Devesh Kumar Mishra, Satender Kr. Vashistha, Pranav Sachdeva, Ali Rahim, Jatin Bhardwaj, Mandeep Kalra, Ms. Chitrangada Singh, Dibyendu Chatterjee, Firdous Samim, Ali Asghar Rahim, Ms. Piyali Paul, Ms. Fatima Baig, Shekhar Kumar, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Hrishikesh Roy, J.

1. Heard Mr. Jaideep Gupta and Ms. Meenakshi Arora, learned senior counsel appearing for the appellants. Also heard Mr. Vinay Navare, Dr. Menaka Guruswamy, Mr. Salman Khurshid, Mr. Rauf Rahim and Mr. Dama Seshadri Naidu, learned senior counsel, Ms. Sumedha Halder and Ms. Madhumita Bhattacharjee, learned counsel appearing for the respondents & impleaders.

2. Relevant facts for the sake of convenience are taken from Civil Appeal Nos. 1875-1876 of 2024, filed by the West Bengal Board of Primary Education [hereinafter referred to as 'Board'].

FACTUAL MATRIX

3. The origin of the dispute lies in the Board's Notification dated 23.12.2020 for filling up 16,500 vacancies of primary school teachers with a qualification criterion of possessing the minimum NCTE-prescribed training qualification and having qualified the Teacher Eligibility Test 2014 [hereinafter referred to as 'TET-2014']. Thereafter, a Merit List for 15,284 candidates was notified on 15.02.2021. Subsequently, two more Merit Lists were published, covering all the 16,500 vacancies that were notified by the Board. As per the *West Bengal Primary School Teachers Recruitment Rules, 2016* [hereinafter referred to as 'Recruitment Rules, 2016'], the said panel

of candidates was then sent across to the respective District Primary School Councils ('appointing authority' under *S. 5 of Recruitment Rules 2016*) to make appointments therefrom.

4. At that shape, a few candidates who had not yet been appointed approached the Calcutta High Court seeking directions that the Board fill up the remaining vacant seats by reducing cut-off marks in each category. After the unfilled vacancies were reconciled, the learned Single Judge vide order dated 26.09.2022 directed that the 252 Writ Petitioners be granted appointments against these unfilled 3929 vacancies. Subsequently, the Board notified the filling up of a fresh set of 11,765 vacancies for primary school teachers vide Notification dated 21.10.2022, considering the candidature from TET-2014 as well as TET-2017 candidates.

5. Immediately thereafter, the Board filed an appeal (MAT No. 1734/2022 & CAN 1/2022) challenging the Single Judge's order of 26.09.2022. In dismissing the Board's appeal, the Division Bench directed that the balance 3929 vacancies of primary school teachers be treated exclusively as part of the 16,500 vacancies pertaining to TET-2014 candidates only, for which recruitment process had commenced vide Notification dated 23.12.2020.

6. The Division Bench concluded that the entire TET-2014 selection as well as the appointment process was fraught with irregularities. The Merit List contained only ranks of the candidates without offering their comparative marks. It was observed that not just the TET-2014 candidates or Writ Petitioners before the High Court but the Board itself was not aware of the cut-off mark at which appointments had ceased. Marks were not disclosed to the unsuccessful candidates and they were given only one-line intimation that they were 'not included in the present Merit List'. These features shrouded the entire selection process into deeper suspicion, thereby further vitiating the appointment process as opined by the Division Bench.

7. With this understanding, the Division Bench directed that the TET-2014 Eligibility List be treated as the Merit List to determine *inter-se* positions of the TET-2014 candidates, including those 252 applicants who had filed Writ Petitions before the High Court. Consequently, the Single Bench order dated 26.09.2022 was modified to the effect that the 3929 left over vacancies were extended to all the remaining TET-2014 candidates, in descending order of their *inter-se*

positions in the TET Eligibility List 2014, notwithstanding the fact that these vacancies were carried forward through a fresh recruitment Notification dated 29.09.2022.

8. Appeals herein have been filed by the Board & others to challenge the Division Bench judgment dated 11.11.2022 of the Calcutta High Court in MAT 1734/2022 and I.A. No. CAN 1/2022.

Submissions

9. The primary contention of Mr. Jaideep Gupta and Ms. Meenakshi Arora, learned senior counsel, is rooted in the provisions of the *Recruitment Rules, 2016*. They would refer to the procedure of selection specified in Rule 8 of the *Recruitment Rules, 2016* to contend that the Merit List is based on evaluation conducted on various parameters, following which marks are awarded to candidates. Eventually, the Merit List is published and thereafter, appointments are to be made on the basis of marks secured by the candidates in the evaluation process specified in the provisions. However, the directions issued by the Division Bench in the impugned judgment provide for appointments to be made on the basis of candidates' *inter-se* positions in the TET Eligibility List 2014, which is in contravention to the procedure specified under the *Recruitment Rules, 2016*.

10. It is then argued that the life of the panel/Merit List remains valid for a period of one year from the date of approval by the Board. In this case, since the panel was notified on 15.02.2021, it naturally expired after one year on 15.02.2022. In this case, candidates filed their Writ Petitions only in May 2022 i.e., approximately three months after the panel had expired. Therefore, no individual could have claimed any right of appointment in reference to the particular recruitment process after the panel had expired.

11. Additionally, Mr. Gupta pointed out that the 3929 vacancies that remained unfilled due to various factors were then carried forward through a Notification dated 29.09.2022 as part of the fresh recruitment cycle. Under the new process, 9500 appointments were already been made from the advertised 11,500 vacancies. It would therefore not be fair to dislodge the appointed candidates either from the previous or current recruitment cycle.

12. Appearing for those candidates who seek appointment to the 3929 left-over vacancies from the initial pool of 16,500 vacancies, Dr.

Menaka Guruswamy, learned senior counsel contends that although the validity of the panel as per Rule 12 is one year, there is a provision to extend the validity of the same by six months at a time but the total period of such extension cannot exceed one year in any case.

13. It was argued that the learned Single Judge in WPA No. 8981 of 2022 gave sufficient opportunity to the Board to put forth the relevant information pertaining to the entire recruitment exercise in a transparent manner. Despite many such requests, directions and reminders by the Court, information was not forthcoming about the respective candidates' ranks, marks, category, cut-offs, etc. Even when the matter was posted for consideration on 26.09.2022, these relevant information were not furnished by the Board.

14. Finding that the names of the 252 Writ Petitioners in WPA No. 8981/2022 are figuring in the particulars submitted by the Board in a tabular form, the learned Judge issued direction that the 252 Writ Petitioners should be granted appointments against the unfilled vacancies (3929). The Division Bench likewise noticed the inequities that the candidates had been put through along with the arduous nature of seeking employment as well as the lack of *bona fide* conduct on the Board's part. Therefore, left with no choice but to ignore the Merit List fraught with irregularities, the Division Bench directed that the appointments be made on the basis of the *inter-se* positions of candidates within the TET Eligibility List 2014.

15. Mr. Vinay Navare, learned senior counsel in his turn pointed out that the entire recruitment exercise had been done in a reckless manner with little to no information in the public domain. Although the Merit List had been notified by the Board, marks scored by candidates were not put forth as part of the same. Additionally, even the candidates were not informed of their scores or the cut-off mark to be breached, to be included in the Merit List. In fact, the Board was not forthcoming on why 3929 vacancies had remained, why no written test was conducted and other relevant informations, pertaining to the recruitment process. In light of the same, the counsel contends that the panel, being full of such glaring lapses and errors, was not valid in law and therefore the panel can't possibly have an expiry date.

Discussion

16. As earlier noted, the recruitment for primary school teachers is governed by the *Recruitment Rules, 2016*. The Rule 8 provides for

the procedure for selection of candidates. After a *prima facie* scrutiny of application forms by the Selection Committee, candidates are made to undergo a round of interview(s) and aptitude test(s).

17. Thereafter, an evaluation is done on the basis of marks that are awarded or computed as per the criteria. These are extracted here for easy reference:

> *"8. Procedures of selection: ……. (3) Academic qualifications, training, performance in the TET, Extra Curricular activities and performance in viva-voce or interview and Aptitude test, shall be computed in the manner as mentioned in Table A below:-*

Sl. No.	*Item for Evaluation*	*Max. Marks*
(i)	*Madhyamik pass under the West Bengal Board of Secondary Education or its equivalent*	*05*
(ii)	*Higher Secondary pass under the West Bengal Council of Higher Secondary Education or its equivalent*	*10*
(iii)	*Training as specified by NCTE*	*15*
(iv)	*Teacher Eligibility Test (TET)*	*05*
(v)	*Extra-Curricular Activities*	*05*
(vi)	*Viva-Voce or Interview*	*05*
(vii)	*Aptitude Test*	*05*
	Total	*50*

> *Note 1.- The percentage of marks obtained by the candidate in the Madhyamik Examination or its equivalent excluding additional marks, if any, shall be reduced proportionately to marks obtained out of 5.*
>
> *Note 2.- The percentage of marks obtained by the candidate in the Higher Secondary, Madhyamik Examination or its equivalent excluding additional marks, if any, shall be reduced proportionately to marks obtained out of 10.*
>
> *Note 3.- The percentage of marks obtained by the candidate in the relevant Teacher Training shall be reduced proportionately to marks obtained out of 15.*

Note 4.- The percentage of marks obtained by the candidate in the TET Examination shall be reduced proportionately to marks obtained out of 5.

Note 5.- Marks out of maximum five (5) Marks as mentioned in Sl. No. (v) of Table A of this rule shall be awarded to the candidates, including para teacher, in the following manner:-

Sl. No.	*Extra Curricular Activities*	*Marks*
1	*Games and Sports*	*1*
2	*National Cadet Corps (NCC)*	*1*
3	*Arts and Literature*	*1*
4	*Performing Art (Drama)*	*1*
5	*Music*	*1*
	Total:	*5*

18. The evaluation criteria envisages marks to be awarded on relevant academic qualifications, NCTE-mandated training, performance in TET, extra-curricular activities, performance in the viva-voce and aptitude test to the aspirants. Even within the criteria, extra-curricular activities are to be awarded as per the candidate's experience in music, arts, drama, literature, etc.

19. As specified under the *Recruitment Rules, 2016*, the panel under Rule 2(l) of eligible/selected candidates is to be prepared bearing in mind the aggregate of marks provided in Rule 8(3) and Table A appended thereto. It is clear that the evaluation criteria to be taken into account as per Table A and Rule 8(3) is a far more comprehensive method of evaluating a candidate's suitability for the post than the performance in TET i.e., a qualifying examination for teaching eligibility. The impugned judgment however directed that appointments against the remaining 3929 vacancies shall be made in a descending order of candidates' respective *inter-se* positions in TET Eligibility List 2014.

20. Therefore, the manner of shortlisting candidates for appointment as directed by the Division Bench is at loggerheads with and in departure from the procedure envisaged under Rule 8. Being inconsistent with the *Recruitment Rules, 2016*, such a direction cannot be sustained.

21. The next issue is whether the remaining 3929 vacancies are to be treated exclusively as part of 16,500 vacancies for which the recruitment process commenced via a Notification dated 23.12.2020, or whether such vacancies can be carried forward to the next recruitment cycle that commenced via a Notification dated 29.09.2022 instead.

22. Although the first advertisement reflected a total of 16,500 vacancies, the Merit List (notified on 15.02.2021) was only for 15,284 candidates. Thereafter, two additional Merit Lists with 478 and 738 candidates respectively were notified thereby taking the total count to 16,500. During the proceedings before the High Court, the learned Single Judge on 22.02.2021 passed an interim order staying appointments from the Merit List notified on 15.02.2021. However, the Division Bench by its order on 04.03.2021 declared that the Board is bound by the said Merit List dated 15.02.2021 and permitted appointments to be made to the 15,284 posts. Thereafter, regular appointments came to be made.

23. Since the panel expired after one year under Rule 12 of the *Recruitment Rules, 2016*, the Board issued a fresh advertisement to fill up 11,765 vacancies. It was argued that the unfilled vacancies should be treated exclusively as a part of the recruitment process initiated through Notification dated 23.12.2020 and the Court may modify the Division Bench direction to the extent that the 3929 vacancies are filled up on the basis of merit determined in consonance with *Rule 8 of the Recruitment Rules, 2016*. The aforementioned argument can be accepted only if a legal justification is found for the Writ Petitioner's appointment to the 16,500 posts.

24. To better understand whether such a panel can be utilised for appointment after its expiry and if there exists a legal right to be considered for appointments to the notified 16,500 vacancies, it is relevant to take note of the ratio in the following judgments:

    i. *State of Orissa & Anr. v. Raj Kishore Nanda & Ors.*[1]:

    *"*16. *A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required.*

1 [2010] 7 SCR 301 : (2010) 6 SCC 777 at 783. Para 16

It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage."

ii. Union of India v. B. Valluvan[2]:

"17. *The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do so. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained."*

iii. Girdhar Kumar Dadhich v. State of Rajasthan[3]:

"16. *Furthermore, the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us.*"

iv. State of Bihar v. Mohd. Kalimuddin[4]:

"8. *As held in the case of Shankarsan Dash [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : (1991) 2*

2 [2006] Supp. 7 SCR 755 : (2006) 8 SCC 686, Para 17

3 [2009] 1 SCR 585 : (2009) 2 SCC 706 at 709, Para 16

4 [1996] 1 SCR 314 : (1996) 2 SCC 7 at 12. Paras 8 & 9

SCR 567] even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. It is indeed expected of the State to act bona fide and for valid reasons in refusing to make the appointments after the selection process has been gone through……..

Without knowing the nature of change it was not open to the High Court to anticipate the policy and brand it as unreasonable.

9. *For the above reasons, we are of the opinion that even if it is assumed that the panel or select list had not expired at the date of filing of the writ petition, the refusal on the part of the Government to make appointments from the panel or select list, vide letter dated 27-5-1993, could not be condemned as arbitrary, irrational and or mala fide. We, therefore, reverse the view taken by the High Court, set it aside and hold that the original writ petition was liable to be dismissed and we hereby dismiss the same. No order as to costs."*

25. The opinion expressed in the above judgments makes it clear that a panel or a Merit List cannot be treated as if it exists in perpetuity, which will facilitate making appointments as and when required. When the panel expires or after the selection process is over with most posts being filled, the benefit of appointments cannot be given unless the panel's validity is legally extended. However, no such extension of the panel's validity was granted. In fact, in conclusion of the earlier process, a fresh recruitment process was undertaken vide Notification dated 29.09.2022, through which, 9500 candidates have already been appointed.

26. That apart even when vacancies are notified and an adequate number of candidates are shortlisted, these candidates do not acquire an indefeasible right to be appointed against those vacancies. Multiple factors are to be taken into account by the Board, including suitability as per district, age, language, etc. before appointments are made. For such reasons 3929 vacancies remained unfilled by the time the panel's validity expired. Before that, 12,571 appointments were made.

27. As earlier noted, the selection process for appointment to the posts of primary teacher is to be made by assessment of merit by the Selection Committee as notified under Rule 8 of the *Recruitment Rules, 2016*. The recruitment process initiated on 23.12.2020 cannot continue indefinitely. The 2020 recruitment process had concluded and the fresh recruitment process commenced thereafter vide notification dated 29.09.2022. It would therefore not be appropriate for this Court to direct appointments to be made against the remaining 3929 vacancies, from the already-expired Merit List.

28. Dr. Menaka Guruswamy, learned senior counsel, placed heavy reliance on the ratio in *Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Ors.*[5] to contend that although the selected candidate may not have any vested right to be appointed against the available vacancies but when the employer decides not to fill up the posts, the discretion is to be exercised judiciously. On this aspect, suffice it would be to say that the Rules provided for shelf life of one year for the panel list. Admittedly, extension of the said list (notified on 15.02.2021) was not granted by any authority. As the decision to not act upon the expired select list is based upon the provisions of the Rules, we are disinclined to accept the argument advanced by the learned senior counsel based on the ratio in *Dinesh Kumar Kashyap*. It may also be noted that the candidates in *Dinesh Kumar Kashyap* (supra) had approached the Court during the validity of the select list unlike in these matters where the first batch of Writ Petitions came to be filed in May 2022, i.e., roughly three months after the expiry of the said Merit List in February 2022.

29. In light of the above discussion, the following conclusions are reached:

    i. The manner of shortlisting candidates for appointment as suggested by the Division Bench in the impugned judgments is inconsistent with the procedure laid down under Rule 8 of the *Recruitment Rules, 2016*, and those, cannot be sustained.

    ii. The Panel or Merit List as notified on 15.02.2021 stood extinguished after expiry of one year i.e., on 15.02.2022, as per Rule 12 of the *Recruitment Rules, 2016*.

5 [2018] 14 SCR 947 : (2019) 12 SCC 798

iii. No extension by any competent authority was granted to the 15.02.2021 Panel and therefore no relief can be granted to candidates who approached the court in May 2022, i.e., long after the panel stood extinguished.

iv. No further appointments is permissible from the recruitment process initiated on 23.12.2020 when a fresh recruitment process has commenced.

30. The impugned judgment rendered by the Division Bench on 11.11.2022 and the earlier direction given by the learned Single Judge on 26.09.2022 are accordingly set aside. The concerned 252 Writ Petitioners and others who are sailing with this group, do not have any legitimate claim for appointments, to the remaining vacancies in the form of the 23.12.2020 recruitment process. The appeals stand allowed accordingly.

31. The IA No. 28252 of 2024 and IA No. 28255 of 2024 are allowed to the extent of the prayers made by the applicant(s). All pending application(s), if any, including impleadment or intervention application(s), shall stand disposed of.

CIVIL APPEAL NO. 1873 OF 2024

32. In view of the order passed in Civil Appeal Nos. 1875-1876 of 2024, this appeal stands disposed of.

33. All pending application(s), if any, including impleadment/ intervention application(s) shall stand disposed of.

CIVIL APPEAL NO. 1874 OF 2024

34. In view of the order passed in Civil Appeal Nos. 1875-1876 of 2024, this appeal stands disposed of.

35. All pending application(s), if any, including impleadment/ intervention application(s) shall stand disposed of.

Result of the case: Civil Appeal Nos.1875-1876 of 2024 allowed.
Civil Appeal Nos.1873-1874 of 2024 disposed of.

†*Headnotes prepared by:* Divya Pandey

[2024] 5 S.C.R. 949 : 2024 INSC 454

Govt. of NCT of Delhi Through Its Secretary, Land and Building Department & Another
v.
M/s K.L. Rathi Steels Limited and Others

(Miscellaneous Application No. 414 of 2023)
In
Civil Appeal No. 11857 of 2016

17 May 2024

[Surya Kant, Dipankar Datta and Ujjal Bhuyan, JJ.]

Issue for Consideration

Issue arose to resolve as to which of the two views on maintainability of the Review petitions-Hon'ble Judge presiding over the Bench ruling in favour of maintainability of the review petitions whereas the Hon'ble companion Judge on the Bench holding that the review petitions were not maintainable, is the correct view; can the review petitioners, on the basis of the pleadings in the review petitions, be considered persons aggrieved; whether the last sentence of paragraph 217 of Shailendra [3-Judge] case grants 'liberty' to any party to seek a review of Pune Municipal Corporation case; if affirmative, did such 'liberty' survive after the decision in Manoharlal [5-Judge, lapse] case; can the RPs be held to be maintainable, giving due regard to the Explanation in r. 1 of Ord. XLVII, CPC vis-à-vis Manoharlal [5-Judge, lapse] case; if no, do the review petitions still deserve to be entertained on the other grounds urged therein; and if the miscellaneous applications are maintainable.

Headnotes†

Code of Civil Procedure, 1908 – Order XLVII r.1 – Application for review of judgment – Review petitions – In Govt. of NCT of Delhi v. K.L. Rathi Steels Limited, split verdict by two Hon'ble judges – Hon'ble Judge presiding over the Bench ruled in favour of maintainability of the review petitions whereas the Hon'ble companion Judge on the Bench held that the review petitions were not maintainable – In view of difference of opinion, the review petitions referred to larger Bench to resolve which of the two views on maintainability of the review petitions is the correct view – Issue arose as regards if the review petitioners, on the basis of the pleadings in the review petitions, could be considered persons aggrieved; whether the

last sentence of paragraph 217 of Shailendra [3-Judge] case grants 'liberty' to any party to seek a review of Pune Municipal Corporation case; did such 'liberty' survive after the decision in Manoharlal [5-Judge, lapse] case; can the review petitions be held to be maintainable, giving due regard to the Explanation in Rule 1 of Order XLVII, CPC vis-à-vis Manoharlal [5-Judge, lapse] case and if no, do the review petitions still deserve to be entertained on the other grounds urged therein; and are the miscellaneous applications maintainable:

Held: No review is available upon a change or reversal of a proposition of law by a superior court or by a larger Bench of this Court overruling its earlier exposition of law whereon the judgment/order under review was based – Notwithstanding the fact that Pune Municipal Corporation case has since been wiped out of existence, the said decision being the law of the land when the Civil Appeals/Special Leave Petitions were finally decided, the subsequent overruling of such decision and even its recall, for that matter, would not afford a ground for review within the parameters of Ord. XLVII – Opinion expressed by the Hon'ble companion Judge on the said Division Bench is concurred with and this Court is not in agreement with the Hon'ble presiding Judge – Judgments and orders under review were right on the dates they were rendered, the review petitioners are not considered as persons aggrieved who can maintain a review petition citing either Manoharlal [5-Judge, lapse] and Shailendra [3-Judge] – However, it is held that the review petitioners can yet be considered persons aggrieved – Last sentence of paragraph 217 of Shailendra [3-Judge] case does not grant 'liberty' to any party to seek a review of Pune Municipal Corporation's case – Review petitions cannot be held to be maintainable, giving due regard to the Explanation in r. 1 of Ord. XLVII vis-à-vis Manoharlal [5-Judge, lapse] case – Review petitions do not deserve to be entertained on the other grounds urged – Miscellaneous applications not maintainable – Under the circumstances, dismissal of the RPs and miscellaneous applications would have been logical – However, having regard to the disclosures made in course of progress of other proceedings before this Court, which followed immediately after judgment on the Review Petitions and miscellaneous applications was reserved, taking an overall and holistic view of the matter and in the light of the larger public interest certain directions issued – Time limit for initiation of fresh acquisition proceedings in terms of the

provisions contained in s. 24(2) of the 2013 Act is extended by a year whereupon compensation to the affected landowners may be paid in accordance with law – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. [Paras 104, 117, 118, 119, 121]

Code of Civil Procedure, 1908 – Order XLVII r.1 – Review – Application for review of judgment – Review petitioners, on the basis of the pleadings in the review petitions, if could be considered persons aggrieved:

Held: In the eyes of an unsuspecting person, obviously the review petitioners are persons aggrieved because of declaration of land acquisition proceedings initiated by them as deemed to have lapsed – However, the dates on which the High Court had disposed of the writ petitions by declaring that the land acquisition proceedings were deemed to have lapsed, the law laid down by a binding authority-Pune Municipal Corporation' case was holding the field at the relevant time and which the High Court applied in reaching its conclusions – This Court too had dismissed the Civil Appeals and the Special Leave Petitions bearing in mind that the issue raised was no longer res integra in view of Pune Municipal Corporation's case – Since the judgments and orders under review were right on the dates they were rendered, the review petitioners could not be considered as persons aggrieved who could maintain a review petition citing either Manoharlal [5-Judge, lapse] and Shailendra [3-Judge] case – However, the review petitioners can yet be considered persons aggrieved. [Paras 107, 108]

Review – Review petitions – Liberty to apply for Review – Last sentence of paragraph 217 of Shailendra [3-Judge] case, if grants 'liberty' to any party to seek a review of Pune Municipal Corporation' case – Such 'liberty' if, survived after the decision in Manoharlal [5- Judge, lapse] case – Plea of the review petitioners that paragraph 217 of Shailendra [3-Judge] case irrespective of anything else, did grant them 'liberty' to apply for review, that availing such 'liberty' granted by this Court the Review Petitions were filed, and thus, the Review Petitions maintainable –

Held: Decision in Shailendra [3-Judge] case cannot come to the rescue of the review petitioners – Majority in Shailendra [3-Judge] case intended that if review petitions were pending on the date of the decision, seeking review of decisions which had been

rendered relying on the decision in Pune Municipal Corporation case, such review petitions could be entertained and considered on the basis of the discussion in Shailendra [3-Judge] case declaring Pune Municipal Corporation's case per incuriam and the decisions reviewed; nothing more, nothing less – Majority in Shailendra [3-Judge] case could not have and did, in fact, give a carte blanche to the land acquiring authorities to apply for review of decisions already made by courts relying on the decision in Pune Municipal Corporation case, even though the remedy of appeal or review had not been pursued earlier and without the successful landowners being on record before the court – Plea of review petitioners if accepted, would result in utter chaos and confusion in the justice delivery system apart from disturbing the principle of finality of judicial decisions – Phrase "open to be reviewed in appropriate cases" occurring in paragraph 217 of the decision in Shailendra [3-Judge] case could not have been perceived by the review petitioners as opening up an avenue for them to apply for review – Assuming arguendo that the submission touching 'liberty' granted by Shailendra [3-Judge] case is correct, the plinth thereof crumbles by reason of paragraph 365 of Manoharlal [5-Judge, lapse] case and, thus, is rendered non-existent. [Paras 78, 80, 83]

Code of Civil Procedure, 1908 – Order XLVII r.1 Explanation – Review – Application for review of judgment – Maintainability of the review peitions, giving due regard to the Explanation in r. 1 of Order XLVII, CPC vis-à-vis Manoharlal [5-Judge, lapse] case:

Held: An alternative remedy, carved out by r. 1 of Ord. XLVII, already exists which the review petitioners have pursued – Recourse to s. 151, CPC, would not be available, the object of which is to supplement and not replace the remedies provided under the CPC – Attempt of the review petitioners has been to draw inspiration from the ground "any other sufficient reason" appearing in r. 1 – No review is available upon a change or reversal of a proposition of law by a superior court or by a larger Bench of this Court overruling its earlier exposition of law whereon the judgment/order under review was based – Notwithstanding the fact that Pune Municipal Corporation's case has since been wiped out of existence, the said decision being the law of the land when the Civil Appeals/Special Leave Petitions were finally decided, the subsequent overruling of such decision and even its

recall, for that matter, would not afford a ground for review within the parameters of Ord. XLVII – Plea that an aggrieved party can seek a review "for any other sufficient reason" and overruling of Pune Municipal Corporation's case followed by recall thereof brings the claims of the review petitioners within the coverage of this particular ground cannot be accepted – Thus, review petition not maintainable. [Para 99, 100, 104-105]

Code of Civil Procedure, 1908 – Order XLVII r.1 explanation – Review – Application for review of judgment – Review petitions not held to be maintainable, giving due regard to the explanation in r. 1 of Ord. XLVII vis-à-vis Manoharlal [5-Judge, lapse] case – Review petitions if could be entertained on the other grounds urged therein:

Held: Review petitions include under the caption 'grounds' reference to points which, according to the review petitioners, are sufficient to review the judgments/orders under review, apart from reference to the so-called 'liberty' granted by this Court vide Shailendra [3-Judge] case – 'Grounds' in each of the review petitions are factual in nature – In fact, the review petitioners have raised 'Grounds' without even averring what was pleaded in their counter affidavits filed before the High Court and what were the defences raised which, because of non-consideration by this Court, could be said to amount to an error apparent on the face of the record – Review petitions are silent as to on which specific ground referrable to r. 1 of Order XLVII the review has been asked for – Even then, having considered such 'Ground', the judgments/orders under review do not suffer from any error apparent on the face of the record – Review petitions could not be entertained on the other grounds urged therein. [Paras 109-111]

Miscellaneous applications – Maintainability – Miscellaneous applications seeking recall of certain orders of this Court, whereby some of the land acquisition proceedings were declared to have lapsed:

Held: Miscellaneous applications not maintainable – Said applications filed in the form of miscellaneous applications, were in essence akin to the review petitions as they also seek reconsideration of this Court's orders – Since these miscellaneous applications also rely on Manoharlal [5-Judge, lapse] case as a ground for review/reconsideration of the previous orders, they are squarely covered by the analysis in this judgment – If it is

held otherwise, the review petitioners would be permitting to do something indirectly that is seeking review through miscellaneous applications, which they could not have done directly i.e., seeking review through review petitions – This would open the law to being misused and lead to by-passing the legislative intent behind introduction of Explanation 1 to Rule 1 of Order XLVII, CPC which cannot be permitted by the Court – This does not imply an absolute prohibition against filing of miscellaneous applications seeking 'clarification,' 'modification,' or 'recall' following the initial disposal of a matter – Only the Court need to exercise prudence and ascertain whether such an application is, in substance, in the nature of a review petition – In case such an application is found to be nothing but a disguised version of a review petition, it ought to be treated in similar manner a review petition is treated. [Paras 113, 116]

Code of Civil Procedure, 1908 – Order XLVII r.1 explanation – Review – Application for review of judgment – Maintainability of the Review peitions:

Held: Ord. XLVII does not authorize a review of a decree, which was right, on the happening of some subsequent event – In case of discovery of a new or important matter or evidence, such matter or evidence has to be one which existed at the time when the decree or order under review was passed or made – Resultantly, what the statute prohibits, cannot be permitted by the Court – If permitted, the Court would be acting contrary to law – What the Parliament has done, the Court cannot undo unless the law enacted by the Parliament is declared ultra vires – Vires of the Explanation not being under challenge during more than four decades of its existence, it is not for the Court to ignore the Explanation. [Paras 89, 90]

Constitution of India – Arts. 137 and 145 – Supreme Court Rules, 2013 – Ord. XLVII r.1 – Review – Review jurisdiction – Exercise of, by the Supreme Court:

Held: Power of the Supreme Court to review its own judgment and/or order has its genesis in Arts. 137 and 145 of the Constitution read with Ord. XLVII of the Supreme Court Rules, 2013 – r. 1 of Ord. XLVII of the Rules lays down that no application for review in a civil proceeding would be entertained by this Court except on the ground mentioned in r. 1 Ord. XLVII CPC – Review in civil proceedings is governed by s. 114 CPC read with Ord. XLVII thereof – First and foremost condition that is required to be satisfied

by a party to invoke the review jurisdiction of the court, whose order or decree, as the case may be, is sought to be reviewed, is that the said party must be someone who is aggrieved by the order/decree – Meaning of words "person aggrieved" has to be ascertained with reference to the purpose and provisions of the statute – In one sense, the said words could correspond to the requirement of 'locus standi' in relation to judicial remedies – Need to ascertain the 'locus standi' of a review petitioner could arise, if he is not a party to the proceedings but claims the order or decree to have adversely affected his interest – In terms of Ord. XLVII of the 2013 Rules read with Ord. XLVII, CPC, a petition for review at the instance of a third party to the proceedings too is maintainable, the quintessence being that he must be aggrieved by a judgment/ order passed by this Court – Normally, in the context of r. 1 of Ord. XLVII, CPC, it is that person (being a party to the proceedings) suffering an adverse order and/or decree who, feeling aggrieved thereby, usually seeks a review of the order/decree on any of the grounds outlined therein – Circumstances where a review would lie are spelt out in clauses (a) to (c) but Ord. XVLII does not end with the circumstances – Review power u/s. 114 read with Order XLVII, CPC is available to be exercised, subject to fulfilment of the conditions, on setting up by the review petitioner any of the following grounds: discovery of new and important matter or evidence; or mistake or error apparent on the face of the record; or any other sufficient reason. [Paras 34, 38, 39]

Constitution of India – Art. 142 – Code of Civil Procedure, 1908 – ss. 114, 151, Order XLVII – Inherent powers – Review power – Distinction:

Held: Constitutional courts have inherent powers and this Court is also vested by Art. 142 of the Constitution with powers to pass such decree or make such order as is necessary to do complete justice in any cause or matter pending before it – Superior court, in exercise of its inherent power, is authorized to do justice that the cause before it demands – Upon satisfaction being reached by a court that a mistake has been committed by it, which is gross and palpable, it is not the law that the mistake has to be corrected by exercising the power of review only – Such power can be exercised, only if the person aggrieved by the order or decree applies therefor – On its terms, s. 114 CPC rw Ord. XLVII thereof does not conceive of a suo motu power of review being exercised

by the court –Words "court on its own motion" are absent in the statutory provision – However, once the court is satisfied that a mistake committed by it needs to be rectified, it is always open to exercise the inherent powers to achieve the desired result – An order of court, be it judicial or administrative which is made per incuriam or in violation of certain Constitutional limitations or in derogation of principles of natural justice can always be remedied by the court ex debito justitiae – It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application – To own up the mistake when judicial satisfaction is reached does not militate against its status or authority; perhaps, it would enhance both – On the other hand, when it involves invocation of the power of review and such power is traceable in a statute, which also has provisions regulating the exercise of the review power, it has to be held that the power of review is not an inherent power – If a power of review is statutorily conferred, it would be inappropriate, nay incompetent, for the court exercising review power to travel beyond the contours of the provision conferring the very power – Statutorily conferred power to review is not to be confused with the inherent power of the court to recall any order – Said power inheres in every court to prevent miscarriage of justice or when a fraud has been committed on court or to correct grave and palpable errors – Furthermore, inherent powers of the court u/s. 151, CPC cannot be invoked if there exists a remedy made available by the CPC itself. [Para 92, 94, 96]

Precedents – Decision when, per incuriam – Shailendra [3-Judge] case, declaring Pune Municipal Corporation' case per incuriam – Correctness:

Held: Shailendra [3-Judge] case declared Pune Municipal Corporation [3-Judge] case per incuriam without having the benefit of the caution sounded by the Constitution Bench in Vikramjit Singh's case and Central Board of Dawoodi Bohra Community's case though it considered in excess of 250 decisions – There is absolutely no scope for a Bench of three-Hon'ble Judges to declare a previous decision of a Bench of co-equal strength per incuriam – Shailendra [3-Judge] case, at the highest, could have doubted Pune Municipal Corporation case and referred it for decision by a yet larger Bench but could not have, by any stretch of reasoning, declared it per incuriam. [Para 74]

Precedents – Decision when, per incuriam – Shailendra [3-Judge] case, if per incuriam:

Held: There is absolutely no scope for a Bench of three-Hon'ble Judges to declare a previous decision of a Bench of co-equal strength per incuriam – Shailendra [3-Judge] case declared Pune Municipal Corporation [3-Judge]'s case per incuriam without having the benefit of the caution sounded by the Constitution Bench in Vikramjit Singh's case and Central Board of Dawoodi Bohra Community's case – Shailendra [3-Judge] case, at the highest, could have doubted Pune Municipal Corporation case and referred it for decision by a yet larger Bench but could not have, by any stretch of reasoning, declared it per incuriam – Same logic applicable to this Bench too – Following, the Central Board of Dawoodi Bohra Community's case, and also having regard to the sense of judicial discipline and propriety, this Court restrains itself from declaring Shailendra [3-Judge] case as per incuriam notwithstanding the firm conviction in this behalf – Shailendra [3-Judge] case is not held to be per incuriam. [Para 74]

Precedent – Precedent of a previous Bench – Maintenance of judicial discipline and propriety:

Held: Supreme Court of India, a revered institution, is one Court which operates through separate Benches owing to administrative exigency and practical expedience – These Benches are essential to efficiently manage the diverse and voluminous cases that come before the Court and to discharge the solemn judicial duty for which the Court exists – Each Bench speaks for the Court as a whole, contributing to the intricate symphony of justice that defines the Supreme Court of India – Thus, the need arises for a Bench to be careful, cautious, and circumspect while being critical of a precedent of a previous Bench – Every Bench is supposed to bear in mind two overriding considerations – First is that of deference to the views expressed by a Bench in a primary decision and the other is maintaining judicial discipline and propriety if, upon threadbare consideration, it is found difficult to assent to the justification for such primary decision – In such an eventuality, dignity and decency would demand disagreement voiced by the subsequent Bench and reference of the matter to the Hon'ble the Chief Justice for constitution of a larger Bench which is not a critical observations and adverse comments in respect of the primary decision rendered by a coordinate Bench. [Paras 69, 70]

Judicial Discipline – Maintenance of:

Held: If a judgment and/or order has attained finality because a judicial remedy is either not available in law or even if available, such remedy has been lost, it is not open for a higher court of law by a judicial fiat either to create a remedy for the party on the losing side to pursue or to grant liberty to him to pursue an otherwise available remedy which by passage of time might have been lost-behind the back of a party who would obviously be seriously affected if he were compelled to contest the proceedings once again – Such an act of court would be without the authority of law. [Para 81]

Case Law Cited

Central Board of Dawoodi Bohra Community v. State of Maharashtra [2004] Supp. 6 SCR 1054 **: (2005) 2 SCC 673 – followed.**

Board of Control for Cricket in India v. Netaji Cricket Club [2005] 1 SCR 173 **: (2005) 4 SCC 741;** *Jagmohan Singh v. State of Punjab* [2008] 7 SCR 117 **: (2008) 7 SCC 38 – distinguished.**

Govt. of NCT of Delhi v. K.L. Rathi Steels Limited and Ors. [2023] 6 SCR 209 **: (2023) SCC OnLine SC 288;** *Pune Municipal Corporation v. Harakchand Misirimal Solanki* [2014] 1 SCR 783 **: (2014) 3 SCC 183;** *Indore Development Authority v. Shailendra* **(2018) 1 SCC 733;** *Indore Development Authority v. Shailendra* [2018] 2 SCR 1 **: (2018) 3 SCC 412;** *State of Haryana v. GD Goenka Tourism Corporation Ltd.* **(2018) 3 SCC 585;** *Indore Development Authority v. Shyam Verma* **(2020) 15 SCC 342;** *State of Haryana v. Maharana Pratap Charitable Trust (Regd.)* **(2018) SCC Online SC 3600;** *Indore Development Authority v. Manoharlal* [2020] 3 SCR 1 **: (2020) 8 SCC 129;** *Indore Development Authority v. Manoharlal* [2019] 15 SCR 1085 **: (2020) 6 SCC 304;** *Pune Municipal Corporation v. Harakchand Misirimal Solanki* **[2014] 1 SCR 783 : (2020) SCC OnLine SC 1471;** *Chajju Ram v. Neki AIR* **(1922) PC 112;** *Haridas Das v. Usha Rani Banik* [2006] 3 SCR 87 **: (2006) 4 SCC 78;** *BSNL v. Union of India* **(2006) 3 SCC 1;** *Neelima Srivastava v. State of UP* [2021] 8 SCR 167 **: (2021) SCC Online SC 610;** *Union of India v. Nareshkumar Badrikumar Jagad* [2018] 14 SCR 239 **: (2019) 18 SCC 586;** *Moran Mar Basselios Catholics v. Most Rev. Mar Poulose Athanasius* [1955] 1 SCR 520 **: AIR (1954) SC 526;** *Syed Liaqat Husain v. Mohd. Razi,* **AIR (1944) Oudh 198;** *Lachhmi Narain Balu v. Ghisa Bihari,* **AIR**

(1960) Punjab 43; *Patel Naranbhai Jinabhai v. Patel Gopaldas Venidas,* **AIR (1972) Gujarat 229;** *Thadikulangara Pylee's Son Pathrose v. Ayyazhiveettil Lakshmi Amma's son Kuttan,* **AIR (1969) Kerala 186;** *Sudananda Moral v. Rakhal Sana* **XXXI CWN 822 : AIR (1927) Cal 920;** *Rajah Kotagiri Venkata Subbamma Rao v. Raja Vellanki Venkatrama Rao,* **7 LR (1899-1900) 27 IA 197;** *Ravella Krishnamurthy v. Yarlagadda,* **AIR (1933) Madras 485;** *Shanti Devi v. State of Haryana* **(1999) 5 SCC 703;** *Union of India v. Mohd Nayyar Khalil* **(2000) 9 SCC 252;** *Nand Kishore Ahirwar v. Haridas Parsedia* **(2001) 9 SCC 325;** *State of West Bengal v. Kamal Sengupta* **[2008] 10 SCR 4 : (2008) 8 SCC 612;** *Subramanian Swamy v. State of Tamil Nadu* **[2014] 1 SCR 308 : (2014) 5 SCC 75;** *Beghar Foundation v. K.S. Puttaswamy* **[2021] 1 SCR 681 : (2021) 3 SCC 1;** *A.C. Estates v. Serajuddin* **[1966] 1 SCR 235;** *Raja Shatrunji v. Mohd. Azmat Azim Khan* **[1971] Supp. 1 SCR 433 : (1971) 2 SCC 200;** *Kamlesh Verma v. Mayawati* **[2013] 11 SCR 25 : (2013) 8 SCC 320;** *S. Madhusudhan Reddy v. V. Narayana Reddy* **[2022] 11 SCR 42 : (2022) SCC OnLine SC 1034;** *Vikramjit Singh v. State of Madhya Pradesh* **(1992) Supp. 3 SCC 62;** *Shri Ram Sahu and Others v. Vinod Kumar Rawat* **[2020] 11 SCR 865 : (2021) 13 SCC 1;** *Indian Bank v. Satyam Fibres* **[1996] Supp. 4 SCR 464 : (1996) 5 SCC 550;** *A.R. Antulay v. R.S. Nayak* **[1988] Supp. 1 SCR 1 : (1988) 2 SCC 602;** *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* **(1971) 3 SCC 844;** *Padam Sen v. State of Uttar Pradesh* **[1961] 1 SCR 884 : (1961) 1 SCR 884;** *My Palace Mutually Aided Co-operative Society v. B. Mahesh & Others* **(2022) SCC OnLine SC 1063;** *Delhi Administration v. Gurdip Singh Uban and Others* **[2000] Supp. 2 SCR 496 : (2000) 7 SCC 296;** *Supertech Ltd. v. Emerald Court Owner Resident Welfare Association and Others* **[2021] 10 SCR 569 : (2023) 10 SCC 817 – referred to.**

List of Acts

Constitution of India; Code of Civil Procedure, 1908; Supreme Court Rules, 2013; Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Code of Civil Procedure, 1877; Code of Civil Procedure, 1882; Limitation Act, 1963.

List of Keywords

Review petitions; Persons aggrieved; Shailendra [3-Judge] case; Pune Municipal Corporation' case; Manoharlal [5-Judge, lapse]

case; Maintainability of the Review petitions; Change or reversal of a proposition of law by a superior court; Larger Bench of this Court overruling its earlier exposition of law; Public interest; Review jurisdiction; Review in civil proceedings; Locus standi; Judicial remedies; Liberty to apply for Review; Per incuriam; Principle of finality of judicial decisions; Discovery of a new or important matter or evidence; Inherent powers; Review power; Court on its own motion; Derogation of principles of natural justice; Ex debito justitiae; Alternative remedy; Subsequent overruling of decision; Miscellaneous applications; Recall of certain orders; Land acquisition; Compensation; Rightful claimant; Judicial discipline; Judicial propriety; Administrative exigency; Judicial duty; Precedent of a previous Bench.

Case Arising From

CIVIL APPELLATE JURISDICTION: Miscellaneous Application No. 414 of 2023

In

Civil Appeal No. 11857 of 2016

From the Judgment and Order dated 29.11.2016 of the Supreme Court of India in C.A. No.11857 of 2016

With

MA No.808 of 2023 In C.A. No.12239 of 2016, R.P.(C) No.882 of 2017 In C.A. No. 11846 of 2016, MA No.159 of 2018 In C.A. No.11857 of 2016, R.P.(C) No.396 of 2023 In C.A. No. 11857 of 2016, R.P.(C) No.409 of 2023 In C.A. No. 8511 of 2016, R.P.(C) No.410 of 2023 In C.A. No. 8925 of 2016, R.P.(C) No.412 of 2023 In C.A. No. 12114 Of 2016, R.P.(C) No.414 of 2023 In C.A. No. 8898 of 2016, R.P.(C) No.416 of 2023 In C.A. No. 4599 of 2016, R.P.(C) No.419 of 2023 In C.A. No. 10206 of 2016, R.P.(C) No.418 of 2023 In C.A. No. 8505 of 2016, R.P.(C) No.425 of 2023 In C.A. No. 8929 of 2016, R.P.(C) No.428 of 2023 In C.A. No. 8545 of 2016, R.P.(C) No.1731 of 2023 In C.A. No. 9598 of 2016, R.P.(C) No.429 of 2023 In C.A. No. 11256 of 2016, R.P.(C) No.431 of 2023 In C.A. No. 9597 of 2016, R.P.(C) No.432 of 2023 In C.A. No. 11841 of 2016, Conmt.Pet.(C) No.735 of 2018 In C.A. No. 11857 of 2016, R.P.(C) No.398 of 2023 In C.A. No. 8529 of 2016, R.P.(C) No.399 of 2023 In C.A. No. 11857 of 2016, R.P.(C) No.400 of 2023 In C.A. No. 8899 of 2016, R.P.(C) No.401

of 2023 In C.A. No. 8527 of 2016, R.P.(C) No.402 of 2023 In C.A. No. 8547 of 2016, R.P.(C) No.403 of 2023 In C.A. No. 8952 of 2016, R.P.(C) No.405 of 2023 In C.A. No. 8935 of 2016, R.P.(C) No.406 of 2023 In C.A. No. 8954 of 2016, R.P.(C) No.407 of 2023 In C.A. No. 9049 of 2016, R.P.(C) No.408 of 2023 In C.A. No. 8559 of 2016, R.P.(C) No.411 of 2023 In C.A. No. 9214 of 2016, R.P.(C) No.413 of 2023 In C.A. No. 9595 of 2016, R.P.(C) No.397 of 2023 In C.A. No. 8909 of 2016, R.P.(C) No.417 of 2023 In C.A. No. 8921 of 2016, R.P.(C) No.420 of 2023 In C.A. No. 8904 of 2016, R.P.(C) No.421 of 2023 In C.A. No. 9719 of 2016, R.P.(C) No.423 of 2023 In C.A. No. 8957 of 2016, R.P.(C) No.424 of 2023 In C.A. No. 8922 of 2016, R.P.(C) No.426 of 2023 In SlP(C) No. 17316 of 2016, R.P.(C) No.430 of 2023 In C.A. No. 11854 of 2016, C.A. No.1522 of 2023 DiAry No. 14831 of 2023, DiAry No. 15893 of 2023, R.P.(C) No. 422 of 2023 In C.A. No. 12046 of 2016, R.P.(C) No. 404 of 2023 In C.A. No. 12111 of 2016, And R.P.(C) No. 415 of 2023 In C.A. No. 11853 of 2016

Appearances for Parties

Ms. Aishwarya Bhati, K M Nataraj, A.S.Gs., Sanjay Poddar, Sanjiv Sen, Kailash Vasdev, Sanijiv Sen, Shyam Divan, V.Giri, Kailash Vasudev, Neeraj Kr Jain, Vivek Chib, Sr. Advs., Ms. Qurratulain, Govind Kumar, Pratish Goel, Anil Kumar Goyal, Ms. Niharika Ahluwalia, Arpit Sharma, M/s. Saharya & Co., Nitin Mishra, Ishaan Sharma, Ms. Mitali Gupta, Ms. Shagun Sabharwal, Ms. Binu Tamta, Ravi Bharuka, Ashwani Kumar, Arpit Singh, Ms. Anjali Singh, Ms. Radha Gupta, Ms. Sujeeta Srivastava, Ms. Purnima Singh, Rustam Singh Chauhan, Ms. BLN Shivani, Ashwin Joesph, Ms. Arti Singh, Ms. Shalini Chandra, Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg, Ms. Anshula L. Bakhru, Ishaan Tiwari, Chanakya Gupta, R. P. Bansal, Ms. Malvika Kapila, Ms. Tanwangi Shukla, Ms. Manika Tripathy, Ashutosh Kaushik, Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, Rahul Pandey, N Balraj, Ms. Shambhavi Sharma, Ms. Prachi Bajpai, Ms. Bansuri Swaraj, Siddhesh Shirish Kotwal, Ms. Ana Upadhyay, Ms. Manya Hasija, Tejasvi Gupta, Pawan Upadhyay, Ms. Suveni Bhagat, B.V.Niren, Rakesh Kumar, M/s. Vedya Partners, Bharat Arora, Alok Gupta, T. N. Singh, Vikas Kumar Singh, Ms. Rajshree Singh, Dr. Sham Chand, D.K. Garg, Ms. Ishita Bist, Ankur Bansal, Davesh Bhatia, Sadre Alam, Vivek Sharma, Ms. Diksha Rai, Ms. Ragini Pandey, Arijit Dey, Anirudh Bakru, Ms. Akriti Chaubey, Ayush Puri, Ms. Anshula Laroiya, R Jawaharlal, Siddharth Bawa, Anuj

Garg, Mayank Kshirsagar, Ms. Smita Maan, Rajiv Ghawana, T. V. S. Raghavendra Sreyas, Siddharth Vasudev, Neelaksh Sharma, Vikalp Chandela, Divyanshu Goyal, Mayank Kapoor, Ms. Divya Sharma, Ms. Jasmine Damkewala, Akhil Sachar, Ms. Vaishali Sharma, Sudeep Singh, Amit Malik, Bhavya Sethi, Akul Mahendru, Prakash Kumar, Sameer Malik, Ms. Neelam Singh, Rajiv Raheja, Ravi Ranjan, Abhinav Shrivastava, Sharath Nambiar, B K Satija, Kanu Agarwal, Raman Yadav, Arvind Kumar Sharma, Ms. Astha Tyagi, Nishit Agrawal, Ajay Marwah, Shivam Goel, Govind Kumar, Ms. Ramya S Goel, Akash Katiyar, Rahatdeep Sharma, Praveen Swarup, Ajay Vikram Singh, Mrs. Priyanka Singh, Pankaj Kumar, Omkar, Shubham Singh, Puneet Singh Bindra, Akshay Sharma, Simran Jeet, Rishabh Gupta, Sameer Sethi, Manish Paliwal, N.S. Vasisht, Jyoti Kataria Bajaj, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

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A. PREFACE

1. Day in and day out, as Judges of this Court, we are majorly addressed by learned counsel for the parties that the High Courts are either

* Ed. Note: Pagination as per the original Judgment.

right or wrong; here, in view of a split verdict rendered by an Hon'ble Division Bench ("said Division Bench", hereafter) comprising two Hon'ble Judges of this Court, we have been addressed by the parties that our distinguished colleagues on the Bench have been right and wrong at the same time. To complete the task that has been entrusted to us, one of the opinions of the Hon'ble Judges comprising the said Division Bench has to be held incorrect unless, of course, harmonization of the two opinions, in any manner, is possible. In the process of considering the rival claims, the exercise of declaring one view as correct and the other incorrect or to harmonize the two views, have necessarily taken us back to the basics of the substantive and procedural laws regulating review jurisdiction of this Court. The effort, we have no hesitation to say, has been really educative as well as rewarding because the erudite arguments advanced from the Bar opened up a new vista of thinking to appreciate points of debate that emerged not only from the facts of the petitions before us but also points arising from certain connected matters, decided by this Court. We record our sincere appreciation for the valuable assistance rendered by the members of the Bar who had the occasion to address this larger Bench.

B. THE REFERENCE

2. The two Hon'ble Judges comprising the said Division Bench were considering a clutch of review petitions ("RPs", hereafter), presented either by the Delhi Development Authority or the Government of NCT, Delhi, or the Land and Building Department, etc. ("review petitioners", hereafter). The RPs urged review of the judgments/orders passed by this Court on either Civil Appeals or Special Leave Petitions carried by the review petitioners from judgments and orders of the High Court of Delhi ("High Court", hereafter), declaring land acquisition proceedings initiated under the Land Acquisition Act, 1894 ("1894 Act", hereafter) as deemed to have lapsed under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act ("2013 Act", hereafter). By the judgments/orders under review, the said Civil Appeals/Special Leave Petitions stood dismissed. The RPs having been listed before the said Division Bench, the respondents therein (i.e., landowners) had questioned the maintainability of the same by referring to the Explanation to Rule 1 of Order XLVII, Code of Civil Procedure ("CPC", hereafter). As noted earlier, a split verdict

emerged in ***Govt. of NCT of Delhi v. K.L. Rathi Steels Limited and ors.***,[1] being the lead matter. Briefly put, the Hon'ble Judge presiding over the Bench ruled in favour of maintainability of the RPs whereas the Hon'ble companion Judge on the Bench disagreed and held that the RPs were not maintainable. An order was, thus, made by the Bench on 17th March, 2023 requiring the papers of the RPs to be placed before the Hon'ble the Chief Justice. Such order has been the immediate reason for His Lordship to constitute this larger Bench and refer the RPs to resolve which of the two views on maintainability of the RPs is the correct view; hence, all such RPs are now before this larger Bench.

C. JUDICIAL TRAJECTORY

3. Before delving deep into the intricacies presented by the reference, it would be apposite to trace the judicial trajectory of proceedings in this Court on interpretation of section 24(2) of the 2013 Act that preceded the split verdict.

4. The 2013 Act was enforced with effect from 1st January, 2014. Soon thereafter, the interpretation of section 24(2) of the 2013 Act fell for consideration before this Court. A three-Judge Bench (cor. Hon'ble R.M. Lodha, Hon'ble Madan B. Lokur and Hon'ble Kurian Joseph, JJ.) in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki***[2] explained, in the light of section 31 of the 2013 Act what the expression "compensation has not been paid" occurring in section 24(2) meant. The verb "paid" in the same sub-section was also explained. Perhaps, since no argument was advanced, the Bench did not have the occasion to consider whether the conjunction "or" between the expressions "compensation has not been paid" and "possession has not been taken" in sub-section (2) should be read as "or" as it is, or read as "and".

5. However, ***Pune Municipal Corporation*** (supra) was doubted by a two-Judge Bench (cor. Hon'ble Arun Mishra and Hon'ble Amitava Roy, JJ.) in ***Indore Development Authority v. Shailendra [2-Judge]***[3] wherein it was of the opinion that the issue should be considered by a larger Bench.

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1 [2023] 6 SCR 209 : 2023 SCC OnLine SC 288

2 (2014) 3 SCC 183

3 (2018) 1 SCC 733

6. Consequently, a Bench of three-Judges (cor. Hon'ble Arun Mishra, Hon'ble A.K. Goel and Hon'ble M. Shantanagoudar, JJ.) was constituted. The majority speaking through Hon'ble Arun Mishra, J. in ***Indore Development Authority v. Shailendra [3-Judge]***[4] held ***Pune Municipal Corporation*** (supra) *per incuriam* but deemed it not necessary to refer to a larger Bench. Relevant excerpts from such decision are set out hereunder:

> 216. With respect to the decision of this Court in *Pune Municipal Corpn.* we have given deep thinking whether to refer it to further larger Bench but it was not considered necessary as we are of the opinion that *Pune Municipal Corpn.* has to be held per incuriam, inter alia, for the following reasons:
>
> ***
>
> 217. The decision rendered in *Pune Municipal Corpn.*, which is related to Question (*i*) and other decisions following, the view taken in *Pune Municipal Corpn.* are per incuriam. … The decisions rendered on the basis of *Pune Municipal Corpn.* are open to be reviewed in appropriate cases on the basis of this decision."

7. It is relevant to highlight that one of the Judges (Hon'ble M. Shantanagoudar, J.) partly dissented by recording the following observations:

> "295.2. …However, according to me the judgment in Pune Municipal Corpn. is not rendered per incuriam. In view of the above, the judgment in Pune Municipal Corpn. may have to be reconsidered by a larger Bench, inasmuch as Pune Municipal Corpn. was decided by a Bench of three Judges."

8. The aforesaid decision, as it was destined, gave rise to uncertainty rendered by two contradictory decisions by Benches of co-equal strength. Hence, a three-Judge Bench (cor. Hon'ble Madan B. Lokur, Hon'ble Kurian Joseph and Hon'ble Deepak Gupta, JJ.) in

4 (2018) 3 SCC 412

State of Haryana v. G.D. Goenka Tourism Corporation Limited[5] while deferring a hearing as to whether the matter should at all be referred to a larger Bench directed that pending decision on the question of reference, the High Courts may not deal with any case relating to the interpretation of or concerning section 24 of the 2013 Act.

9. Two orders dated 22nd February, 2018 passed by different Benches of co-equal strength followed. While a Bench (cor. Hon'ble A.K. Goel and Hon'ble U.U. Lalit, JJ.) by an order passed in ***Indore Development Authority v. Shyam Verma*** [6] directed the matters to be placed before an appropriate Bench the next day as per orders of the Hon'ble the Chief Justice of India, a similar order was passed by a coordinate Bench (cor. Hon'ble Arun Mishra and Hon'ble Amitava Roy, JJ.) *vide* its order in ***State of Haryana v. Maharana Pratap Charitable Trust (Regd)***.[7]

10. A five-Judge Constitution Bench (cor. Hon'ble Arun Mishra, Hon'ble Indira Banerjee, Hon'ble Vineet Saran, Hon'ble M.R. Shah and Hon'ble S. Ravindra Bhat, JJ.) was thereafter constituted.

11. Ultimately, *vide* the judgment in ***Indore Development Authority v. Manoharlal [5-Judge, lapse]***,[8] the controversy was finally put to rest. The conclusions in ***Manoharlal [5-Judge, lapse]*** (supra) are recorded in paragraphs 365 and 366. However, paragraph 365 being relevant for a decision here, is quoted hereunder:

> "365. Resultantly, the decision rendered in Pune Municipal Corpn. is hereby overruled and all other decisions in which Pune Municipal Corpn. has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [3-judge], the aspect with respect to the proviso to Section 24(2) and whether 'or' has to be read as 'nor' or as 'and' was not placed for consideration. Therefore, that decision

5 (2018) 3 SCC 585

6 (2020) 15 SCC 342

7 Civil Appeal No. 4835/2015

8 [2020] 3 SCR 1 : (2020) 8 SCC 129

too cannot prevail, in the light of the discussion in the present judgment."

12. Ironically, during the hearing, a controversy was raised by the respondents therein regarding the composition of the Bench in ***Manoharlal [5-Judge, lapse]*** (supra). A preliminary objection for recusal of the presiding Judge of the said Constitution Bench was sought on the ground that His Lordship was a part of the three-Judge Bench in ***Shailendra [3-Judge]*** (supra) wherein the correctness of the three-Judge Bench decision in ***Pune Municipal Corporation*** (supra) was doubted and by 2:1 majority, held to be *per incuriam.* It was contended that in ***Shailendra [3-Judge]*** (supra), His Lordship did not merely express reservations about the precedent i.e., ***Pune Municipal Corporation*** (supra), instead, His Lordship effectively annulled the judgment by asserting that it held no legal value, departing thereby from established principles of *stare decisis* and judicial discipline. Rejecting the aforesaid arguments, a detailed order was rendered by His Lordship in ***Indore Development Authority v. Manoharlal [5-Judge, recusal]***.[9] The plea of recusal was declined, and it was observed that *"accepting the plea of recusal would sound a death knell to the independent system of justice delivery where litigants would dictate participation of judges of their liking in particular cases or causes"*.[10] While the lead opinion was delivered by the concerned Judge, the four other member Judges on the Bench delivered a joint concurring opinion.

13. For completing the narrative, it is to be noted that the ball did not stop rolling with ***Manoharlal [5-Judge, lapse]*** (supra). By an order dated 16th July, 2020 in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki [Recall Order]***,[11] a three-Judge Bench (cor. Hon'ble Arun Mishra, Hon'ble Vineet Saran and Hon'ble M.R. Shah, JJ.) allowed several applications, thereby recalling the judgment in ***Pune Municipal Corporation*** (supra).

14. What is, therefore, laid bare by these facts is that firstly, ***Pune Municipal Corporation*** (supra) was doubted in ***Shailendra [2-Judge]*** (supra), whereafter it was declared *per incuriam*

9 [2019] 15 SCR 1085 : (2020) 6 SCC 304

10 (2020) 6 SCC 304, Para 45

11 2020 SCC OnLine SC 1471

in ***Shailendra [3-Judge]*** (supra), followed by its overruling in ***Manoharlal [5-Judge, lapse]*** (supra) and ultimately recalled on 16th July, 2020 in ***Harakchand Misirimal Solanki [Recall Order]*** (supra).

D. FACTS GIVING RISE TO THE REVIEW PETITIONS

15. Immediately after ***Pune Municipal Corporation*** (supra) was decided, several writ petitions came to be instituted not only in the High Court but also in different high courts across the country seeking similar declaration, viz. owing to the requisite conditions mentioned in Section 24(2) of the 2013 Act being met, land acquisition proceedings initiated under the 1894 Act stood lapsed. These RPs arise out of writ proceedings on the file of the High Court, which have since attained finality by reason of the judgments and orders under review.

16. The facts are noticed from the Review Petition arising out of the Writ Petition[12] instituted by the first respondent, K.L. Rathi Steels Limited, which is the lead matter. Relying upon the decision of this Court in ***Pune Municipal Corporation*** (supra) and similar line of decisions, the High Court *vide* its judgment and order dated 7th July, 2015, allowed the writ petition taking a view that the necessary ingredients of section 24(2), as interpreted by this Court, having been met, the acquisition proceedings under challenge therein are deemed to have lapsed. Aggrieved, the first respondent carried such judgment and order in a Civil Appeal[13] praying for it to be set aside. This Court, *vide* a common judgment and order dated 29th November, 2016 concerning various civil appeals, dismissed the appeals and granted a period of one year to the appellants (review petitioners herein) to exercise liberty granted under section 24(2) of the 2013 Act for initiation of acquisition proceedings afresh.

17. Availing what they call is a 'liberty' granted by this Court in ***Shailendra [3-Judge]*** (supra), the appellants in the Civil Appeal (review petitioners herein) approached this Court seeking a review of the aforesaid judgment and order dated 29th November, 2016. Although the review petition suffered from substantial delay, the same stood condoned by the said Division Bench after the split verdict.

12 W.P. (C) No. 9200/2014

13 Civil Appeal No. 11857/2016

18. It is relevant to mention at this stage that during the entire period of controversy, the observation in paragraph 217 of ***Shailendra [3-Judge]*** (supra) was construed as 'liberty' by not only the appellants in the Civil Appeal but also by other similarly placed appellants/ special leave petitioners leading them to approach this Court seeking review of all those decisions whereby, relying upon ***Pune Municipal Corporation*** (supra) and similar line of cases, it was declared that land acquisition proceedings were deemed to have lapsed under section 24(2) of the 2013 Act.

E. THE SPLIT VERDICT

19. Heavy reliance was placed by the review petitioners before the said Division Bench on paragraphs 365 and 366 of ***Manoharlal [5-Judge, lapse]*** (supra) and paragraph 217 of ***Shailendra [3-Judge]*** (supra). They also relied on ***Board of Control for Cricket in India v. Netaji Cricket Club***[14] in support of the contention that a party for sufficient reason could urge the court to exercise its review jurisdiction. On behalf of the respondent landowners, various decisions were cited to contend that the Explanation to Rule 1 of Order XLVII, CPC would not permit a review of the judgments/orders under review.

20. The presiding Judge allowed the review/recall petitions. Noting the specific overruling of ***Pune Municipal Corporation*** (supra) and all the decisions which were rendered following it by ***Manoharlal [5-Judge, lapse]*** (supra), and referring to paragraph 217 of the decision in ***Shailendra [3-Judge]*** (supra), the Hon'ble Judge felt that "some meaning" had to be given to such observations. The contention of the respondents that the case falls under Rule 1 of Order XLVII, CPC and the subsequent overruling of ***Pune Municipal Corporation*** (supra) cannot be a ground to review the earlier judgments and orders was rejected by reasoning that "here is a peculiar case where the earlier decision in *Pune Municipal Corporation* (supra), upon which reliance has been placed earlier, was itself doubted in the subsequent decision in the case of … and that the matter was referred to the Constitution Bench and thereafter the Constitution Bench has declared the law as above, more particularly paragraphs 365 and 366 of the judgment in the case of …".

14 [2005] 1 SCR 173 : 2005 4 SCC 741

21. Lastly, it was noted that in most of the cases that were sought to be reviewed, the lands had already been utilised by the beneficiaries of acquisition and in view of the orders passed declaring the deemed lapse of acquisition, "(T)he resultant effect would be to return the possession of the land/s which might have been used by the beneficiary authorities". It was, therefore held that the RPs should be allowed in the larger public interest and the authorities should be given an opportunity to put forward their case afresh, "which shall be in the larger public interest".

22. In contrast, the Hon'ble companion Judge while dissenting with the Hon'ble presiding Judge proceeded to examine the RPs on the basis of their very maintainability, in the light of the Explanation to Rule 1 of Order XLVII, CPC. Multiple decisions of this Court, on the parameters on which a review petition could be entertained by this Court, were examined and it was held that in view of the specific bar that the Explanation creates on taking into consideration the subsequent overruling of a determinative judgment, the RPs could not be held to be maintainable. ***Pune Municipal Corporation*** (supra) being good law as on date when the impugned judgments were rendered, it was held that the said impugned judgments could not be reviewed on the ground of ***Pune Municipal Corporation*** (supra) being overruled, the course of action being expressly prohibited by the Explanation to Rule 1 of Order XLVII. It was further held that the decisions relying on ***Pune Municipal Corporation*** (supra) had attained finality and were binding on the parties, and that the decision to review such final decisions would fly in the face of the public policy underlining the Explanation i.e., *interest reipublicae ut sit finis litium* (it is in the interest of the State that there should be an end to a litigation). In thus rejecting the RPs on the ground of maintainability, the Hon'ble Judge was guided, *inter alia*, by decisions of this Court in ***Chajju Ram v. Neki***[15] and ***Haridas Das v. Usha Rani Banik***[16] wherein this Court had held that the grounds for review laid down by Rule 1 of Order XLVII, CPC do not include within their ambit, the rehearing of a dispute solely on the ground that the judgment on which the decision in the dispute had been relied upon, was overruled. ***Netaji Cricket Club*** (supra) was distinguished by observing that "exercise

15 AIR 1922 PC 112

16 [2006] 3 SCR 87 : (2006) 4 SCC 78

of review jurisdiction in that case, based on a subsequent event was confined to purely the facts of the said case involving a controversy between rival Cricket Associations" and hence could not be applied as a general ratio.

F. SUBMISSIONS

23. It is as a consequence of the split-verdict that the RPs were heard by the present three-Judge Bench to decide the point of maintainability of the RPs and to settle the ancillary issues raised in ***K.L. Rathi Steels Limited*** (supra).

24. Though it may not be absolutely necessary to note the elaborate submissions advanced from the Bar by learned senior counsel/counsel for the parties since such submissions have been captured in the minutest detail in the split-verdict, for the sake of completeness, we shall briefly refer to the same.

25. Ms. Bhati, learned Additional Solicitor General, appearing on behalf of the review petitioners (the Govt. of NCT, Delhi), with all the passion at her command, argued that the RPs are maintainable and advanced, in support of maintainability, the following submissions:

a) The specific and categoric overruling of ***Pune Municipal Corporation*** (supra), and all other decisions in which ***Pune Municipal Corporation*** (supra) was followed, leads to the conclusion, in absolute terms, that land acquisition proceedings cannot be deemed to have lapsed under section 24(2) unless the conditions enumerated in paragraph 366 of ***Manoharlal [5-Judge, lapse]*** (supra) are satisfied.

b) *Vide* order dated 16th July, 2020 in ***Pune Municipal Corporation [Recall Order]*** (supra), the decision in ***Pune Municipal Corporation*** (supra) has been recalled and the position of law, as expounded therein, stands erased, leading the findings operating *inter se* the parties to cease.

c) To dismiss the review/recall petitions at the threshold as not being maintainable will lead to a great injustice and undermine the public interest, particularly in the light of the 'liberty' granted by this Court in ***Shailendra [3-Judge]*** (supra). The RPs deserve to be decided on merits on a case-to-case basis on various parameters including the stage of litigation, the reason for

incomplete acquisition by the State, stage of acquisition, status of possession and compensation, reasons for the delay in filing review/recall petitions, and the purpose of the acquisition.

d) Urging this Court to equally weigh equitable considerations involved in the matter, Ms. Bhati prayed that the RPs may not be dismissed at the threshold.

26. Mr. Kailash Vasdev, learned senior counsel, representing the Delhi Development Authority contended that having regard to the peculiar facts and circumstances that have emerged since overruling of ***Pune Municipal Corporation*** (supra) by ***Manoharlal*** ***[5-Judge, lapse]*** (supra), public interest indeed is one of the factors requiring paramount consideration and, on the anvil thereof, the opinion of the Hon'ble presiding Judge of the said Division Bench ought to be accepted. According to him, it is justice that the courts are duty bound to dispense and it would not amount to dispensing justice if the respondent landowners' objection to the maintainability of the RPs, based on an overruled judgment, were upheld.

27. Mr. Sen, learned senior counsel, also appearing on behalf of the Delhi Development Authority, apart from adopting the submissions of Ms. Bhati and Mr. Vasdev, asserted the maintainability of the RPs by submitting as follows:

a) Maintainability of the RPs ought not to be decided by a blanket order as the RPs have been filed not on the solitary ground of overruling of ***Pune Municipal Corporation*** (supra) but in terms of the 'liberty' granted by this Court in ***Shailendra*** ***[3-Judge]*** (supra), which has the force of law under Article 141 of the Constitution. *In arguendo*, Article 137 comes to the rescue of the review petitioners granting them the liberty to file a review.

b) Public interest must be given precedence over private interest in case of a conflict. The present lands are required for implementing residential schemes for low-income groups and significant construction had already been carried out in other acquired portions.

c) The jurisdiction under Article 142 of the Constitution ought to be invoked to ensure substantial justice considering the threat to public good involved in the matter.

28. Urging that the RPs are maintainable and deserve a hearing on merits, Mr. Sen urged that the RPs be held maintainable and heard on its own merits.

29. The landowner respondents, represented by Mr. Divan, Mr. Giri, Mr. Chib and Mr. Jain, learned senior counsel and by Ms. Swaraj, learned counsel, supported the opinion expressed by the Hon'ble companion Judge on the said Division Bench and urged this Bench to take the same recourse. The following submissions were advanced by them:

a) The decision in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) does not come to the rescue of the review petitioners, it must operate prospectively and cannot reopen claims which have attained finality.

b) ***BSNL v. Union of India***[17] and ***Neelima Srivastava v. State of U.P.***[18] were relied upon to support the contention that overruling of ***Pune Municipal Corporation*** (supra) merely takes away the precedential value; it, however, does not affect the binding nature of a decision that has attained finality *inter se* the parties.

c) This Court has limited jurisdiction available in review and in terms of the Explanation to Rule 1 of Order XLVII, CPC, overruling of earlier judgments would not constitute a ground for review.

d) Further, the decision in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) did not, in any manner whatsoever, endorse the purported liberty granted by ***Shailendra*** ***[3-Judge]*** (supra) in paragraph 217 to the review petitioners to file the present RPs; on the contrary, it has been overruled. Moreover, ***Shailendra*** ***[3-Judge]***, having been decided by a Bench of co-equal strength, could neither have granted liberty to file the RPs, nor could have declared ***Pune Municipal Corporation*** (supra) *per incuriam*.

e) Most of the RPs had been filed after periods of inordinate delay where no sufficient explanation had been provided for the same by the review petitioners. In any event, the present RPs were also filed belatedly after the purported liberty granted by this Court in ***Shailendra*** ***[3-Judge]*** (supra).

17 (2006) 3 SCC 1

18 [2021] 8 SCR 167 : 2021 SCC OnLine SC 610

30. Praying that the RPs are not maintainable, the learned counsel urged this Court to dismiss them *in limine.*

G. QUESTIONS BEFORE US

31. The parties have been heard and the materials on record perused, in the light of the law regulating exercise of power by the Supreme Court to review its earlier judgment/order under the extant laws. We are of the opinion that on the rival contentions, the following questions arise for answers on the facts of these RPs:

a) Can the review petitioners, on the basis of the pleadings in the RPs, be considered persons aggrieved?

b) Whether the last sentence of paragraph 217 of ***Shailendra [3-Judge]*** (supra) grants 'liberty' to any party to seek a review of ***Pune Municipal Corporation*** (supra)?

c) If the answer to (b) is in the affirmative, did such 'liberty' survive after the decision in ***Manoharlal [5-Judge, lapse]*** (supra)?

d) Can the RPs be held to be maintainable, giving due regard to the Explanation in Rule 1 of Order XLVII, CPC vis-à-vis ***Manoharlal [5-Judge, lapse]*** (supra)?

e) If the answer to (d) is in the negative, do the RPs still deserve to be entertained on the other grounds urged therein?

f) Are the miscellaneous applications maintainable?

32. While answering the aforesaid questions, we feel obliged and, hence, intend to address certain ancillary issues too.

H. LAW ON REVIEW JURISDICTION

33. The law regulating exercise of review jurisdiction by the Supreme Court is so well-settled that any detailed discussion would, in the first place, seem to be unnecessary. However, we cannot overlook the vociferous arguments on behalf of both the review petitioners and the respondents that the Hon'ble Judges of the said Division Bench have erred in their respective appreciation of the law relating to exercise of review jurisdiction by the Supreme Court. In view thereof and particularly in the light of the authorities considered in the split verdict and those which have been cited in course of the debate that unfolded before us, calls for a relook at the relevant provisions

and the precedents bearing in mind the respective approaches of the Hon'ble Judges in the split verdict: one of them has given public interest paramount importance, no matter what the law ordains; while the other has stuck to the law, no matter what public interest demands.

34. Power of the Supreme Court to review its own judgment and/or order has its genesis in Articles 137 and 145 of the Constitution read with Order XLVII of the Supreme Court Rules, 2013 ("2013 Rules", hereafter). Rule 1 of Order XLVII of the 2013 Rules, in no uncertain terms, lays down that no application for review in a civil proceeding will be entertained by this Court except on the ground mentioned in Rule 1 Order XLVII, CPC. Review in civil proceedings is governed by section 114 of the CPC read with Order XLVII thereof. It would, therefore, not be inapt to read section 114 and Rule 1 of Order XLVII, CPC once again:

> 114. Review.— Subject as aforesaid, any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed by this Code, or
>
> (*c*) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.
>
> ORDER XLVII
>
> 1. Application for review of judgment.— (1) Any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed, or
>
> (*c*) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not

within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

35. Read in conjunction with section 114 of the CPC, Order XLVII Rule 1 thereof has three broad components which need to be satisfied to set the ball for a review in motion – (i) 'who', means the person applying must demonstrate that he is a person aggrieved; (ii) 'when', means the circumstances a review could be sought; and (iii) 'why', means the grounds on which a review of the order/decree ought to be made. Finally, comes the 'what', meaning thereby the order the Court may make if it thinks fit. Not much attention is generally required to be paid to components (i) and (ii), because of the overarching difficulties posed by component (iii). However, in deciding this reference, component (i) would also have a significant role apart from the Explanation inserted by way of an amendment of the CPC.

36. Let us now briefly attempt a deeper analysis of the provision. We are conscious that the provisions relating to review have been considered in a catena of decisions, but the special features of these RPs coupled with the fact that two Hon'ble Judges of this Court have delivered a split verdict make it imperative for us not to miss any significant aspect.

37. A peep into the legislative history would reveal that Rule 1 of Order XLVII, CPC, which is part of the First Schedule appended thereto, bears very close resemblance to its predecessor statutes, i.e., Section 623 of the Codes of Civil Procedure of 1877 and 1882. The solitary legislative change brought about in 1976 in Order XLVII, CPC resulted in insertion of an Explanation at the foot of Rule 1, which is at the heart of the controversy here.

38. The first and foremost condition that is required to be satisfied by a party to invoke the review jurisdiction of the court, whose order or decree, as the case may be, is sought to be reviewed, is that the said party must be someone who is aggrieved by the order/decree. The

words "person aggrieved" are found in several statutes; however, the meaning thereof has to be ascertained with reference to the purpose and provisions of the statute. In one sense, the said words could correspond to the requirement of *'locus standi'* in relation to judicial remedies. The need to ascertain the *'locus standi'* of a review petitioner could arise, if he is not a party to the proceedings but claims the order or decree to have adversely affected his interest. In terms of Order XLVII of the 2013 Rules read with Order XLVII, CPC, a petition for review at the instance of a third party to the proceedings too is maintainable, the quintessence being that he must be aggrieved by a judgment/order passed by this Court. This is what has been held in ***Union of India v. Nareshkumar Badrikumar Jagad***.[19] That is, of course, not the case here. Normally, in the context of Rule 1 of Order XLVII, CPC, it is that person (being a party to the proceedings) suffering an adverse order and/or decree who, feeling aggrieved thereby, usually seeks a review of the order/decree on any of the grounds outlined therein. The circumstances where a review would lie are spelt out in clauses (a) to (c).

39. Order XVLII does not end with the circumstances as section 114, CPC, the substantive provision, does. Review power under section 114 read with Order XLVII, CPC is available to be exercised, subject to fulfilment of the above conditions, on setting up by the review petitioner any of the following grounds:

(i) discovery of new and important matter or evidence; or

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

(iii) any other sufficient reason.

40. Insofar as **(i)** (supra) is concerned, the review petitioner has to show that such evidence (a) was actually available on the date the court made the order/decree, (b) with reasonable care and diligence, it could not be brought by him before the court at the time of the order/decree, (c) it was relevant and material for a decision, and (d) by reason of its absence, a miscarriage of justice has been caused in the sense that had it been produced and considered by the court, the ultimate decision would have been otherwise.

19 [2018] 14 SCR 239 : (2019) 18 SCC 586

41. Regarding **(ii)** (supra), the review petitioner has to satisfy the court that the mistake or error committed by it is self-evident and such mistake or error can be pointed out without any long-drawn process of reasoning; and, if such mistake or error is not corrected and is permitted to stand, the same will lead to a failure of justice. There cannot be a fit-in-all definition of "mistake or error apparent on the face of the record" and it has been considered prudent by the courts to determine whether any mistake or error does exist considering the facts of each individual case coming before it.

42. With regard to **(iii)** (supra), we can do no better than refer to the traditional view in ***Chhajju Ram*** (supra), a decision of a Bench of seven Law Lords of the Judicial Committee of the Privy Council. It was held there that the words "any other sufficient reason" means "a reason sufficient on grounds at least analogous to those specified immediately previously", meaning thereby **(i)** and **(ii)** (supra). Notably, ***Chhajju Ram*** (supra) has been consistently followed by this Court in a number of decisions starting with ***Moran Mar Basselios Catholics v. Most Rev. Mar Poulose Athanasius***.[20]

43. There are recent decisions of this Court which have viewed 'mistake' as an independent ground to seek a review. Whether or not such decisions express the correct view need not detain us since the review here is basically prayed in view of the subsequent event.

44. As noted above, the Explanation in Rule 1 Order XLVII was inserted in 1976. It reads:

> "*Explanation*.— The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment."

45. The above insertion was preceded by a recommendation contained in the 54th report of the Law Commission. The decisions in ***Syed Liaqat Husain v. Mohd. Razi***,[21] ***Lachhmi Narain Balu v. Ghisa Bihari***[22] and ***Patel Naranbhai Jinabhai v. Patel Gopaldas***

20 [1955] 1 SCR 520 : AIR 1954 SC 526

21 AIR 1944 Oudh 198

22 AIR 1960 Punjab 43

Venidas [23] held that the fact that the view of the law taken in a judgment has been altered by a subsequent decision of a superior court in another case, is not a ground for review of such judgment. On the contrary, in ***Thadikulangara Pylee's Son Pathrose v. Ayyazhiveettil Lakshmi Amma's son Kuttan*** [24] law was laid down that the fact that a subsequent binding authority took a different view of the law from what had been taken in the decision sought to be reviewed, was a good ground for review. Upon consideration of these decisions, the Law Commission had recommended as follows:

> "**Recommendation**
>
> It is felt that the position should be settled on this point. If the law is altered by judicial pronouncement of a higher court, the party affected should not, in our opinion, have a right to get the judgment reviewed.
>
> An amendment adopting the Kerala view will create a serious practical problem. It will keep alive the possibility of review indefinitely. Under the Limitation Act, the period of limitation for an application for review has been prescribed, but the delay can, 'for sufficient cause', be condoned by the Court under that Act. Where an application for review is made on the ground of a later binding authority, the party applying for review will usually be able to plead 'sufficient cause', because it is only when the superior court has made a pronouncement that he will have a ground for review; and he can, therefore, argue with considerable force that there was 'sufficient cause' for his not making the application earlier.
>
> **Recommendation**
>
> We, therefore, recommend that the following Explanation should be added below Order 47/XLVII Rule 1." [25]

23 AIR 1972 Gujarat 229

24 AIR 1969 Kerala 186

25 "*Explanation.*— The fact that the view taken on a question of law in the judgment of a Court has been reversed or modified by the subsequent decision of a superior court in another case is not a ground for review of the judgment."

46. A comparative study of the terms of the Explanation recommended by the Law Commission and the Explanation, which ultimately had the approval of the Parliament and came to be inserted in Order XLVII are not in variance except alteration of some words.

47. It is of some worth to note that even prior to the decisions of the Oudh, Punjab and Gujarat High Courts considered by the Law Commission in its 54th report, two chartered high courts of the country had taken the same view. The High Court at Calcutta way back on 15th February, 1927 in ***Sudananda Moral v. Rakhal Sana***,[26] considering the decision of the Privy Council in ***Rajah Kotagiri Venkata Subbamma Rao v. Raja Vellanki Venkatrama Rao***,[27] opined that reversal of a relied-on decision subsequent to the decree in the suit was not a ground for review of the judgment. Also, the High Court of Madras in ***Ravella Krishnamurthy v. Yarlagadda*** [28] observed that for review on the ground of discovery of new and important matter, such matter must be in existence at the date of the decree. The exposition of law on the point, therefore, dates back to almost a quarter and a century back.

I. PRECEDENTS CONSIDERING THE EXPLANATION

48. There are a few decisions of this Court where the Explanation to Rule 1 of Order XLVII, CPC has since been considered.

49. The earliest decision is ***Shanti Devi v. State of Haryana*** [29] where the Court rejected the review petition by holding that the contention that the judgment sought to be reviewed was overruled in another case subsequently is no ground for reviewing the said decision. Explanation to Order XLVII Rule 1 of the Code of Civil Procedure clearly rules out such type of review proceedings.

50. Reference may next be made to the decision in ***Union of India v. Mohd Nayyar Khalil***.[30] There, the impugned order had followed a three-Judge Bench judgment of this Court. Such judgment was admittedly pending consideration before a Constitution Bench. Taking note of such facts, it was held that:

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26 XXXI CWN 822 : AIR 1927 Cal 920

27 LR (1899-1900) 27 IA 197

28 AIR 1933 Madras 485

29 (1999) 5 SCC 703

30 (2000) 9 SCC 252

> "2. *** Even if the question regarding the legality of the said three-Judge Bench decision is pending scrutiny before the Constitution Bench the same is not relevant for deciding the review petition for two obvious reasons — firstly, this was not pointed out to the Bench which decided the civil appeal; and secondly, by the time the impugned order was passed the three-Judge Bench judgment had not been upset and even in future if the Constitution Bench takes a contrary view it would be a subsequent event which cannot be a ground for review as is clear from the explanation to Order 47 Rule 1(2) of the Code of Civil Procedure ***".
>
> (emphasis supplied)

The principle, thus, laid down is that a decision being upset in the future would be a subsequent event which could not be a ground to seek review.

51. In ***Nand Kishore Ahirwar v. Haridas Parsedia***,[31] a Bench of three Hon'ble Judges, while dismissing the review petitions before it, made pertinent observations reaching out to the very core of the said Explanation. This Court observed that simply because there has been a Constitution Bench decision, passed in the aftermath of the judgment impugned, would be no ground for a review of the said judgment. It also went on to observe that a reference to a Constitution Bench would stand on a still weaker footing (emphasis supplied).

52. The question arising for decision in ***State of West Bengal v. Kamal Sengupta***[32] was whether a tribunal established under section 4 of the Administrative Tribunals Act, 1985 can review its decision on the basis of a subsequent order/decision/judgment rendered by a coordinate or larger Bench or any superior court or on the basis of subsequent event/development. It was contended on behalf of the State that any subsequent decision on an identical or similar point by a coordinate or larger Bench or even change of law cannot be made the basis for recording a finding that the order sought to be reviewed suffers from an error apparent on the face of the record. After considering a host of decisions with a fine-tooth comb, the

31 (2001) 9 SCC 325

32 [2008] 10 SCR 4 : (2008) 8 SCC 612

Court went on to cull out the principles of review in paragraph 35 of the decision which is extracted hereunder:

> "35. The principles which can be culled out from the abovenoted judgments are:
>
> (*i*) The power of the Tribunal to review its order/decision under Section 22(3)(*f*) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
>
> (*ii*) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
>
> (*iii*) The expression 'any other sufficient reason' appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
>
> (*iv*) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(*f*).
>
> (*v*) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
>
> (*vi*) A decision/order cannot be reviewed under Section 22(3)(*f*) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
>
> (*vii*) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
>
> (*viii*) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."
>
> (emphasis supplied)

53. This Court, in ***Subramanian Swamy v. State of Tamil Nadu***,[33] has read the Explanation as follows:

> "52. *** The Explanation to Order XLVII, Rule 1 of Code of Civil Procedure 1908 provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed."

54. The final one is a decision of the Constitution Bench in ***Beghar Foundation v. K.S. Puttaswamy***.[34] The majority was of the following view:

> "2. The present review petitions have been filed against the final judgment and order dated 26-9-2018. We have perused the review petitions as well as the grounds in support thereof. In our opinion, no case for review of judgment and order dated 26-9-2018 is made out. We hasten to add that change in the law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review. The review petitions are accordingly dismissed."

J. OTHER PRECEDENTS ON REVIEW

55. Precedents on the aspect of review are legion and we do not wish to burden this judgment by tracing all the decisions. However, only a few that were considered in the split verdict, some which were cited by the parties before us and some that have emerged on our research on the subject and considered relevant, are discussed/referred to here.

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33 [2014] 1 SCR 308 : (2014) 5 SCC 75

34 [2021] 1 SCR 681 : (2021) 3 SCC 1

56. Two of these decisions, viz. ***A.C. Estates v. Serajuddin***[35] and ***Raja Shatrunji v. Mohd. Azmat Azim Khan***[36] were rendered prior to introduction of the Explanation in Rule 1 of Order XLVII, CPC. Significantly, even without the Explanation, substantially the same view was expressed.

57. In ***A.C. Estates*** (supra), a bench of three Hon'ble Judges of this Court, while dismissing the civil appeal and upholding the order of the High Court at Calcutta, held as follows:

> "Our attention in this connection is drawn to Section 29(5) of the Act which gives power to the Controller to review his orders and the conditions laid down under Order 47 of the Code of Civil Procedure. But this cannot be a case of review on the ground of discovery of new and important matter, for such matter has to be something which exist at the date of the order and there can be no review of an order which was right when made on the ground of the happening of some subsequent event (see *Rajah Kotagiri Venkata Subbamma Rao* v. *Raja Vellanki Venkatrama Rao*[37]*).*
>
> (emphasis supplied)

58. The next is the decision of a Bench of two Hon'ble Judges of this Court in ***Raja Shatrunji*** (supra). While dismissing an appeal and upholding the order of the Allahabad High Court, reference was made to "any other sufficient reason" in Rule 1 of Order XLVII, CPC and the decision in ***Rajah Kotagiri Venkata Subbamma Rao*** (supra) whereupon it was held:

> "13. *** the principles of review are defined by the Code and the words 'any other sufficient reason' in Order 47 of the Code would mean a reason sufficient on grounds analogous to those specified immediately previously in that order. The grounds for review are the discovery of new matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be

35 [1966] 1 SCR 235

36 [1971] Supp. 1 SCR 433 : (1971) 2 SCC 200

37 LR (1899-1900) 27 IA 197

> produced by him at the time when the decree was passed or order made, or the review is asked for on account of some mistake or error apparent on the face of the record. In *Rajah Kotagiri Venkata Subbamma Rao* v. *Rajah Vellanki Venkatrama Rao* Lord Davey at p. 205 of the Report said that 'the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event'."
>
> (emphasis supplied)

59. What was laid down in ***Netaji Cricket Club*** (supra), upon reading Order XLVII, CPC, can be better understood in the words of the Hon'ble Judge authoring the judgment. The relevant passages are quoted hereunder:

> "88. *** Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.
>
> 89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.
>
> 90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*'."

In the next paragraph, Their Lordships quoted a portion of paragraph 32 from the Larger Bench decision in ***Moran Mar Basselios Catholics*** (supra) but held that "the said rule is not universal".

60. ***Netaji Cricket Club*** (supra) was followed in ***Jagmohan Singh v. State of Punjab***.[38] It was held there that Rule 1 of Order XLVII, CPC does not preclude the High Court or a court to take into consideration any subsequent event and that if imparting of justice in a given situation is the goal of the judiciary, the court may take into consideration (of course on rare occasions) the subsequent events.

61. This Court, in paragraph 20 of the decision in ***Kamlesh Verma v. Mayawati***,[39] after surveying previous authorities and following ***Chhajju Ram*** (supra) and ***Moran Mar Basselios Catholics*** (supra) summarized the principles of review and illustrated when a review would be and would not be maintainable. Despite the observation in ***Netaji Cricket Club*** (supra) limiting ***Moran Mar Basselios Catholics*** (supra), ***Kamlesh Verma*** (supra) thought it fit to agree with the latter decision.

62. Recently, in ***S. Madhusudhan Reddy v. V. Narayana Reddy***,[40] a Bench of three Hon'ble Judges has accepted the meaning of the ground "for any other sufficient reason" as explained in ***Chhajju Ram*** (supra), ***Moran Mar Basselios Catholics*** (supra) and ***Kamlesh Verma*** (supra).

K. ANALYSIS

63. Before answering question (a), we take up questions (b), (c) and (d) first with (b) and (c) together for answers.

64. It was with more than sufficient intensity, force, vehemence and seriousness that learned senior counsel appearing on behalf of the review petitioners argued, based on their understanding of paragraph 217 of ***Shailendra*** ***[3-Judge]*** (supra) that, irrespective of anything else, the same did grant them 'liberty' to apply for review, that availing such 'liberty' granted by this Court the RPs were filed, and that this Bench being of co-equal strength, instead of taking a different view, ought to read the last sentence of paragraph 217 in the manner they

38 [2008] 7 SCR 117 : (2008) 7 SCC 38

39 [2013] 11 SCR 25 : (2013) 8 SCC 320

40 [2022] 11 SCR 42 : 2022 SCC OnLine SC 1034

(learned senior counsel) understood it, and to accept the same for holding the RPs maintainable.

65. For reasons more than one, the decision in ***Shailendra*** ***[3-Judge]*** (supra) cannot come to the rescue of the review petitioners.

66. The first reason is that the submission of a 'liberty' being granted by ***Shailendra*** ***[3-Judge]*** (supra) makes it abundantly clear that but for such 'liberty', the review petitioners would not have even thought of applying for review since the law on the point was no longer *res integra*. It is, therefore, an admission on their part that the judgments and orders under review, as on the dates they were delivered/made, were neither erroneous (which is a possible ground for appeal, if an appeal were allowed by law) nor suffering from any error apparent on the face of the record (a possible ground for review). Therefore, merely based on ***Shailendra*** ***[3-Judge]*** (supra), a subsequent event, the review jurisdiction of this Court which is a limited jurisdiction could not have been invoked.

67. Next, we need to consider whether the last sentence of paragraph 217 of ***Shailendra*** ***[3-Judge]*** (supra) can at all be read and understood to have granted a 'liberty' of the nature claimed by the review petitioners.

68. This Court sitting in a combination of five-Hon'ble Judges in ***Vikramjit Singh v. State of Madhya Pradesh***[41] had the occasion to consider an appeal where the facts were quite alike. A learned Judge (Varma, J.) of the Madhya Pradesh High Court had granted bail to the appellant. While the appellant was enjoying the concession of bail and such order had not been challenged, a co-accused moved for bail. Noticing the earlier order granting bail in favour of the appellant, another learned Judge (Gupta, J.) in his order observed that the appellant did not deserve to be enlarged on bail, and that it was "a fit case where the State should apply for cancellation of bail of all the accused persons". In view of this observation, the State filed a petition for cancellation of the bail order passed by Varma, J. In this application, neither any additional fact was stated nor any allegation was made against the appellant which could be relevant for cancellation of the earlier bail order. The prayer for cancellation was founded only on the observations in the order of Gupta, J.,

41 1992 Supp (3) SCC 62

which was verbatim quoted in the application. The same was listed before Gupta, J. who by the impugned order cancelled the earlier order of Varma, J. and while so doing made strong remarks against grant of bail in cases like the one under consideration. This order of cancellation was carried in appeal before this Court. The Constitution Bench observed that no bench can comment on the functioning of a co-ordinate bench of the same court, much less sit in judgment as an appellate court over its decision (emphasis supplied). While allowing the appeal, it was further observed that the State not having filed any appeal against the order of Varma, J. granting bail to the appellant, the same had become final so far as the high court was concerned and that in the absence of any allegation of misuse of the concession of bail by the appellant, Gupta, J. had no authority to upset the earlier order of Varma, J (emphasis supplied). In conclusion, it was also observed as follows:

> "2. *** That which could not be done directly could also not be done indirectly. Otherwise a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary ***."

69. We do believe that what was said of a high court in this decision, would squarely apply to this Court. The Supreme Court of India, a revered institution, is one Court which operates through separate Benches owing to administrative exigency and practical expedience. These Benches are essential to efficiently manage the diverse and voluminous cases that come before the Court and to discharge the solemn judicial duty for which the Court exists. It would be an erroneous perception to regard this division as a cause for din within the Court. When faced with a peculiar circumstance as before us presently, one might just be compelled to ask whether one voice of this Court is louder than another? The answer to this is that this Court, as one, might speak through a singular voice or several voices as the occasion might demand**.** In any event, these voices, though marked by their individual tone(s), enjoin to form a collective melody,

akin to a choir of justice. It cannot be forgotten that no matter the strength, all these voices bear the symbol of the Supreme Court of India. While we may have our specific functions and jurisdictions, the collective objective is to find our bearings towards *धर्म* (duty) and *न्याय* (justice). In this sense, it can be said that each Bench speaks for the Court as a whole, contributing to the intricate symphony of justice that defines the Supreme Court of India.

70. It is here that the need arises for a Bench to be careful, cautious, and circumspect while being critical of a precedent of a previous Bench. Every Bench is supposed to bear in mind two overriding considerations. The first is that of deference to the views expressed by a Bench in a primary decision and the other is maintaining judicial discipline and propriety if, upon threadbare consideration, it is found difficult to assent to the justification for such primary decision. In such an eventuality, dignity and decency would demand disagreement voiced by the subsequent Bench and reference of the matter to the Hon'ble the Chief Justice for constitution of a larger Bench in a tone that does not sound like critical observations and adverse comments in respect of the primary decision rendered by a coordinate Bench.

71. Here too, the grounds of the RPs refer to the 'liberty' granted by the decision in ***Shailendra*** ***[3-Judge]*** (supra). The question, as noted above, is whether the Bench while deciding ***Shailendra*** ***[3-Judge]*** (supra) could have granted any 'liberty' to the review petitioners to apply for review, assuming that the words "open to be reviewed in appropriate cases" did mean 'liberty to apply'.

72. Prior to attempting an answer to that question, it would also be apposite to note what the dicta in ***Central Board of Dawoodi Bohra Community v. State of Maharashtra***[42] is, as laid down by another Constitution Bench of this Court. The legal position summed up in paragraph 12 reads as follows:

> "12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

42 [2004] Supp. 6 SCR 1054 : (2005) 2 SCC 673

(*1*) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(*2*) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(*3*) The above rules are subject to two exceptions: (*i*) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (*ii*) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. ***"

(emphasis supplied)

73. Although the larger Bench in ***Shailendra [3-Judge]*** (supra) appears to have considered in excess of 250 decisions, the above opinions of the Constitution Benches do not seem to have been presented before it. It is, thus, clear as crystal from the majority opinion delivered by Hon'ble Arun Mishra and Hon'ble A.K. Goel, JJ. that recourse was taken to declare ***Pune Municipal Corporation*** (supra) *per incuriam*

without having the benefit of the caution sounded by this Court in ***Vikramjit Singh*** (supra) and ***Central Board of Dawoodi Bohra Community*** (supra).

74. Having regard to the opinions expressed by Constitution Bench decisions of this Court, there is absolutely no scope for a Bench of three-Hon'ble Judges to declare a previous decision of a Bench of co-equal strength *per incuriam*. ***Shailendra*** ***[3-Judge]*** (supra), at the highest, could have doubted ***Pune Municipal Corporation*** (supra) and referred it for decision by a yet larger Bench but could not have, by any stretch of reasoning, declared it *per incuriam*. But, the same logic applies to this Bench too. Respectfully following the binding dictum in ***Central Board of Dawoodi Bohra Community*** (supra) and also having regard to our sense of judicial discipline and propriety, we restrain ourselves from declaring ***Shailendra*** ***[3-Judge]*** (supra) as *per incuriam* notwithstanding our firm conviction in this behalf.

75. However, nothing much turns on our restraint for there are weightier reasons to reject the contention of the review petitioners; and this, we say, to specifically answer question (c).

76. In paragraph 365 of ***Manoharlal*** ***[5-Judge, lapse]*** (supra) itself, it has been held by the Constitution Bench that ***Shailendra*** ***[3-Judge]*** (supra) did not have the occasion to consider certain aspects for which that decision cannot prevail. Learned senior counsel for the respondents, based on such statement, contended that ***Shailendra*** ***[3-Judge]*** (supra) stands overruled. This submission has been disputed by learned senior counsel for the review petitioners. According to them, ***Shailendra*** ***[3-Judge]*** (supra) has not been expressly overruled; only because of aspects referred to in paragraph 365 and the discussion preceding, it ceases to be a precedent.

77. We have not held ***Shailendra*** ***[3-Judge]*** (supra) to be *per incuriam* for the reason indicated above but the statement in paragraph 365 of ***Manoharlal*** ***[5-Judge, lapse]*** (supra) has to be given some meaning. Although it is true that ***Shailendra*** ***[3-Judge]*** (supra) was not expressly overruled by ***Manoharlal*** ***[5-Judge, lapse]*** (supra), what stands out as a direct impact of paragraph 365 thereof is that ***Shailendra*** ***[3-Judge]*** (supra), not having considered certain vital aspects and more particularly as to how the conjunction 'or' in sub-section (2) of section 24 of the 2013 Act has to be read as well as the proviso thereto, the very basis for ***Shailendra*** ***[3-Judge]*** (supra)

to declare ***Pune Municipal Corporation*** (supra) *per incuriam* stands removed. Since the reasoning for ***Shailendra*** ***[3-Judge]*** (supra) to declare ***Pune Municipal Corporation*** (supra) *per incuriam* does not survive, it would be unreasonable and inappropriate to hold that the consequential observation would nevertheless survive. Significantly, in ***Manoharlal*** ***[5-Judge, lapse]*** (supra), one does not find any observation of like nature as in paragraph 217 of ***Shailendra*** ***[3-Judge]*** (supra).

78. That apart, being members of a larger Bench of co-equal strength as in ***Shailendra*** ***[3-Judge]*** (supra), we are not precluded by any law from interpreting the last sentence of paragraph 217 of the said decision and to say what the Court exactly intended even if it is assumed notwithstanding what has been said in paragraph 365 of ***Manoharlal*** ***[5-Judge, lapse]*** (supra) that the observation in paragraph 217 survives. In our humble understanding, what the majority in ***Shailendra*** ***[3-Judge]*** (supra) intended to say is that if review petitions were pending on the date of the decision, i.e., 8th February, 2018, seeking review of decisions which had been rendered relying on the decision in ***Pune Municipal Corporation*** (supra), such review petitions could be entertained and considered on the basis of the discussion in ***Shailendra*** ***[3-Judge]*** (supra) declaring ***Pune Municipal Corporation*** (supra) *per incuriam* and the decisions reviewed; nothing more, nothing less. We do not think that the majority in ***Shailendra*** ***[3-Judge]*** (supra) could have and did, in fact, give a *carte blanche* to the land acquiring authorities to apply for review of decisions already made by courts relying on the decision in ***Pune Municipal Corporation*** (supra), even though the remedy of appeal or review had not been pursued earlier and without the successful landowners being on record before the court.

79. The role of the Court, it is needless to observe, is to adjudicate; it cannot, in the absence of exercising its advisory jurisdiction under Article 143 of the Constitution, take upon itself the role of the advisor to any party to the proceedings, to wit, the land acquiring authorities. The maxim heavily relied on by the review petitioners, i.e., *actus curiae neminem gravabit*, in such a situation would kick in to prevent any harmful act being perpetrated.

80. There is another perspective which cannot be lost sight of. If the understanding of learned senior counsel for the review petitioners

of the relevant sentence in paragraph 217 of ***Shailendra*** ***[3-Judge]*** (supra) is accepted, it would result in utter chaos and confusion in the justice delivery system apart from disturbing the principle of finality of judicial decisions. Should we read "open to be reviewed" as connoting a 'liberty' granted to apply for review, any number of review petitions could be filed based on such liberty for review of decisions between parties which have attained finality not only in this Court but also in the high courts. From the practical point of view, the results could be pernicious. A landowner, satisfied with a final decision of a court, could find himself requiring to contest a review petition filed on the basis of the 'liberty' granted by none other than the Supreme Court of India in proceedings where such landowner was not even noticed. We would be inclined to the thought that no court, much less the Supreme Court (because of its status as the apex court), should pass any judicial order affecting the right of a party who has not been put on notice. If such an order is passed, there cannot be a more egregious violation of principles of natural justice.

81. Notably, if a judgment and/or order has attained finality because a judicial remedy is either not available in law or even if available, such remedy has been lost, it is not open for a higher court of law by a judicial fiat either to create a remedy for the party on the losing side to pursue or to grant liberty to him to pursue an otherwise available remedy - which by passage of time might have been lost - behind the back of a party who would obviously be seriously affected if he were compelled to contest the proceedings once again. Such an act of court would be without the authority of law, and this is precisely what ***Vikramjit Singh*** (supra) has held.

82. Moreover, as on the dates the RPs were filed, the decision in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) had not seen the light of the day. A review petition, under the law, cannot be filed in anticipation of a favourable judgment in the future.

83. For the reasons discussed above, we cannot be persuaded to accept that the phrase "open to be reviewed in appropriate cases" occurring in paragraph 217 of the decision in ***Shailendra*** ***[3-Judge]*** (supra) could have been perceived by the review petitioners as opening up an avenue for them to apply for review. Assuming *arguendo* that the contention touching 'liberty' granted by ***Shailendra*** ***[3-Judge]*** (supra)

is correct, the plinth thereof crumbles by reason of paragraph 365 of ***Manoharlal*** ***[5-Judge, lapse]*** (supra) and, therefore, is rendered non-existent.

84. All these aspects, we say so with respect, escaped the attention of the Hon'ble Judge presiding over the said Division Bench. His Lordship's opinion on the observations made in ***Manoharlal*** ***[5-Judge, lapse]*** and ***Shailendra*** ***[3-Judge]*** (supra) are erroneous.

85. Questions (b) and (c) are answered accordingly, against the review petitioners.

86. Let us now move on to question (d) to answer it.

87. The decision in ***Manoharlal*** ***[5-Judge, lapse]*** (supra), according to the respondents, did not afford a ground for maintainability of the RPs while the contrary is argued by the review petitioners. According to Ms. Bhati, an aggrieved party can seek a review "for any other sufficient reason" and overruling of ***Pune Municipal Corporation*** (supra) followed by recall thereof brings the claims of the review petitioners within the coverage of this particular ground. That apart, it has been urged that when miscarriage of justice occasioned due to an earlier flawed decision is brought to the notice of this Court and when public interest would be a casualty resulting from the operation of such earlier decision, it ought to be the Court's duty to pass appropriate orders to set things right.

88. It has been noted that prior to the Explanation being inserted in Rule 1 Order XLVII, with the sole exception of the Kerala High Court, there were decisions of the Privy Council dating back to the commencement of the twentieth century and at least of five High Courts, starting from 1927, to the effect that a subsequent judgment of a higher court reversing the judgment relied on in the order under review would not afford a ground for review. There are also at least half a dozen precedents of this Court reiterating such position of law, *albeit* with the aid of the Explanation.

89. The relevant principles deducible from the precedents on the Explanation to Rule 1 that we have considered, for the purpose of deciding the present reference, are as follows:

a) in case of discovery of a new or important matter or evidence, such matter or evidence has to be one which existed at the

time when the decree or order under review was passed or made; and

b) Order XLVII would not authorize the review of a decree or order which was right when it was made on the ground of some subsequent event.

What follows is that Order XLVII of the CPC does not authorize a review of a decree, which was right, on the happening of some subsequent event (emphasis supplied).

90. With the introduction of the Explanation, there seems to be little room for any serious debate on the point under consideration. Parliament, in its wisdom, has accepted what the Law Commission recommended. Resultantly, what the statute prohibits, cannot be permitted by the Court. If permitted, the Court would be acting contrary to law. What the Parliament has done, the Court cannot undo unless the law enacted by the Parliament is declared *ultra vires*. The *vires* of the Explanation not being under challenge during more than four decades of its existence, it is not for the Court to ignore the Explanation.

91. It is worthwhile to also note at this stage the decision dated 3rd November, 2020 in ***Shri Ram Sahu and others v. Vinod Kumar Rawat***.[43] Upon consideration of the decisions in ***Moran Mar Basselios Catholics*** (supra), ***Haridas Das*** (supra), ***Kamal Sengupta*** (supra), etc., this Court speaking through the Hon'ble presiding Judge of the said Division Bench was of the opinion that the court of review has a limited jurisdiction, it cannot overstep such jurisdiction and has to strictly adhere to the grounds mentioned in Rule 1 of Order XLVII. It is a pity that the respondent landowners did not cite the aforesaid decision before the Hon'ble presiding Judge where the law has been correctly laid down by His Lordship.

92. Concededly, the Constitutional courts have inherent powers and this Court is also vested by Article 142 of the Constitution with powers to pass such decree or make such order as is necessary to do complete justice in any cause or matter pending before it.

93. Insofar as inherent powers are concerned, it has been held by this Court in ***Indian Bank v. Satyam Fibres***[44] that:

43 [2020] 11 SCR 865 : (2021) 13 SCC 1

44 [1996] Supp. 4 SCR 464 : (1996) 5 SCC 550

> "22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business."

94. A superior court, in exercise of its inherent power, is authorized to do such justice that the cause before it demands. Upon satisfaction being reached by a court that a mistake has been committed by it, which is gross and palpable, it is not the law that the mistake has to be corrected by exercising the power of review only. Such power can be exercised, only if the person aggrieved by the order or decree applies therefor. On its terms, section 114 of the CPC read with Order XLVII thereof does not conceive of a *suo motu* power of review being exercised by the court. The words "court on its own motion" are absent in the statutory provision. However, once the court is satisfied that a mistake committed by it needs to be rectified, it is always open to exercise the inherent powers to achieve the desired result. As has been held by the Constitution Bench in ***A.R. Antulay v. R.S. Nayak***,[45] an order of court – be it judicial or administrative – which is made *per incuriam* or in violation of certain Constitutional limitations or in derogation of principles of natural justice can always be remedied by the court *ex debito justitiae*. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. After all, "to err is human" is the oft-quoted saying and courts including the apex court are no exception. To own up the mistake when judicial satisfaction is reached does not

45 [1988] Supp. 1 SCR 1 : (1988) 2 SCC 602

militate against its status or authority; perhaps, it would enhance both. On the other hand, when it involves invocation of the power of review and such power is traceable in a statute, which also has provisions regulating the exercise of the review power, it has to be held that the power of review is not an inherent power. That power of review is not an inherent power has been held in ***Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji***.[46] If a power of review is statutorily conferred, it would be inappropriate, nay incompetent, for the court exercising review power to travel beyond the contours of the provision conferring the very power. A statutorily conferred power to review is not to be confused with the inherent power of the court to recall any order. The said power inheres in every court to prevent miscarriage of justice or when a fraud has been committed on court or to correct grave and palpable errors.

95. In any event, in the present case, we have not found exercise of inherent power under section 151, CPC or under Article 142 by the Hon'ble presiding Judge of the said Division Bench.

96. It was urged that a court may recall or review any order exercising its inherent power saved by section 151, CPC to meet the ends of justice or to prevent abuse of the process of the Court. This argument, however, need not detain us for long in the light of the law, which stands well-settled by this Court. It is no longer *res integra* that inherent powers of the court under section 151, CPC cannot be invoked if there exists a remedy made available by the CPC itself.

97. A three-Judge Bench of this Court in ***Padam Sen v. State of Uttar Pradesh***[47] laid down the law in the following words:

> "8. …The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well

46 (1971) 3 SCC 844

47 [1961] 1 SCR 884 : (1961) 1 SCR 884

recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."

(emphasis supplied)

98. Another three-Judge Bench of this Court in ***My Palace Mutually Aided Co-operative Society v. B. Mahesh & others***[48] held thus:

"27. In exercising powers under Section 151 of the CPC, it cannot be said that the civil courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.

28. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC."

(emphasis supplied)

99. An alternative remedy, carved out by Rule 1 of Order XLVII, already exists which the review petitioners have pursued. Recourse to section 151, CPC, therefore, would not be available, the object of which is to supplement and not replace the remedies provided under the CPC.

100. Moving on further, we find that the attempt of the review petitioners has been to draw inspiration from the ground "any other sufficient reason" appearing in Rule 1. There have been decisions of this Court which have construed the words "any other sufficient reason" expansively, like ***Netaji Cricket Club*** (supra) and ***Jagmohan Singh***

48 2022 SCC OnLine SC 1063

(supra), whereas there are decisions, including ***Moran Mar Basselios Catholics*** (supra), ***Raja Shatrunji*** (supra), ***Kamlesh Verma*** (supra) and ***S. Madhusudhan Reddy*** (supra), that have followed ***Chhajju Ram*** (supra) explaining that the ground "any other sufficient reason" means "a reason sufficient on grounds at least analogous to those specified immediately previously".

101. However, with utmost respect, we do not find any of those decisions, which have taken an expansive view, looking at such ground in the manner we propose to look, for recording our concurrence with the view in ***Chhajju Ram*** (supra) that has unhesitatingly been followed over the years. If indeed "any other sufficient reason" were to take within its embrace any situation not analogous to "discovery of new matter or evidence" and "on account of some mistake or error apparent on the face of the record", we wonder why the legislature chose to keep "any other sufficient reason" immediately after the aforesaid two grounds. If "any other sufficient reason" were to be read independent of the said two grounds, we believe the long line in Rule 1 after clauses (a) to (c) need not have been drafted in the manner it presently reads. In *lieu* of referring to the said two grounds as grounds on which a review could be sought, the legislature could well have kept it open- ended as in section 5 of the Limitation Act, 1963 where it is provided, without any strings attached, that any appeal or any application may be admitted after the prescribed period of limitation if the appellant or applicant satisfies the court that he had "sufficient cause" for not preferring the appeal or the application earlier. If the intention of the legislature were to give an expanded meaning, Order XLVII Rule 1 would have read somewhat like this: any person considering himself aggrieved by a decree or order or decision of the nature indicated in clauses (a), (b) and (c) *for any sufficient reason* desires to obtain a review of the decree or order made against him, may apply for a review. But that is not what the provision says and means. Reading Order XLVII Rule 1 in juxtaposition to section 5 of the Limitation Act drives us to accept the view in ***Chhajju Ram*** (supra) as having interpreted the law correctly and acceptance of the same by this Court and high courts over the years, coupled with the fact that the Parliament did not consider it necessary to amend Rule 1 when it inserted the Explanation in 1976. Giving a wider meaning to the ground "any other sufficient reason" in ***Netaji Cricket Club*** (supra) and ***Jagmohan Singh*** (supra), therefore,

must have been intended and necessitated by this Court because the justice of the cases so demanded but the same would have no application in a case of this nature.

102. Having regard to the aforesaid distinction in the exercise of review power and the power that inheres in every court, we are unable to be *ad idem* with the decision in ***Netaji Cricket Club*** (supra) as well as the decision in ***Jagmohan Singh*** (supra), which followed the former decision. The said two decisions are by benches of two Hon'ble Judges, with a common author. With the deepest of respect and reverence we have for His Lordship, we find limiting the application of the principles regarding exercise of the power of review, as expounded in ***Moran Mar Basselios Catholics*** (supra) (a decision rendered by a Bench of three Hon'ble Judges, which has stood the test of time), to be against established principles flowing from Article 141 of the Constitution by which the Supreme Court is also bound. Also, laying down as a matter of principle that subsequent events could be considered while hearing a review petition, is unprecedented. The Court in ***Netaji Cricket Club*** (supra) and ***Jagmohan Singh*** (supra) read something in the statute which apart from being unnecessary, is seen to run contrary to the terms of Order XLVII, CPC as expounded in ***A.C. Estates*** (supra) (decision of a Bench of three Hon'ble Judges) and ***Raja Shatrunji*** (supra). To save ***Netaji Cricket Club*** (supra) and ***Jagmohan Singh*** (supra) from being declared as decisions rendered *per incuriam*, we prefer to hold, as the Hon'ble companion Judge on the said Division Bench did, that such decisions turned on the very special facts and circumstances of the cases and cannot guide us in the present endeavor.

103. Ms. Bhati put forth the dissent authored by Hon'ble Dr. D.Y. Chandrachud, J. (as the Chief Justice then was) in ***Beghar Foundation*** (supra) to argue that the Explanation could not be a bar to the maintainability of the RPs in the present case. However, when a view is expressed by a member-Judge of a Constitution Bench which turns out to be the minority view, judicial discipline demands that a Bench of lesser strength does not accept the minority view in preference to the majority view. In any event, on a closer reading of the dissent itself, more particularly paragraph 18, it is revealed that the RPs had already been filed and were pending on the date when reference was made to a larger Bench for which His Lordship

did not consider it necessary even to consider the Explanation. The issue before us, as held earlier, cannot be resolved without looking at the Explanation and, thus, the contention advanced by Ms. Bhati is rejected.

104. We, thus, hold that no review is available upon a change or reversal of a proposition of law by a superior court or by a larger Bench of this Court overruling its earlier exposition of law whereon the judgment/order under review was based. We also hold that notwithstanding the fact that ***Pune Municipal Corporation*** (supra) has since been wiped out of existence, the said decision being the law of the land when the Civil Appeals/Special Leave Petitions were finally decided, the subsequent overruling of such decision and even its recall, for that matter, would not afford a ground for review within the parameters of Order XLVII of the CPC.

105. Question (d) is, therefore, answered in the negative.

106. Let us now turn to question (a), which incidentally arises, and answer it.

107. Reverting to the facts, these cases would not call for ascertainment of the *'locus standi'* of the review petitioners, since they were parties to the proceedings from which the RPs have arisen. However, in the context of a review, a distinction can yet be drawn between a person who, not being a party to the original proceedings, has the *'locus standi'* to invoke the review jurisdiction and a person who, despite being a party to the proceedings, can be considered as not aggrieved by the judgment/order of which he seeks a review. This question would obviously require a deep scrutiny, having regard to the materials on record and the objection to the maintainability of the RPs specifically raised by the respondent landowners. In the eyes of an unsuspecting person, obviously the review petitioners are persons aggrieved because of declaration of land acquisition proceedings initiated by them as deemed to have lapsed. But, as is evident from the factual narrative, the dates on which the High Court had disposed of the writ petitions by declaring that the land acquisition proceedings were deemed to have lapsed, it is the law laid down by a binding authority, i.e., ***Pune Municipal Corporation*** (supra) that was holding the field at the relevant time and which the High Court applied in reaching its conclusions. This Court too had dismissed the Civil Appeals and the Special Leave Petitions bearing in mind that the issue raised was no longer *res integra* in view of

Pune Municipal Corporation (supra). If indeed the judgments and orders were right, could the review petitioners be categorized as aggrieved persons?

108. For the reason that the judgments and orders under review were right on the dates they were rendered, we do not consider the review petitioners as persons aggrieved who can maintain a review petition citing either ***Manoharlal [5-Judge, lapse]*** and ***Shailendra [3-Judge]*** (supra). We, however, hold that the review petitioners can yet be considered persons aggrieved for what we proceed to say and hold immediately hereafter.

109. Insofar as question (e) is concerned, which has been framed based on the arguments of Mr. Sen, it is true that the RPs include under the caption 'GROUNDS' reference to points which, according to the review petitioners, are sufficient to review the judgments/orders under review, apart from reference to the so-called 'liberty' granted by this Court *vide* ***Shailendra [3-Judge]*** (supra). Mr. Sen thus argued that even if the RPs are held not to be maintainable based on ***Shailendra [3-Judge]*** (supra) and ***Manoharlal [5-Judge, lapse]*** (supra), the same ought to be decided upon consideration of such other grounds; and, for such purpose, the larger Bench may remit the RPs for being considered by an appropriate Bench on such other grounds. Viewed in the light of such contention, the review petitioners are persons aggrieved and the RPs cannot be shut out on the ground that the same are not maintainable for reasons discussed above. However, this finding does not take the cause of the review petitioners any forward.

110. We have perused the 'GROUNDS' in each of the RPs opposed by Mr. Divan and Mr. Giri. All such grounds are factual in nature. In fact, the review petitioners have raised 'GROUNDS' without even averring what was pleaded in their counter affidavits filed before the High Court and what were the defences raised which, because of non-consideration by this Court, could be said to amount to an error apparent on the face of the record. The RPs are silent as to on which specific ground referrable to Rule 1 of Order XLVII the review has been asked for. Even then, having considered such 'GROUNDS', we are of the considered opinion that the judgments/orders under review do not suffer from any error apparent on the face of the record.

111. Thus, we have no hesitation to reject Mr. Sen's contention and answer question (e) against the review petitioners.

112. As we approach the end, we need to address question (f) regarding the maintainability of several miscellaneous applications in the present batch that seek recall of certain orders of this Court, whereby some of the land acquisition proceedings were declared to have lapsed.

113. Notably, while these have been filed in the form of miscellaneous applications, they are in essence akin to the RPs as they also seek reconsideration of this Court's orders. Since these miscellaneous applications also rely on ***Manoharlal*** ***[5-Judge, lapse]*** (supra) as a ground for review/reconsideration of the previous orders, they are squarely covered by the foregoing analysis in this judgment. If we were to hold otherwise, we would be permitting the review petitioners to do something indirectly—i.e., seeking review through miscellaneous applications, which they could not have done directly—i.e., seeking review through RPs. This would open the law to being misused and lead to by-passing the legislative intent behind introduction of Explanation 1 to Rule 1 of Order XLVII, CPC which, as noticed in paragraph 91 of this judgment, cannot be permitted by the Court.

114. In this regard, we find sufficient support in the decision in ***Delhi Administration v. Gurdip Singh Uban and others***,[49] where this Court held:

> "17. We next come to applications described as applications for 'clarification', 'modification' or 'recall' of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued. […] However, with a view to avoid this procedure of 'no hearing', we find that sometimes applications are filed for 'clarification', 'modification' or 'recall' etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and

49 [2000] Supp. 2 SCR 496 : (2000) 7 SCC 296

> also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for 'clarification' or 'modification', — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. [See in this connection a detailed order of the then Registrar of this Court in Sone Lal v. State of U.P. (1982) 2 SCC 398 deprecating a similar practice.]".

115. Similarly, and more recently, this Court in ***Supertech Ltd. v. Emerald Court Owner Resident Welfare Association and others***[50] held:

> "13. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather [See, Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383]. A disturbing trend has emerged in this Court of repeated applications, styled as miscellaneous applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly (*'Quando aliquid prohibetur ex directo, prohibetur et per obliquum')".*

50 [2021] 10 SCR 569 : (2023) 10 SCC 817

116. We must clarify that our statement does not imply an absolute prohibition against filing of miscellaneous applications seeking 'clarification,' 'modification,' or 'recall' following the initial disposal of a matter. We are only emphasizing the need for the Court to exercise prudence and ascertain whether such an application is, in substance, in the nature of a RP. In case such an application is found to be nothing but a disguised version of a RP, it ought to be treated in similar manner a RP is treated.

117. In the light of the foregoing discussion, the miscellaneous applications are not maintainable.

L. CONCLUSION

118. To sum up, our answers to all the questions [(b), (c), (d), (e) and (f)] are in the negative while (a) is partly negative and partly affirmative.

119. We respectfully concur with the opinion expressed by the Hon'ble companion Judge on the said Division Bench and record our inability to be *ad idem* with the Hon'ble presiding Judge.

120. The reference is answered accordingly.

121. Under the circumstances, dismissal of the RPs and miscellaneous applications would have been logical and we could have ended our judgment here by ordering so. However, there is something more of a balancing act that needs to be done having regard to the disclosures that were made in course of progress of other proceedings before us, which followed immediately after judgment on this set of RPs and miscellaneous applications was reserved. Such other proceedings arose out of appeals carried from orders of the High Court declaring land acquisition proceedings as lapsed based on the decision in ***Pune Municipal Corporation*** (supra) as distinguished from RPs and miscellaneous applications of the nature under consideration. Since all such proceedings have more or less a common genesis and have followed similar trajectory, it would be eminently desirable to find a solution that benefits all. We may hasten to add here that the exercise of inherent powers conferred on this Court by Article 142, in such circumstances, is not just inevitable but also pivotal for disposal of the matters at hand, given their impact on public interest at large as well as to secure uniformity and consistency in our decisions; hence, we consider it expedient to pass such orders or directions for ensuring complete justice in the matters under

consideration before us. Notwithstanding our discussion on the reference which was necessitated to answer the question of law on which there was a disagreement between the Hon'ble Judges of the Division Bench, taking an overall and holistic view of the matter and in the light of the larger public interest that is involved, in each of the RPs and miscellaneous applications that have been dealt with by this judgment (except those remanded to the High Court and those de-tagged for separate listing *infra)*, we issue the following directions:

a) The time limit for initiation of fresh acquisition proceedings in terms of the provisions contained in section 24(2) of the 2013 Act is extended by a year starting from 01st August, 2024 whereupon compensation to the affected landowners may be paid in accordance with law, failing which consequences, also as per law, shall follow;

b) The parties shall maintain status quo regarding possession, change of land use and creation of third-party rights till fresh acquisition proceedings, as directed above, are completed;

c) Since the landowners are not primarily dependent upon the subject lands as their source of sustenance and most of these lands were/are under use for other than agricultural purposes, we deem it appropriate to invoke our powers under Article 142 of the Constitution and dispense with the compliance of Chapters II and III of the 2013 Act whereunder it is essential to prepare a Social Impact Assessment Study Report and/or to develop alternative multi-crop irrigated agricultural land. We do so to ensure that the timeline of one year extended at (a) above to complete the acquisition process can be adhered to by the appellants and the GNCTD, which would also likely be beneficial to the expropriated landowners;

d) Similarly, compliance with sections 13, 14, 16 to 20 of the 2013 Act can be dispensed with as the subject-lands are predominantly urban/semi-urban in nature and had earlier been acquired for public purposes of paramount importance. In order to simplify the compliance of direction at (a) above, it is further directed that every Notification issued under section 4(1) of the 1894 Act in this batch of cases, shall be treated as a Preliminary Notification within the meaning of section 11 of the 2013 Act, and shall be deemed to have been published as on 01st January, 2014;

e) The Collector shall provide hearing of objections as per section 15 of the 2013 Act without insisting for any Social Impact Assessment Report and shall, thereafter, proceed to take necessary steps as per the procedure contemplated under section 21 onwards of Chapter-IV of 2013 Act, save and except where compliance of any provision has been expressly or impliedly dispensed with;

f) The landowners may submit their objections within a period of four weeks from the date of pronouncement of this order. Such objections shall not question the legality of the acquisition process and shall be limited only to clauses (a) and (b) of section 15(1) of the 2013 Act;

g) The Collector shall publish a public notice on his website and in one English and one vernacular newspapers, within two weeks of expiry of the period of four weeks granted under direction (f) above;

h) The Collector shall, thereafter, pass an award as early as possible but not exceeding six months, regardless of the maximum period of twelve months contemplated under section 25 of the 2013 Act. The market value of the land shall be assessed as on 01st January, 2014 and the compensation shall be awarded along with all other monetary benefits in accordance with the provisions of the 2013 Act except the claim like rehabilitation etc.;

i) The Collector shall consider all the parameters prescribed under section 28 of the 2013 Act for determining the compensation for the acquired land. Similarly, the Collector shall determine the market value of the building or assets attached with the land in accordance with section 29 and shall further award solatium in accordance with section 30 of the 2013 Act;

j) In the peculiar facts and circumstances of this case, since it is difficult to reverse the clock back, the compliance of Chapter (V) pertaining to "Rehabilitation and Resettlement Award" is hereby dispensed with; and

k) The expropriated landowners shall be entitled to seek reference for enhancement of compensation in accordance with Chapter-VIII of the 2013 Act.

122. Before we part, we must address a minor task that remains unfinished. Specifically, we are currently handling two sets of RPs. The first set pertains to landowners who continue to maintain their status as landowners from the date of Notification under section 4(1) of the 1894 Act. The second set includes landowners who, subsequent to the aforementioned Notification under section 4(1), have transferred their properties—the subject of acquisition—to purchasers ("subsequent purchasers", hereafter) through methods such as executing sale deeds, deeds of assignment, or even via power of attorney. In addition to the allegations regarding fraud by landowners by suppressing subsequent sale transactions, the second set may also involve ownership title disputes, etc.

123. The cases falling under the second set are listed below:

a) DELHI DEVELOPMENT AUTHORITY v. TARUN KAPAHI [R.P.(C) No. 425/2023];

b) GOVT. OF NCT OF DELHI v. NARENDER SHARMA [R.P.(C) No. 426/2023];

c) DELHI DEVELOPMENT AUTHORITY v. M/S. RUNWEELL (INDIA) PVT. LTD. [R.P.(C) No. 428/2023];

d) DELHI DEVELOPMENT AUTHORITY v. MAHARAJ SINGH [R.P.(C) No. 429/2023]; and

e) DELHI DEVELOPMENT AUTHORITY v. SURENDER SINGH [R.P.(C) No. 409/2023].

124. As a fact-finding inquiry is necessary to ascertain the rightful claimant for receiving the compensation, which is to be determined as directed in paragraph 121 *supra*, we hereby set aside the orders of the High Court that were under challenge in the Civil Appeals out of which the aforementioned RPs have arisen. We revive the relevant writ petitions [W.P. (C) No. 5107/2015, W.P. (C) No. 5063/2014, W.P. (C) No. 4780/2014, W.P. (C) No. 1637/2015, W.P. (C) No. 6897/2014], which shall stand restored on the file of the High Court for this limited purpose on remand being ordered. The Chief Justice of the High Court is requested to constitute a dedicated bench to decide these writ petitions in the manner indicated hereafter. The nominated bench will accord an opportunity to the landowners/subsequent purchasers, the GNCTD, and the DDA to submit additional documents on affidavits whereupon such bench shall embark on an exercise to decide who

between the landowner(s) and the subsequent purchaser(s) is the rightful claimant to receive compensation. The nominated bench will have the authority to obtain independent fact-finding enquiry reports, if deemed necessary. The inquiry could include determination as to whether after the Notification under section 4(1) of the 1894 Act, any transfer could have been effected and even if effected, whether such transfer is permitted by any law. Once compensation is determined, the relevant authority in the land acquisition department shall deposit the same with the reference court. The reference court shall then invest the deposited amount in a short-term interest-bearing fixed deposit account with a nationalized bank, ensuring its periodical renewal until the relevant writ petition is disposed of by the nominated bench. Release of the invested amount together with accrued interest to the rightful claimant will be contingent upon the decision of the High Court. Upon enquiry being completed, the High Court shall decide the relevant writ petitions in accordance with law.

125. The directions issued in paragraph 121 *supra* do not extend to eight miscellaneous matters that were erroneously included in the present batch. These cases shall be listed separately in the week commencing 22nd July, 2024. The details of the cases are as follows:

a) In these two cases outlined below, no notice has been issued by this Court for condonation of delay and/or otherwise; hence, they need to be de-tagged and listed separately:

   i. GOVERNMENT OF NCT OF DELHI v. M/S. K.L. RATHI STEELS LTD. [M.A. No. 414/2023 in C.A. No. 11857/2016]; and

   ii. DELHI DEVELOPMENT AUTHORITY v. HARI PRAKASH [R.P. (C) No. 432/2023 in C.A. No. 11841/2016].

b) The following are three cases where neither a RP nor a miscellaneous application has been filed. These cases are Special Leave Petitions filed before this Court and thus necessitate separate hearing:

   i. GOVERNMENT OF NCT OF DELHI v. M/S BEADS PROPERTIES PVT. LTD. [C.A. No. 1522/2023];

   ii. LAND AND BUILDING DEPARTMENT v. RAM SINGH [Diary No. 14831/2023]; and

iii. LAND AND BUILDING DEPARTMENT v. SUMIT BANSAL [Diary No. 15893/2023].

c) The following two cases, although RPs, were filed before the change in law, i.e., prior to the decision in ***Shailendra*** ***[3-Judge]*** (supra). Consequently, they need to be de-tagged to be assessed based on their individual merits:

i. DELHI DEVELOPMENT AUTHORITY v. SWARN SINGH CHAWLA [R.P. (C) No. 882/2017 in C.A. No. 11846/2016]; and

ii. GOVT. OF NCT OF DELHI v. M/S. K.L. RATHI STEELS LTD. [M.A. No. 159/2019 in C.A. No. 11857/2016].

d) The following case concerns a contempt petition, viz. M/S K.L. RATHI STEELS LTD v. ANSHU PRAKASH [Conmt. Pet. (C) No. 735/2018 in C.A. No. 11857/2016]. The same needs to be de-tagged to be assessed on its individual merits.

126. All other RPs and miscellaneous applications stand disposed of, without order for costs. Pending applications, if any, shall also stand disposed of.

Result of the case: Review petitions and miscellaneous application disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 5 S.C.R. 1011 : 2024 INSC 452

Union of India Rep. by The Inspector of Police National Investigation Agency Chennai Branch
v.
Barakathullah etc.

(Criminal Appeal Nos. 2715 - 2719 of 2024)

22 May 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ.]

Issue for Consideration

The respondents-accused were arrested for the alleged offences under section 120(b), 153(A), 153(AA) of IPC and Section 13, 17, 18, 18(B), 38 and 39 of the Unlawful Activities (Prevention) Act, 1957. The High Court released the respondents on bail subject to the conditions. Whether from the perusal of the chargesheet and other material/documents produced against the respondents, there are reasonable grounds for believing that accusations against the respondents are prima facie true, as contemplated in the proviso to sub-section (5) of Section 43D of UAPA.

Headnotes†

Unlawful Activities (Prevention) Act, 1957 – ss. 13, 17, 18, 18(B), 38, 39 and 43D – National Investigation Agency Act, 2008 – An FIR came to be registered on 19.09.2022 against the present respondents and other members and office bearers of PFI for the offences u/ss. 120(b), 153(A), 153(AA) of IPC and ss. 13, 17, 18, 18(B), 38 and 39 of the Unlawful Activities (Prevention) Act, 1957 – The respondents-accused were arrested for the alleged offences – They filed their respective bail applications before the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) and the same were dismissed – However, the High Court released the respondents on bail subject to the conditions – Correctness:

Held: It is quite well settled position of law that the chargesheet need not contain detailed analysis of the evidence – It is for the concerned court considering the application for bail to assess the material/evidence presented by the investigating authority along

* Author

with the report under Section 173 Cr.P.C. in its entirety, to form its opinion as to whether there are reasonable grounds for believing the accusation against the accused is prima facie true or not – The investigation disclosed that the activities and undeclared objectives of PFI had strong communal and anti-national agenda to establish an Islamic rule in India by radicalization of Muslims and communalization of issues – After recruitment as members of PFI, they were motivated towards violent terrorist activities by providing training through beginners course and advanced training courses – During the training courses, physical education classes were conducted in which members were taught to attack, assault, maim and murder with bare hands – The training was also given as to how to use weapons like knives and swords and how to hurl bombs – There is no need to elaborate on the allegations made by the protected/listed witnesses stating the role and involvement of each of the respondents, who were either members or the office bearers of the PFI – Suffice it to say that, there is sufficient material in the form of statements of witnesses and other incriminating evidence in the form of digital devices, books, photographs etc. collected during the course of investigation and relied upon by the appellant as recorded in the chargesheet, to form an opinion that there are reasonable grounds for believing that the accusations against the respondents-accused are prima facie true – The Court at the stage of considering the bail applications of the respondents-accused is merely required to record a finding on the basis of broad probabilities regarding the involvement of the respondents in the commission of the alleged offences – The High Court has committed gross error in not considering the material/evidence in its right and proper perspective – The alleged offences are under Section 18, 18A, 18B etc. – For the purpose of considering the offence under Section 18, the commission of terrorist act as contemplated in Section 15 of UAPA is not required to be made out – In the instant case, this Court is satisfied from the chargesheet as also the other material/documents relied upon by the appellant that there are reasonable grounds for believing that the accusations against the respondents are prima facie true and that the mandate contained in the proviso to Section 43(D)(5) would be applicable for not releasing the respondents on bail – Thus, the impugned order passed by the High Court is set aside and respondents directed to surrender themselves before the appellant-NIA. [Paras 13, 16, 17, 18, 22]

Union of India Rep. by The Inspector of Police National Investigation Agency Chennai Branch v. Barakathullah etc.

Case Law Cited

National Investigation Agency v. Zahoor Ahmad Shah Watali [2019] 5 SCR 1060 **: (2019) 5 SCC 1;** *Gurwinder Singh v. State of Punjab and Another* [2024] 2 SCR 134 **: (2024) SCC OnLine SC 109 – relied on.**

Vernon v. State of Maharashtra and Another [2023] 10 SCR 867 **: 2023 SCC OnLine SC 885;** *Shoma Kanti Sen v. State of Maharashtra and Another* [2024] 4 SCR 270 **: (2024) 4 SCALE 709 – held inapplicable.**

K. Veeraswami v. Union of India and Others [1991] 3 SCR 189 **: (1991) 3 SCC 655;** *Union of India v. K.A. Najeeb* [2021] 1 SCR 443 **: (2021) 3 SCC 713 – referred to.**

List of Acts

Unlawful Activities (Prevention) Act, 1957; National Investigation Agency Act, 2008; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Bail; Application for bail; Investigation; Incriminating evidence; Sufficient material; Reasonable grounds for believing the accusations; Prima facie true; Proviso to Section 43(D)(5) of Unlawful Activities (Prevention) Act, 1957; Assessment of the material/evidence presented by the investigating authority; Communal and anti-national agenda; Violent terrorist activities; Section 18 of Unlawful Activities (Prevention) Act, 1957; Section 15 of Unlawful Activities (Prevention) Act, 1957.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2715-2719 of 2024

From the Judgment and Order dated 19.10.2023 of the High Court of Judicature at Madras in CRLA Nos. 98, 114 and 116 of 2023 and CRLMP Nos. 11595 and 8094 of 2023

Appearances for Parties

Tushar Mehta, Solicitor General, Suryaprakash V Raju, A.S.G., Rajat Nair, Ms. Srishti Mishra, Mrs. Satvika Thakur, Raman Yadav, Mrs. Sakshi Kakkar, Sarthak Karol, Annam Venkatesh, Arvind Kumar Sharma, Advs. for the Appellant.

Ms. Mukta Gupta, Ms. Rebecca John, Sr. Advs., S. Balakrishnan, Rizwan Ahmad, A. Nowfal, Nitya Gupta, Javed R Shaikh, Abdul Shukoor, Shereef Ka, Ms. Anushka Baruah, Devansh A. Mohta, A. Selvin Raja, A. Raja Mohamed, V. S. Banu, Khalid Akthar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. The Central Government in Ministry of Home Affairs, CTCR Division having received a credible information that the office bearers, members and cadres of Popular Front of India (PFI), an extremist Islamic organization have been spreading its extremist ideology across Tamil Nadu, by establishing State Headquarters at Purasaiwakkam, Chennai and also offices in various districts of Tamil Nadu and that through their frontal Organizations like Campus Front of India, National Women's Front, Social Democratic Party of India etc., they conspire for committing terrorist acts, raise funds for committing terrorist activities and recruit members for furthering their extremist ideology, and that the frontal organizations and PFI were involved in the recruitment of members to various prescribed terrorist organizations, passed an order on 16th September 2022, in exercise of the powers conferred under sub-section (5) of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 (hereinafter referred to as the 'NIA Act'), directing the National Investigation Agency to take up investigation of the said case. In view of the said order, an FIR being RC-42/2022/NIA/DLI came to be registered on 19.09.2022 against the present respondents and other members and office bearers of PFI for the offences under Section 120(b), 153(A), 153(AA) of IPC and Section 13,17,18,18(B), 38 and 39 of the Unlawful Activities (Prevention) Act, 1957 (hereinafter referred to as the "UAPA").

3. During the course of investigation, the respondents-accused herein came to be arrested on 22.09.2022 for the alleged offences. They filed their respective bail applications before the Special Court under the NIA Act (Sessions Court for Exclusive Trial of Bomb Blast Cases). The Special Court after considering the case diary, the documents and material produced before it, and after having been satisfied about

the *prima facie* case made out against the respondents-accused as also considering the provisions of Section 43D of the UAPA in the light of the position of law settled by this Court in various decisions, dismissed the said bail applications filed by the respondents.

4. Being aggrieved by the said orders, the respondents filed Criminal Appeals being CRLA Nos. 98, 114 and 116 of 2023 before the High Court of Judicature at Madras. It appears that some of the respondents-accused had also filed Cr.L.M.P Nos. 11595 and 8094/2023 seeking interim bail pending the said appeals. During the pendency of the said Appeals, the chargesheet came to be filed by the appellant-NIA against all the respondents alongwith other accused on 17.03.2023 for the offences under Sections 120B, 121A, 122, 153A, 505(1)(b), (c), (2) of IPC and Sections 13,18, 18A, 18B of UAPA. The High Court after taking into consideration the submissions made by the learned Counsels for the parties and materials placed on record including the Chargesheet, allowed the said Appeals by the common impugned order dated 19.10.2023, releasing the respondents on bail subject to the conditions mentioned therein. Being aggrieved by the said order, the present set of appeals have been filed by the Union of India through NIA, Chennai Branch.

5. At the outset, the learned counsels for the respondents raising preliminary objection had submitted that the appellant having failed to mention about the SLP (Crl.) No.9384/2023 which was preferred by the appellant against the co-accused for cancellation of the bail arising out of the same FIR, the present appeal was liable to be dismissed under Order XXII, Rule 2(3) of the Supreme Court Rules, 2013. The said submission cannot be accepted. Rule 2(2) of Order XXII mandates *inter alia* that no petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition for special leave to appeal against the impugned judgment or order earlier, and if so with what result. Rule 2(3) thereof states that the Court shall, if it finds that the petitioner has not disclosed the fact of filing a similar petition earlier and its dismissal by the Court, dismiss the second petition if it is pending. It may be noted that earlier no special leave to appeal has been filed against the impugned judgment and order dated 19.10.2023 passed by the High Court and hence question of filing Second Petition does not arise. Though, the SLP (Crl.) No. 9384/2023 was filed earlier by the appellant seeking cancellation of bail granted to the co-accused in

respect of the same FIR, the same has already been referred to in the impugned order by the High Court. This set of appeals cannot be treated as Second Petition as sought to be canvassed by the learned counsels for the respondents.

6. So far as the merits of the Appeals are concerned, the learned advocate Mr. Rajat Nair for the appellant has vehemently submitted that the High Court had miserably failed to comprehend the correct import of Section 18 read with the definition of terrorist act contemplated under Section 15 of the UAPA for releasing the respondents on bail who have been charged with very serious offences. According to him, the High Court had fallen into patent and manifest error in not appreciating the overt acts and commission of alleged offences by the respondents, as stated by the listed witnesses/protected witnesses. Mr. Nair placing heavy reliance on the statements of the protected witnesses/listed witnesses had taken the court to the said statements to show the role and involvement of each of the respondents in the commission of the alleged offences under the IPC and UAPA. According to him, though some of the witnesses whose statements were recorded under Section 161/164 Cr.P.C. and relied upon by the appellant, were the members of the PFI when it was not banned by the Government of India, they had not participated in the alleged unlawful activities, and hence their statements till they are rebutted or contradicted could be relied upon. He further submitted that the High Court has committed grave error in trivializing the serious allegations made against the respondents by holding that except the witnesses having stated about respondents organizing weapon training for using knives and swords and to train members to throw beer bottles filled with water on targets, there is no material to suggest commission of any offence which falls under Section 15 of UAPA, whereas all these alleged acts were part of the preparation of committing terrorist acts, particularly when the respondents were imparting training as to how to hurl bombs by using water filled beer bottles and how to use weapons like knives and swords to strike terror in the mind of people. Mr. Nair has also placed heavy reliance on the latest decision of this Court in case of ***Gurwinder Singh vs. State of Punjab and Another***[1] which has relied upon the earlier decision in ***National***

1 [2024] 2 SCR 134 : (2024) SCC OnLine SC 109

Investigation Agency vs. Zahoor Ahmad Shah Watali[2] to submit that the special provision of Section 43(D) of UAPA applies right from the stage of registration of FIR for the offences under Chapter IV and VI of the UAPA until the conclusion of the trial thereof, and that the court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offences or otherwise. Terming the impugned order as perverse, he submitted that the High Court had failed to appreciate that the oral statements of the witnesses and the recoveries made during the course of investigation clearly made out a *prima facie* case against the respondents regarding their involvement of the alleged offences.

7. The learned Senior Counsels, Mrs. Rebecca John appearing for respondent nos. 2, 3 and 4 (accused no. 1, 3 and 4), Mr. Devansh A. Mohta appearing for respondent No.1 (accused No.7), Mrs. Mukta Gupta appearing for respondent no. 5, 7 and 8 (accused No. 5, 8, 9) and Mr. S. Balakrishnan appearing for R-6 (accused no.6) had emphatically submitted that the reliance of the appellant on the statements made by the protected/listed witnesses was highly improper as the said witnesses themselves had participated in the alleged commission of offences. According to them, the vague allegations made by the said witnesses, could not be relied upon, more particularly when there was no material brought on record to show any preparatory work done by the respondents to *prima facie* make out the case against the respondents. They also relied upon the observations made by the High Court in the impugned order to submit that the High Court had in detail considered the evidence collected by the appellant during the course of the investigation and having not found substance in the same has released the respondents on bail which order should not be interfered with. Relying upon various decisions of this Court, they submitted that the impugned order having been passed by the High Court exercising its discretion, could neither be said to be illegal nor unjust.

8. It is trite to say that the consideration applicable for cancellation of bail and consideration for challenging the order on the grant of bail on the ground of arbitrary exercise of discretion are different.

2 [2019] 5 SCR 1060 : (2019) 5 SCC 1

While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like tampering of evidence either during the investigation or during the trial, threatening of witness, accused likely to abscond and the trial getting delayed on that account etc. whereas in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration would be whether there was improper or arbitrary exercise of discretion in the grant of bail or the findings recorded were perverse. The instant appeals have been filed by the appellant challenging the impugned order passed by the High Court granting bail to the respondents-accused on the ground that not only the High Court has arbitrarily exercised the discretion in favour of the respondents, but also has recorded perverse findings while exercising such discretion.

9. Before we appreciate the rival contentions raised by the learned counsel for the parties, it would be apt to refer to some of the provisions of the UAPA particularly with regard to the offences alleged against the respondents. As per the chargesheet, the offences alleged against the respondents are under Section 120B, 153A, 153AA of IPC and Section 13, 17, 18, 18A,18B, 38 and 39 of UAPA. So far as the offences under the UAPA are concerned, Section 13 pertains to the punishment for unlawful activities, Section 15 defines what is "terrorist act" and Section 16 prescribes punishment for the commission of the terrorist act. Section 17 pertains to the punishment for raising funds for terrorist act, Section 18 pertains to the punishment for conspiracy, etc. Section 18A pertains to the punishment for organizing terrorist camps and Section 18B pertains to the punishment for recruiting of person or persons for terrorist act. All these offences fall under Chapter IV of the Act. However, Section 38 which pertains to the offence relating to membership of a terrorist organization and Section 39 which pertains to the offence relating to support given to terrorist organization, fall under Chapter VI of the said Act. Section 43D which was inserted by Act 35 of 2008, pertains to the modified application of certain provisions of the Code of Criminal Procedure. Sub-section (5) of Section 43D being relevant for the purpose of these appeals, the same is reproduced hereunder:

> **"43D. Modified application of certain provisions of the Code**
>
> (1) to (4)……

> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:
>
> Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true…."

10. Since all offences alleged against the respondents are covered under Chapter IV and VI of the UAPA, the rigors and restrictions of sub-section (5) of Section 43D would apply to the facts of this case. It may be noted that this Court in case of ***National Investigation Agency vs. Zahoor Ahmad Shah Watali*** (supra)**,** had an occasion to deal with the sub-section (5) of Section 43D and in similar fact situation, after comparing the similar provisions under the Special enactments such as TADA, MCOCA, NDPS as also the earlier decisions of this court, had held as under:

> **"23.** ……By its very nature, the expression "*prima facie* true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "*prima facie* true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is

prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act……"

11. It was further observed: -

> **"24.** A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.
>
> **25.** From the analysis of the impugned judgment [Zahoor Ahmad Shah Watali v. NIA, 2018 SCC OnLine Del 11185], it appears to us that the High Court has ventured into an area of examining the merits and demerits of the evidence. For, it noted that the evidence in the form of statements of witnesses under Section 161 are not admissible. Further, the documents pressed into service by the investigating agency were not admissible in evidence. It also noted that it was unlikely that the document had been recovered from the residence of Ghulam Mohammad Bhatt till 16-8-2017 (para 61 of the impugned judgment). Similarly, the approach of the High Court in completely discarding the statements of the protected witnesses recorded under Section 164 CrPC, on the specious ground that the same was kept in a sealed cover and was not even perused by the Designated Court and also because reference to such statements having been recorded was not found in the charge-sheet already filed against the respondent is, in our opinion, in complete disregard of the duty of the Court to record its opinion that the accusation made against the accused concerned is prima facie true or otherwise. That opinion must be reached by the Court not only in reference to the accusation in the FIR but also in reference to the contents of the case diary and including the charge-sheet (report

under Section 173 CrPC) and other material gathered by the investigating agency during investigation."

26. …….

27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is."

12. The ratio of the said judgment has been consistently followed by this Court in many cases, and recently in ***Gurwinder Singh vs. State of Punjab and Another*** (supra), in which this court has culled out following guidelines from Watali's Case:

> **"34.** In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:
>
> - **Meaning of 'Prima facie true'** [para 23] : *On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence*.

- **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared** [para 23] : *Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case*.
- **Reasoning, necessary but no detailed evaluation of evidence** [para 24] : *The exercise to be undertaken by the Court at this stage--of giving reasons for grant or non-grant of bail--is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.*
- **Record a finding on broad probabilities, not based on proof beyond doubt** [para 24]:"*The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise*."
- **Duration of the limitation under Section 43D(5)** [para 26] : *The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof*.
- **Material on record must be analysed as a 'whole'; no piecemeal analysis** [para 27] : *The totality of the*

material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.

- **Contents of documents to be presumed as true** [para 27] : *The Court must look at the contents of the document and take such document into account as it is*.
- **Admissibility of documents relied upon by Prosecution cannot be questioned** [para 27] : *The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence……. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."*

13. In the light of the above, let us consider whether from the perusal of the chargesheet and other material/documents produced against the respondents, there are reasonable grounds for believing that accusations against the respondents are *prima facie* true, as contemplated in the proviso to sub-section (5) of Section 43D of UAPA. It is quite well settled position of law that the chargesheet need not contain detailed analysis of the evidence.* It is for the concerned court considering the application for bail to assess the material/evidence presented by the investigating authority along with the report under Section 173 Cr.P.C. in its entirety, to form its opinion as to whether there are reasonable grounds for believing the accusation against the accused is *prima facie* true or not.

14. So far as the instant appeals are concerned, the chargesheet contains a narration of the organisational structure of PFI, the objective of the PFI, the activities of PFI and the identification of the physical education instructors and masters as identified by the protected witnesses/listed witnesses. For better appreciation, the relevant part of the chargesheet is reproduced as under:

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* *K. Veeraswami vs. Union of India and Others* (1991) 3 SCC 655

"17.10 The investigation disclosed that many Muslim youth were recruited as PFI Cadres (Categorized as "Protected witnesses) -B" (LW-8) were sent to Periyapattinam, Ramanathapuram to attend beginners camp where he attended Tharbiya classes in which PFI functionaries/ preachers sermonized that Muslims who were ruling India have been relegated as second grade citizens. The Indian Muslims were systematically and increasingly getting marginalized in their home land, the privileges earlier enjoyed by Muslims in terms of property rights, etc. were withdrawn and Government jobs were denied, trade facilities were restricted and the rights of Sharia were being denied. They preached that the Muslims were being attacked by Hindu right-wing leaders. During the camp, PE classes were conducted in the morning and evening in which they were taught to attack, assault, maim and murder with bare hands. During the camps, PFI leaders namely Adv. Kalith Mohammed and Barakatullah used to supervise the activities of weapons training in the camp.

17.11 The investigation disclosed that the accused persons, A-1 along with A-2, A-3, A-5 and A-6 had approached one witness categorized as "Protected witnesses-C & D" to expand the Mohalla committees through Masjids and recruit Muslim youth in to PFI organisation and impart weapons training to attack targeted persons and establish Islamic rule in India. A-1 told Protected Witness-C that Muslims should be united in order to attack the Hindu leaders and their organizations for which more young Muslims must join the PFI and they should equip themselves with weapons training provided by the PFI through Mohalla Committees. The PW-C also revealed that the objective of PFI is to establish Islamic Rule in India through an Islamic army. The Protected Witness-C also mentioned that A-4, A-8 later met Protected Witness-D to convince them about the Mohalla committees. Further, Protected Witness-C also stated that he had opposed the move of PFI usurping the office of a body named, confederation of mosques in Madurai, an apex governing body of Muslims in Madurai in June 2022. Protected Witnesses also stated that the

accused persons knowingly and intentionally wanted to control the confederation of mosques in Madurai, the initiative to spread Mohalla committee activities of imparting weapons training could easily sail through. Since Protected Witnesses did not agree with the accused persons and opposed them, he was being followed by some unknown persons.

17.12 The investigation disclosed that the accused A-4 insisted on imparting weapons training to Muslim youth through mosques and indoctrinating them in order to establish Islamic rule by 2047. Further, investigation disclosed that A-8 mentioned that such training was being imparted in PFI Arivagam, Theni and at various parts of Ramanathapuram district so that the youth are in readiness to commit terrorist acts and unlawful activities and to disrupt the sovereignty and integrity of India and to establish Islamic rule as per Shariah law. The investigation also disclosed that NEC members including Adv. Md. Yusuf, AS Ismail and Md. Ali Jinnah had also come to request for imparting weapons training to Muslim youth through mosques.

17.13 The investigation disclosed that during the months of November/December-2021, the accused persons A-1, A-2, A-3, A-5, A-6 recruited more Muslim youth through the mosques into PFI organisation and provided weapon training through Mohalla Committee to commit terrorist acts. The investigation also disclosed a three-pronged strategy of PFI organisation called "Trishul" to destroy all those who are against Islam, who attempt to destroy Islam and those who do not accept PFI organisation even if they are Muslims.

17.14 The investigation disclosed that A-1 had explained in PFI guidance classes on the importance of weapon training through Mohalla Committee to target enemies of PFI who are against Islamic rule in India. The investigation also disclosed that Subject 1, Subject 2 and Subject 3 are code words for training with knives, iron rods and swords. During the beginners camp, many Muslim youth

who were recruited as PFI cadres were given unarmed physical training with bare hands and how to attack and neutralize targets. An introduction to weapons training was also imparted. The training of weapons is given during beginners camp, basic and secondary Physical training. Those who performed well were selected for attack teams.

17.15 The investigation disclosed that during the year 2012 and 2020, criminal cases were registered when the PFI cadres had conducted weapon training by A-4, A-7 and other PFI leaders/cadres in Ramanathapuram to the PFI cadres including recruits from various other states.

17.16 The investigation disclosed that the accused Ahamed Idhris @ AM Idris @ MA Idris (A-1) is the state level speaker of PFI and in charge of the Media team of PFI. He as a state level speaker used to deliver instigating speeches in the meetings organised by PFI. The accused had given speeches which were intended to instill perceived threat among Muslin community thereby making gullible Muslim youth to commit offences against the State and to commit offences against a particular community. To realize their larger conspiracy to make India an Islamic country by the year 2047 by striking terror on a section of people, thereby threatening the unity, integrity, security and sovereignty of India, he incited the cadres in the meetings organised by PF1. In the year 2022, PF1 organized a campaign called "Makkal Sangamam" for which Public meetings and exhibitions were organised all over Tamil Nadu, where the accused had given speeches at meetings held at K. Pudur, Madurai District Koothanallur, Tiruvarur District, and Ilayangudi, Sivanganga District. Further, as a media team in charge, he used to organize meetings of the team members. The primary duty of the media team is to collect alarming news, reports containing rumour, and spreading them among public and in the Masjids to create feelings of enmity on grounds of religion and to disrupt the public tranquility. With the same intent, he wrote articles for "Puthiya Vidiyal" such as Suthanthira Porattathil Parpaniya Throgam, Denial of justice (with regard to Babri Masjid Verdict). Further, while he organized camps such

as Beginners Camp, Basic Camp and Secondary camps in which training to handle lethal weapons, attacking on the vulnerable parts of body to kill the enemy was imparted to PFI cadres as a preparation to wage a war against the Government of India to achieve their goal of establishing Islamic State in India by the year 2047.

17.17 ……

17.18 The investigation disclosed that the accused Mohammed Abutbahir (A-3) is the district president of PFI Madurai district, he organised terrorist camps in the name of PE to Muslim youth as a preparation to wage a war against the Government of India to achieve their goal of establishing Islamic State in India by the year 2047. He is one of the organizers of PFI's campaign called "Makkal Sangamam" for which Public meetings and exhibitions were organized by him and other accused persons. In the meetings, he arranged the display of swords, guns, organized demonstration of lethal weapons to attract Muslim youth to join PFI and to get trained in the terrorist camps conducted by PFI in the name of PE classes and Mohalla Committee, and also to create fear among a section of people on the basis of religion. He is one of the PFI's core team members who created social disharmony on the basis of religion by spreading fake news on the Tiruparankundram hills or Sikkanthar Malai communal rift. He plotted to split and divide members belonging to a confederation of Muslim mosques in Madurai as the office bearers of the Jamath were not co-operative for the unlawful activities of PFI such as Sikkanthar Malai communal issue and for the Mohalla Committee. In this process, he conspired with another PFI cadre to murder a Muslim political leader (Protected witness) whose name is suspected to be in the red category of the list created by PFI. The accused also insisted that Muslim community members join PFI's Mohalla committee in a public protest meeting organized by PFI.

17.19 The investigation disclosed that the accused Adv. Kalith Mohamed (A-4) is the State vice president of PFI

Tamil Nadu. The accused used to give speeches which were intended to cause fear among Muslim community people and thereby making gullible Muslim youth to commit offenses against the State and to commit offences against a particular community. To achieve their larger conspiracy of making India as Islamic country by the year 2047 by striking terror on a section of people thereby threatening the unity, integrity, security and sovereignty of India, he gave speeches in the classes organized by PFI to its cadres. The accused was working for PFI to recruit and organize weapons training camps in the name of PE classes which were held to achieve their larger conspiracy to make India an Islamic country by the year 2047 by striking terror on a section of people thereby threatening the unity, integrity, security and sovereignty of India. Further, he actively engaged in the preparation to wage war against the government of India to establish the Islamic State in the year 2047.

17.20 The investigation disclosed that accused Syed Ishaaq (A-5) is the District Secretary, PFI Madurai District. He used to organize weapons training to PFI cadres in the guise of PE classes, Beginners camps, etc., where the PFI cadres were taught how to attack the vulnerable parts of the body and kill people, training with lethal weapons such as knives, swords, iron rods, etc. to achieve their goal to establish an Islamic State in India by the year 2047. He is one of the PFI's core team members which created social disharmony on the basis of religion by spreading fake news about Tiruparankundram hills or Sikkanthar Malai communal rift. Further he motivated Muslim community youth to attend weapons training conducted by PFI in the guise of PE classes thereby making them as hit squads to attack, assault, maim and murder prominent persons even though they belonged to Muslim community for opposing PFI.

17.21 The investigation disclosed that accused S Khaja Mohideen (A-6) is the State level speaker of PFI and in-charge for Mass Mobilization. Further, it is revealed that he used to deliver speeches in the PFI camps and in the

PFI meetings on the materials/articles of ISIS which were published in the Voice of Hind and Voice of Khorasan magazine. Further, he used to preach about the Ghazwa-e-Hind ie., Battle against India to motivate Muslim community people to prepare for waging war against the Government of India and to establish an Islamic state by the year 2047. He was involved in furthering and supporting proscribed terrorist organizations. Further he motivated Muslim community youth to attend weapons training conducted by PFI in the guise of PE classes thereby making them as hit squads to attack, assault, maim and murder prominent persons even though they belong to Muslim community and oppose PFI. As in-charge for Mass Mobilization, he used to make Muslim youth to join PFI and educate them about the ancient Muslim rule over India and the present situation of Muslim in India and make them ready for the Ghazwa-e-Hind, which is corroborated by the digital devices (MO-13) to (MO-17) seized from the accused and in the scrutiny report (D- 166) of the forensic report (D-155) received from NFSU.

17.22 The investigation disclosed that accused S Barkathulla, (A-7) associated himself with Manitha Neethi Pasarai (MNP), predecessor to PFI. He was the District president of PFI in the year 2014 and he organized PF1 marches/parades to create insecurity among a section of people on the basis of religion. He motivated Muslim community youth to attend weapon training conducted by PFI in the guise of PE classes thereby making them as hit squads to attack, assault, maim and murder prominent persons even though they belong to Muslim community who oppose PFI. He had personally supervised and conducted weapons training camps where PFI cadres were given training to attack their intended targets.

17.23 The investigation disclosed that accused Yasar Arafat, (A-8) is the Zonal Secretary of PFI Madurai Zone which consists of six districts. Earlier, he was the district president of PFI, Theni district. He coordinated weapons training in the districts that come under his zone in the name of PE classes where the participants were taught to attack

with knives, swords and petrol bombs. Further, he created an attack team in Theni district from the participants who attended the weapons training camp. He used to select PFI cadres who perform well in the weapons training classes as instructors who in turn would conduct secret training sessions in PFI offices and Arivagam, Theni. The training classes were conducted to achieve their goal to prepare for waging war against the Government of India and to establish an Islamic state by the year 2047. To terrorize the Hindu community, he organized recce of the Hindu leaders' business establishments. Further, documents seized from his residence during the search conducted on 22-09-2022, contain incriminating materials like primary action plan of units, mohalla committees, where explanation was given in gruesome detail on how to attack, where to attack, etc.

17.24 The investigation disclosed that the accused Fayas Ahmed @ Fayas, (A-9) is the district president of PFI Cuddalore District. To achieve their larger conspiracy in making India an Islamic country by the year 2047 by striking terror on a section of people thereby threatening the unity, integrity, security and sovereignty of India, he gave speeches in the classes conducted by PFI to their cadres. He motivated Muslim community youth to attend weapons training conducted by PFI in the guise of PE classes thereby making them hit squads to attack, assault, maim and murder prominent persons even though they belong to Muslim community and oppose PFI. During Ganesh Chaturthi, he attempted to instigate PFI cadres to create riots between Hindu & Muslim with intent to promote enmity between two groups.

18.1 That, the investigation conducted by NIA revealed that A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-13 and others have been parties to the criminal conspiracy in the matter of strengthening PFI, recruiting of persons to PFI, imparting weapon training to its (PFI) members, commission of unlawful acts, preparatory acts for commission of terrorist acts with the object of establishing Islamic rule in India by 2047. Investigation disclosed that Popular Front of India and its office bearers including the arrested accused

persons, A-1 to A-9 and A-13 conspired to wage a war against Government of India by threatening the unity, integrity, security and sovereignty of India in order to establish Islamic State in India. To inspire and incite the cadres of PFI, Islamic wars namely battles of Al Badr and battle of Uhud were compared with the war that the PFI and its cadres were to wage against India. The accused persons intentionally promoted enmity between different groups on grounds of religion, intentionally planting a perceived threat in the minds of impressionable Muslim youth that they were imperilled by Kaffirs/non-believers and the Government and the Indian constitution were scheming against Muslims thereby instigating and inducing gullible Muslim youth to commit offence against the people belonging other religions/faith and to commit offence against the State thereby creating enmity against people of other religions. Further, the accused persons intended and caused alarm to the general public/section of the public by publishing statements in writing thereby inducing to commit offences against the State/general public tranquility. They recruited new cadres and organized weapons training including throwing petrol bombs to the new recruits to strike terror against India and among a section of people in India. Further, the PFI and its office bearers including an accused person; A-6 had professed and invited support to the ideologies of Islamic State and Lashkar-e—Taiba, both proscribed organizations as per the First Schedule under UA (P) Act, 1967, in the classes conducted by the PFI to its cadres."

15. As stated earlier, the chargesheet has been filed against the respondents-accused for the offences under Sections 120B, 121A, 12, 153A, 505(1) (b), (c), (2) of IPC and Sections 13, 18, 18A, 18B of UAPA, except the Accused-6, S. Khaja Maideen, who has been additionally implicated under Section 38 and 39 of UAPA. It may be noted that out of the alleged offences under UAPA, the offences under Sections 18, 18A and 18B would fall under Chapter-IV, whereas the offences under Section 38 and 39 would fall under Chapter-VI of the Act. From the statements of witnesses and the incriminating documents collected during the course of

investigation, as referred to in the charge-sheet, it is discernible that the PW-A, PW-C, PW-D, PW-E, and witnesses Syed Abutaheer and Mohammed Satik have stated about the activities of PFI like radicalizing youth for recruitment, Arms training (knife, sword and use of petrol bombs/inflammable substances) and preparatory act for commissioning of terrorist activities. Similarly, PW-F has stated about the PFI's ideal of an Islamic State and about providing support to ISIS. The PW-A, PW-B, PW-C, PW-D, PW-H and PW-I have stated about the conspiracy hatched by the members of the PFI and particularly the role of A-8 Yasar Arafat for creating an Islamic State by the year 2047 through an armed struggle against the Government of India. From the relevant extracts of the statements of the protected witnesses and of the listed witnesses, the role of each of the respondents-accused has been sought to be made out, which can be tabulated as under:

Accused No.	Name	Relevant statements of protected and listed witnesses
A-1	A.M. Idris @ Ahamed Idris	The role and involvement of A-1 Ahamed Idris is sought to be culled out from the statements of LW-68, LW-69, LW-89/PW-C, LW-93/PW-D, LW-92/PW-F and PW-114/PW-G.
A-3	Mohammed Abuthahir	The role and involvement of A-3 Mohammed Abuthahir is sought to be culled out from the statements of LW-62, LW-89/PW-C, LW-93/PW-D, LW-92/PW-F and LW-114/PW-G.
A-4	Khalid Mohammed	The role and involvement of A-4 Khalid Mohammed is sought to be made out from the statements of LW-68, LW-69, LW-86/PW-B, LW-89/PW-C, LW-93/PW-D and LW-92/PW-F.
A-5	Syed Ishaaq	The role ad involvement of A-5 Syed Ishaaq is sought to be made out from the statements of LW-89/PW-C, LW-93/PW-D, LW-108/PW-E, LW-92/PW-F and LW-114/PW-G.
A-6	S. Khaja Maideen	The role ad involvement of A-6 S. Khaja Maideen is sought to be made out from the statements of LW-89/PW-C, LW-93/PW-D and LW-92/PW-F.

A-7	Barakathullah	The role and involvement of A-7 Barakathullah is sought to be made out from the statements of LW-86/PW-B and LW-122/PW-H.
A-8	Yasar Arafat	The role ad involvement of A-8 Yasar Arafat is sought to be made out from the statements of LW-67, LW-68, LW-69, LW-126/PW-A, LW-89/PW-C, LW-93/PW-D and LW-108/PW-E.
A-9	Fayaz Ahmed	The role ad involvement of A-9 Fayaz Ahmed is sought to be made out from the statements of LW-81, LW-82, LW-83 and LW-88

16. As transpiring from the material on record, the PFI was registered under the Societies Registration Act, having an organizational set up as contained in its constitution. All the respondents-accused were the members or office bearers of the said organization at the relevant time. As alleged in the chargesheet, though the PFI was projecting itself as an organization fighting for the rights of minorities, Dalits and marginalized communities, it was pursuing a covert agenda to radicalize particular section of the society and to work towards undermining the concept of democracy and integrity of India. The investigation disclosed that the activities and undeclared objectives of PFI had strong communal and anti-national agenda to establish an Islamic rule in India by radicalization of Muslims and communalization of issues. After recruitment as members of PFI, they were motivated towards violent terrorist activities by providing training through beginners course and advanced training courses. During the training courses, physical education classes were conducted in which members were taught to attack, assault, maim and murder with bare hands. The training was also given as to how to use weapons like knives and swords and how to hurl bombs. It appears that within few days of the arrest of the respondents on 22.09.2022, the PFI was declared as an "unlawful association" and was banned by the Government of India under the UAPA. We need not elaborate on the allegations made by the protected/listed witnesses stating the role and involvement of each of the respondents, who were either members or the office bearers of the PFI. Suffice it to say that, there is sufficient material in the form of statements of witnesses and other incriminating evidence in the form of digital devices, books, photographs etc. collected during the course of investigation and

relied upon by the appellant as recorded in the chargesheet, to form an opinion that there are reasonable grounds for believing that the accusations against the respondents-accused are *prima facie* true.

17. As stated in Watali's case, the material/evidence collated by the Investigating Agency in reference to the accusation against each of the accused concerned in the chargesheet would prevail until rebutted, contradicted and overcome or disproved by other evidence. The material collated and statements of witnesses recorded also show *prima facie* complicity of the respondents-accused in the commission of the alleged offences, which material/evidence is good and sufficient on its face to establish the facts constituting the alleged offences, till such material/evidence is rebutted or contradicted. The Court at the stage of considering the bail applications of the respondents-accused is merely required to record a finding on the basis of broad probabilities regarding the involvement of the respondents in the commission of the alleged offences.

18. In our opinion, the High Court has committed gross error in not considering the material/evidence in its right and proper perspective and in recording a perverse finding to the effect that there was no material to suggest the commission of any offence, which falls under Section 15 of UAPA, and that the prosecution had not produced any material about the involvement of any of the respondents-accused in any terrorist act or as a member of a terrorist gang or organization or training terrorism. Such perverse findings of the High Court deserve to be strongly deprecated more particularly when the appellant has not alleged the offence under Section 15 of UAPA either in the FIR or in the chargesheet against the respondents. The alleged offences are under Section 18, 18A, 18B etc. For the purpose of considering the offence under Section 18, the commission of terrorist act as contemplated in Section 15 of UAPA is not required to be made out. What Section 18 contemplates is that whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act would be punishable under the said provision. Hence, if there is any material or evidence to show that the accused had conspired or attempted to commit a terrorist act, or committed any act preparatory to the commission of a terrorist act, such material evidence would be sufficient to invoke Section 18. For attracting Section 18, the involvement of the accused in the

actual commission of terrorist act as defined in Section 15 need not be shown. The High Court having miserably failed to comprehend the correct import of Section 18 read with the definition of terrorist act as contemplated in Section 15 of UAPA, in our opinion the High Court has fallen into a patent and manifest error.

19. Though it was sought to be submitted by learned counsel appearing for the respondents that the material/evidence collected by the Investigating Agency and statements of witnesses relied upon by the prosecuting agency is not reliable, the said submission cannot be accepted. As held by this Court in Watali's case, the question of discarding the material or document at the stage of considering the bail application of an accused, on the ground of being not reliable or inadmissible in evidence, is not permissible. The Court must look at the contents of the documents and take such documents into account as it is and satisfy itself on the basis of broad probabilities regarding the involvement of the accused in the commission of the alleged offences for recording whether a *prima facie* case is made out against the accused.

20. No doubt, in ***Union of India vs. K.A. Najeeb***,[3] relied upon by the learned counsels for the respondents, it has been observed that a Constitutional court is not strictly bound by the prohibitory provisions of grant of bail in 1967 Act, and can exercise its constitutional jurisdiction to release the accused on bail who has been incarcerated for a long period of time relying upon Article 21 of the Constitution of India, the said observations may not be applicable to the facts of the present case. In the said case, this Court did not interfere with the order passed by the High Court granting bail to the accused in the said case, on the ground that the said accused had already spent 5 years and 5 months in custody, and the trial was likely to take long time. So far as the respondents in the instant appeals are concerned, they are in custody hardly for one and half years, apart from the fact that all the respondents are shown to have been involved in previous cases. There are about 8 to 9 previous cases shown in the chargesheet against the respondents except accused no.1, 4 and 6 who are shown to have been involved in two cases. Considering the nature and gravity of the alleged offences and

3 (2021) 3 SCC 713

considering their criminal antecedents, in our opinion High Court should not have taken a lenient view, more particularly when there was sufficient material to show their *prima facie* involvement in the alleged offences under the UAPA.

21. Similarly, the decision in ***Vernon vs. State of Maharashtra and Another***,[4] relied upon by the learned counsels for the respondents also would be of hardly any help in as much in the said case this Court after considering allegations made against the accused and long incarnation of five years, did not think it proper to continue further detention of the appellants-accused in the said case. In ***Shoma Kanti Sen vs. State of Maharashtra and Another***,[5] relied upon by the learned counsels for the respondents, this Court had deemed it proper to release the accused involved in the offences under the UAPA on bail, having considered the facts of the case and observing that Section 43(d)(5) of UAPA was not applicable.

22. In the instant case, we are satisfied from the chargesheet as also the other material/documents relied upon by the appellant that there are reasonable grounds for believing that the accusations against the respondents are *prima facie* true and that the mandate contained in the proviso to Section 43(D)(5) would be applicable for not releasing the respondents on bail. Having regard to the seriousness and gravity of the alleged offences, previous criminal history of the respondents as mentioned in the charge-sheet, the period of custody undergone by the respondents being hardly one and half years, the severity of punishment prescribed for the alleged offences and *prima facie* material collected during the course of investigation, the impugned order passed by the High Court cannot be sustained. We are conscious of the legal position that we should be slow in interfering with the order when the bail has been granted by the High Court, however it is equally well settled that if such order of granting bail is found to be illegal and perverse, it must be set aside.

23. This Court has often interpreted the counter terrorism enactments to strike a balance between the civil liberties of the accused, human rights of the victims and compelling interest of the state. It cannot be denied that National security is always of paramount importance and

4 [2023] 10 SCR 867 : 2023 SCC OnLine SC 885

5 [2024] 4 SCR 270 : (2024) 4 SCALE 709

any act in aid to any terrorist act – violent or non-violent is liable to be restricted. The UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of the persons in the interest of sovereignty and integrity of India.

24. In that view of the matter, the impugned order passed by the High Court is set aside. The respondents shall forthwith surrender themselves before the appellant-NIA. Since, the chargesheet has already been submitted before the Special Court, it is directed that the Special Court shall proceed with the trial as expeditiously as possible and in accordance with law, without being influenced by any of the observations made by this Court in this order.

25. The appeals are allowed accordingly.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 5 S.C.R. 1038 : 2024 INSC 461

In Re-Inhuman Conditions In 1382 Prisons

(Writ Petition (Civil) No. 406 of 2013)

14 May 2024

[Hima Kohli and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Status reports filed by various States/UTs furnishing information on the action proposed to be taken within fixed timeline as regards various facilities lacking in jails and the recommendations made by the Committee(s) constituted by the Supreme Court.

Headnotes†

Prison Reforms – Recommendations made by the Committee(s) constituted by Supreme Court – Overcrowding in jails; capacity enhancement; welfare of women prisoners and children in prisons etc. – Status reports filed by the States of Bihar, Punjab, Chhattisgarh, Rajasthan, Jharkhand, Odisha and Kerala in terms of directions issued vide order dtd. 23.04.2024 – Recommendations made by Amicus Curiae as regards additional wards; upgradation of other necessary infrastructure like sanitation facility, kitchen, staff etc. to meet the additional needs; such infrastructural improvement and their upgradation; pending approvals:

Held: In terms of recommendations of Amicus Curiae, specific directions issued to the States/UTs – Additional affidavits personally affirmed by the Chief Secretary of the State/UT concerned be filed – Affidavits to address all issues including inmate-capacity enhancement/augmentation and creation of posts of wardens/cooks/doctors/various jail staff etc. – Pending approvals for sanction of projects or identification of suitable land, to be brought to their logical conclusion within the period as directed – Further, for creating facilities in prisons, common specifications/parameters may be in terms prescribed by and under the Model Prison Manual 2016 issued by the Ministry of Home Affairs, Government of India. [Paras 36-38, 41]

Case Law Cited

Sunil Batra (II) v Delhi Administration **[1980] 2 SCR 557 : (1980) 3 SCC 488;** *Rama Murthy v State of Karnataka* **(1997) 3 SCC 642;** *State of Maharashtra v Prabhakar Pandurang Sangzgir* **[1966] 1**

SCR 702 : AIR 1966 SC 424; *Mohan Patnaik v State of Andhra Pradesh* **[1975] 2 SCR 24 : (1975) 3 SCC 185;** *Re-Inhuman Conditions In 1382 Prisons vs. Re-Inhuman Conditions In 1382 Prisons* **[2016] 1 SCR 1090 : (2016) 3 SCC 700;** *Re- Inhuman Conditions In 1382 Prisons (Ji)* **[2016] 7 SCR 1001 : (2016) 10 SCC 17;** *Re-Inhuman Conditions In 1382 Prisons* **[2017] 14 SCR 519 : (2017) 10 SCC 658;** *Inhuman conditions In 1382 Prisons, In Re* **[2018] 12 SCR 78 : (2018) 18 SCC 777 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Prison Reforms; Basic facilities in prisons; Article 21 of the Constitution of India; Fundamental Rights of prisoners; Problems in jails in India; Facilities lacking in jails; Overcrowding in jails; Inmate capacity enhancement/augmentation; Construction of new prisoner cells; Women prisoners; Welfare of women prisoners and children in the prison; Prison Manual; Model Prison Manual 2016.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No.406 of 2013

(Under Article 32 of The Constitution of India)

Appearances for Parties

Gaurav Agrawal, Sr. Adv., Amicus Curiae

Ms. Aishwarya Bhati, A.S.G., Amit Anand Tiwari, Ms. Garima Prasad, Sr. A.A.Gs., B.K. Satija, Mohd Irshad, Shiv Mangal Sharma, A.A.G., Harmeet Singh Ruprah, D.A.G., Tapesh Kumar Singh, Sr. Adv./ AAG, R. Bala, Sr Adv., Mahfooz Ahsan Nazki, Polanki Gowtham, K. V. Girish Chowdary, T. Vijaya Bhaskar Reddy, Ms. Rajeswari Mukherjee, Meeran Maqbool, Ms. Archita Nigam, Shuvodeep Roy, Saurabh Tripathi, Sumit Kumar, Abhimanyu Tewari, Ms. Eliza Bar, Ms. Pragati Neekhra, Ms. Deepanwita Priyanka, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Neha Singh, Surjendu Sankar Das, Anand Murthi Rao, Samar Vijay Singh, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, Manish Verma, Parth Awasthi, Pashupathi Nath Razdan, Ms. Maitreyee Jagat Joshi, Astik Gupta, Ms. Inderdeep Kaur Raina, Rishi Malhotra, V. N. Raghupathy, Manendra Pal Gupta, Varun

Varma, Ms. Mythili S, Md. Apzal Ansari, C. K. Sasi, Ms. Meena K Poulose, Ms. Anupriya, Ms. Mrinal Gopal Elker, Saurabh Singh, Manish Yadav, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Preet S. Phanse, Adarsh Dubey, Pukhrambam Ramesh Kumar, Karun Sharma, Ms. Anupama Ngangom, Ms. Rajkumari Divyasana, R.Rajaselvan, Avijit Mani Tripathi, Upendra Mishra, P.S. Negi, T.K. Nayak, Kynpham V. Kharlyngdoh, Ms. Marbiang Khongwir, Siddhesh Shirish Kotwal, Ms. K. Enatoli Sema, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Chang, Prang Newmai, Ms. Anindita Pujari, Shaileshwar Yadav, Ms. Radhika Mohapatra, Ms. Bhumika Chouksey, Karan Sharma, Saurabh Rajpal, Ms. Nidhi Jaswal, Ms. Shalini Singh, Amogh Bansal, Sandeep Kumar Jha, Raghvendra Kumar, Anand Kumar Dubey, Simanta Kumar, Jainendra Kumar, Maneesh Pathak, Sabarish Subramanian, Ms. Devyani Gupta, Vishnu Unnikrishnan, Naman Dwivedi, C Kranthi Kumar, Ms. Tanvi Anand, Danish Saifi, Chandra Bhushan Tiwari, Siddharth Sangal, Pradeep Misra, Daleep Dhyani, Suraj Singh, Manoj Kumar Sharma, Srisatya Mohanty, Ms. Astha Sharma, Shreyas Awasthi, Ms. Muskan Surana, K.M. Natraj, Mukesh Kumar Maroria, Mrs. Suhasini Sen, Ishaan Sharma, Mrs. Indira Bhakar, Mrs. Mrinal Elkar Mazumdar, Harish Pandey, Mrs. Shagun Thakur, Kamlendra Mishra, Rajesh Singh Chauhan, Piyush Beriwal, Kanu Agrawal, Varun Chugh, Bhuvan Kapoor, Krishna Kant Dubey, Shashwat Parihar, Vineet Singh, M.K. Maroria, Arvind Kumar Sharma, Ms. Pallavi Langar, Ms. Ruchika Gupta, Ms. Henny Khanna, Ms. Namita Choudhary, Ashutosh Kumar Sharma, Ms. Srishti Choudhary, Samir Ali Khan, Pranjal Sharma, Md Kashif Irshad Khan Faridi, Abhimanyu Jhamba, Abhishek Pandey, Prashant Kumar Umrao, Ms. Rashmi Nandakumar, Yashmita Pandey, Rajendra Sahu, Ms. Hema Sahu, Ms. Kamlesh Jain, Gaurav Agrawal, Gurmeet Singh Makker, Ms. Suhashini Sen, Sarthak Karol, Ms. Ameyvikrama Thanvi, Ashok Panigrahi, B. K. Satija, Kartikay Agrawal, Abhishek Kumar Pandey, Chitvan Singhal, Raman Yadav, Mukesh Kumar Singh, Mrs. Ameya Vikrama Thanvi, Anando Mukherjee, Ms. Ekta Bharati, Shwetank Singh, Chandra Prakash, Shantanu Sagar, Prabhat Ranjan Raj, Anil Kumar, Gunjesh Ranjan, Salvador Santosh Rebello, Raghav Sharma, Prateek Tanmay, Jaskirat Pal Singh, Deepanshu Raj, Ms. Pooja Gill, Ajay Verma, Vaishnav Kirti Singh, Durgesh Ramchandra Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

(I) CONTEXT

1. Pursuant to our order dated 23rd April, 2024, Mr. Gaurav Agrawal, learned Amicus Curiae[1] has filed a Note summarising details of information[2] received from the States of Bihar, Punjab, Chhattisgarh, Rajasthan, Jharkhand, Odisha, and Kerala.

2. The AC submits that the State of Uttar Pradesh has also filed a report which runs into more than 300 pages; likewise stands the position for the States of Andhra Pradesh, West Bengal and Madhya Pradesh – all their reports/responses are voluminous. Mr. Agrawal submits that these three States (supra) may file additional affidavits in terms of the order dated 23rd April, 2024, for which purpose some time be granted.

3. It is also submitted that further affidavits have been received from the States of Telangana, Assam, Gujarat, Tamil Nadu and Maharashtra. He requests for time to file a comprehensive report after going through the said affidavits.

(II) STATEWISE STUTUS REPORTS

(A) STATE OF BIHAR

4. Onto what engages us today, the AC draws the attention of this Court to the State of Bihar, where overcrowding in jails has been flagged, especially concerning the (a) District Jails at (i) Aurangabad, (ii) Darbhanga, (iii) Gopalganj, (iv) Khagaria, (v) Lakhisarai, (vi) Madhepura, (vii) Biharsharif, (viii) Navadah, (ix) Saharsa, (x) Chapra, (xi) Sitamarhi, (xii) Siwan, (xiii) Supaul, (xiv) Hajipur; (b) Adarsh Central Jail, Beur, and (c) Central Jail, Purnea.

5. The Note indicates a measure of slackness pertaining to approvals being granted for works to commence. In some jails, the capacity enhancement is likely to be completed by the end of the present Financial Year i.e. by/before March, 2025, whereas in other jails, suitable land is still being identified.

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1 hereinafter referred to as the 'AC'

2 hereinafter referred to as the 'Note'

6. This Court is not satisfied with the steps taken by the concerned authorities of the State of Bihar to indicate their seriousness towards addressing issues which are urgent in nature and cannot be casually dealt with. For instance, *apropos* improvement in living conditions for the prisoners in Central Jail, Gaya, it transpires that that approval has been given for making adequate availability of drainage facility, construction of additional toilets, construction of kitchen, in the current Financial Year followed by construction over the next two years.

7. For the Sub-Jail, Sherghati, approval has been given for construction of 15 additional toilets and the work is being done by the Building Construction Department.

8. The AC has submitted that in terms of the recommendations made by the Committee constituted by this Court, in 13 Central/District Jails, insofar as women prisoners are concerned, the State Government has indicated various steps taken in the District Jails at Aurangabad, Ara, Katihar, Lakhisarai, and the Central Jail at Gaya.

9. Again, we would note that though some recommendations made by the Committee have been accepted/processed, the State Government is yet in the process of granting approvals for construction of kitchen, increasing the height of the parameter wall as also for construction/maintenance of clean toilets, separate women prisoners' hospital, expansion of women prison-wards and barracks and construction of new prisoner cells. We find no valid reason for the delays in the approvals. Needless to state, the approval, being the starting point for any project/development to proceed, it must be dealt with on priority. The Note and the record make it clear that for various jails, approvals for the works are expected to be given in the present Financial Year 2024-25 i.e. in the next 10 months, upto March, 2025.

10. In the above background, the AC has prayed for issuance of directions as under:

> *'a) Approval for additional wards in District Jail Aurangabad, District Jail Lakhisarai and District Jail Nawadah, and the 5 women jails mentioned above may be expedited by the State Government so that process for construction can begin at the earliest. The*

Government has stated that the financial approval would be given in this financial year. The Government may consider giving approval in 3 months' time and take further steps thereafter.

b) *It is important that with the increase in the capacity, the State Government may also be directed to ensure that other necessary infrastructure like sanitation facility, kitchen, staff etc is also upgraded to meet the additional needs.*

c) *Construction is going on in District Jail Darbhanga, Central Jail Purnea, District Jail Saharsa and District Jail Chhapra. Affidavit of the State Government states that most of the works would be completed by next year i.e. 2025. The Chief Secretary, State of Bihar may take a review meeting of the ongoing construction in 6 months' time to ensure that there is no delay in the said construction.*

d) *Land identification process is underway interalia in Gopalganj, Khagaria, Biharsharif and few other districts. It is humbly prayed that the Chief Secretary may review the matter in 4 months. He may impress upon the District Magistrates of the urgency, so that land is identified at the earliest. The progress in this regard may be informed to this Hon'ble Court.*

e) *It appears that land has been selected for construction of new jail in Madhepura. Madhepura has huge overcrowding in as much as sanctioned capacity is 182 and existing capacity is 517 i.e. 2.5 times the sanctioned capacity. It is prayed that the State Government may be directed to complete the land acquisition process within 6 months.*

f) *A new jail is proposed in Supaul for which estimate has been received from Building Construction Department and process of approval is underway. The State Government may be directed to expedite approval process so that construction process can begin.'*

11. The AC has also highlighted additional issues:

> '… The undersigned has gone through the summary of the report and respectful submits that the following may need the attention of the State Government:-

Sr. No.	*Name of jail*	*Report of the Committee*
1	*District Jail Begusarai*	*Facilities for children lodged with their mothers in jail:- There is women's cell of 10 capacity located in the prison currently have 37 women prisons with one child are living. A temporary crèche facility is available in the women's sections. District Education Officer/ District Programme Officer Begusarai have been requested to open an Anganwari Center in the women's wing of the jail for the primary education of the children of 0-6 years confined with female prisoners.* *There is lack of space inside the jail for construction of addition male cell. As the number of prisoners increases, a situation of public unrest arise. Keeping in mind the density of prisoners, there seems to be a need for construction of a sub-jail inside the district.* *The Committee unanimously decided to recommend for construction of a sub-jail inside the District between Manjhaul Sub-Division and Bakhri Sub-Division.*
2	*Central Jail Bhagalpur/ Women District Jail Bhagalpur*	*Construction of toilet cum bathroom with 10 commodes is required in Mahila Mandal Jail, Bhagalpur for the purpose of female prisoners.*

		There is a need to construct double washing closets (toilets, urinals) inside the wards in Mahila Mandal Jail, Bhagalpur as per Model Jail Manual, 2016, which is not available in the jail. *At present, the provision of flush toilet is not available in Mahila Mandal Jail, Bhagalpur. According to the Model Jail Manual, 2016, all the previously constructed toilets are required to be converted into flush toilets and the previously non-functional toilets in the jail are required to be repaired and renovated.* *At present, there is a provision of one washroom for every 10 prisoners in Mahila Mandal Jail, Bhagalpur, but it needs repair/ renovation.* *Presently, modern kitchen is not installed in Mahila Mandal Jail, Bhagalpur. As a result, as per Model Jail Manual, 2016, additional modern kitchen is expected to be installed as per the prison capacity.*
3	*Central Jail Buxar*	*On the point of welfare of women prisoners and facilities for children lodged with their mother in jails, the Jail Superintendent stated that construction of canteen, crèche, toilets and bathrooms, advanced kitchen of women is required.*
4	*District Patna*	*Patna has Adarsh Central Beur, District Jail Phulwarisharif and 4 sub jails. However, there is no report regarding the requirements of the said jails.*

5	*District Jail Rohtas (Sasaram)* *[As against capacity of 30 women prisoners, there are 82 women prisoners lodged in jail].*	*One female ward is needed for the women inmates during the meeting, Jail Superintendent submitted that place is available for enhancing the capacity of existing jail.*
6	*District Jail Samastipur*	*For the treatment of women inmates service of one Gynaecologist (sic) is required at least once in a week. Hence, Jail Superintendent is directed to communicate the matter to Civil Surgeon, Samastipur for the arrangement of one Gynaecologist (sic). It is also recommended by the Committee that any child between age 4-6 years, who is living with his/her mother, he/she will be enrolled to the nearest school for proper education.*

…'

12. From the aforesaid, it transpires that no specific report regarding requirements for the Adarsh Central Jail, Beur, Phulwarisharif and 4 Sub-jails of the said jails, has been furnished.

13. *Ergo*, on the recommendation of the AC, a direction is hereby issued to the State of Bihar not only to implement on priority basis, the recommendations *supra* but further, to ensure that the exercise contemplated is undertaken on an urgent basis for all the jails in its jurisdiction. Milestones be fixed for expeditious implementation/completion thereof. The State will also endeavour to shorten the timelines presently projected for various works. Fresh affidavit of compliance shall be filed by the State of Bihar before the next date.

(B) STATE OF PUNJAB

14. The AC's Note highlights overcrowding in jails and points out some timelines for infrastructural improvement in jails and their upgradation. Four five-year phases have been indicated *viz.* from (a) 2024-2025 to 2028-2029, (b) 2029-2030 to 2033-2034, (c) 2034-2035 to 2038-2039, and (d) 2039-2040 to 2043-2044. For the first phase comprising the Financial Years 2024-2025 to 2028-2029, the Central Jails at Patiala, Ludhiana, Amritsar, Kapurthala, Faridkot; District Jails at Nabha, Sangrur, Roopnagar, Mansa, Barnala and Sub-Jail, Fazilka have been included detailing works qua repair, other constructions including sewage systems, new barracks, repair of hospital cells, bathrooms, creation of female barracks, creche etc.

15. For the State of Punjab, the AC seeks the following directions:

> *'i) It is humbly submitted that the Chief Secretary, Government of Punjab has merely mentioned that summary is submitted. It is hoped that the Government has decided the recommendations. It is imperative that actual decisions are taken by the State Government in this regard and atleast (sic) the works that can be approved in this financial year 2024-25 are approved in 3 months' time. The Government must try and approve as many projects/ works as possible.*
>
> *ii) Construction of additional capacity should also be matched with other infrastructure like construction of toilets, enhancement of staff etc. This aspect should also be examined by the State.*
>
> *iii) On the last date, this Hon'ble Court had indicated about **need for de-addiction center** in atleast (sic) major jails in the State of Punjab. Only recommendation is given qua Central Jail Faridkot that there is a requirement for de-addiction center. It is important that the State of Punjab examines the availability of medical facilities which are required in all Central Jails atleast (sic) for purposes of de-addiction center.*
>
> *iv) With regard to women prisoners: The State Government has mentioned in its affidavit that the Department of Jail will establish sanitary pad dispensing and disposal*

machine at Central Jail Ferozepur as recommended by the District Committee. It is humbly submitted that the State Government may examine whether similar such facility is required and can be made available in other Central Jails also.'

16. The State of Punjab through its authorities concerned is directed to do the needful in the above terms and file a fresh affidavit well before the next date of hearing.

(C) STATE OF CHHATTISGARH

17. The Note, as per the Statement of the Director General, Prisons, indicates that the total capacity of the 33 jails in the State is 14483, whereas currently 18343 prisoners are lodged. The Statement informs that construction work of 78 prisoner barracks is being undertaken to increase the capacity to 4450. 26 works would be completed by December, 2024; 40 works by June 2025, and the remaining works by December, 2025. It is stated that for ensuring that there is no overcrowding in jails for the next 10 years, action will be taken on a proposal of ₹ 22.8 crores for construction of 19 additional prisoner barracks, which would further boost the capacity by 1900. Provision thereof would be made in the Budget of the next Financial Year and the work would be completed by December, 2026.

18. With regard to the welfare of women prisoners and children in the prison, the Note sets out that the State's position is that overcrowding would be solved by completion of the already-sanctioned barracks as also barracks to be sanctioned in the coming Financial Year. It is said that free sanitary pads are being provided to the women prisoners and an incinerator machine has also been installed for their disposal. It is informed that adequate arrangements for toilets and bathrooms in the women's cells and for night toilets in the barracks has been made, to handle cleanliness and hygiene. The State submits that adequate water facilities are in place. For children living with female prisoners, who are detained in jail, it is stated that nutritious food, clothes and medical facilities as per the relevant jail rules are being provided. Babies are provided clothes, food and milk on the advice of the doctor. Baby-kit clothes, soap, oil, powder, mosquito net, rexine, etc., are being given for new-born baby/ies. A crèche has been arranged in the jails for children. Children above the age of six years, who do not have any guardian, are kept in a Children's

Home, with permission from the concerned District Magistrate. It is informed that the Children's Home is equipped for the intellectual and physical development of the children.

19. The AC has submitted that construction in the existing barracks would ease the overcrowding to some extent, but the affidavit of the Chief Secretary/Note of the Director General, Prisons does not deal with the recommendations of the Committee regarding each of the 16 Central and District Jails. The AC points out that administrative approval in many cases is pending such as construction of a special jail with capacity of 4000 prisoners in Raipur District, acquisition of land in Village Deori, approval for new jails in Balrampur etc.

20. The AC seeks following directions:

> *'a) The Government may examine the specific recommendations qua 16 central/ district jails as highlighted in the note of the undersigned and examine whether the additional construction of barracks would ease of overcrowding in that jail. The problem of overcrowding must be seen at jail level and not for the entire State as a whole.*
>
> *b) The additional capacity should be matched with other infrastructure like toilets and enhancement of staff. This aspect should also be examined by the State.*
>
> *c) It has been mentioned that 19 additional prison barracks of 100 each would be approved in this financial year. It is prayed that the State Government may be directed to approve the said proposals within a period of 3 months so that construction could began.*
>
> *d) The report of the Committee constituted by this Hon'ble Court qua women prisoners and children is not available. It is submitted that the said report may be made available to the undersigned so that the problems can be highlighted and the recommendations can be brought to the notice of this Hon'ble Court.'*

21. Directions are issued to the State of Chhattisgarh on the above terms and compliance report be filed on an affidavit before the next date of hearing.

(D) STATE OF RAJASTHAN

22. The Note by the AC states that 30 works relating to construction of jails are on-going, including construction of District Jail Dungarpur, which is likely to be completed by 31st August, 2024, construction of prison barracks in Sub-Jail Kishangarh, District Jail Barmer, Central Jail Sriganganagar, District Jail Nagaur, District Jail Churu, Central Jail Kota and District Jail Jhunjhunu. Similarly, reconstruction of open jail quarters in various jails including Central Jail Kota and District Jail Barmer, most of the works are scheduled to be completed either in the present calendar year or at the latest, by March, 2025.

23. As far as the reports of the Committee constituted by this Court are concerned, para 8 of the Chief Secretary's affidavit reads as under:

> *'The recommendations of the Committee formed under the chairmanship of the Hon'ble District and Sessions Judges were examined and the following land has been allotted for prisons-*
>
> 1. *Sub Jail Bari (Dholpur)*
> 2. *Sub Jail Hindaun City*
> 3. *District Jail Bhilwara*
> 4. *Sub Jail Phalodi*
> 5. *Sub Jail Choti Sadri*
> 6. *District Jail Rajsamand*
> 7. *Sub Jail Bheem*
> 8. *Sub Jail Ramganjmand*
> 9. *Sub Jail Nainwa*
> 10. *Sub Jail Bhawanimandi'*

24. The State Government has stated that various requests for sanction of money and identification of suitable land for expansion would be done in the coming months.

25. The AC, *in praesenti*, does not seek any positive directions to the authorities concerned. However, the AC submits that the timelines be adhered to, both for works in progress as also for analysing new proposals. The State is directed to take note of the afore-stated and proceed accordingly.

(E) STATE OF JHARKHAND

26. Various recommendations made by the Committee for the 14 Jails (Central/District) have been indicated. It has been stated that pursuant to the recommendations of the Committee, the Government has written to all the Prison Superintendents to seek preparation of estimates from the Jharkhand Police Housing Corporation Limited[3] for the works recommended. The State Government has sought information wherever new prisons have been recommended for establishment.

27. The AC has sought directions as under:

> *'i) There is urgent need for construction of new jail in Deogarh for which part of the land is also acquired and another part of the land has been earmarked. The Chief Secretary of the State should ensure that necessary steps are taken for process of the construction of new Jail at Deogarh and submit a status report to this Hon'ble Court.*
>
> *ii) As regards other jails are concerned, the State has directed the Superintendent of all jails to get estimates for construction of new wards and/or renovation. It may be* (sic) *admissible if this process is completed as soon as possible so that the requirement in each of the jails is ascertained as soon as possible and those works which can be started this year can commence at the earliest.*
>
> *iii) The Superintendent of women jails/wards in the State can also examine specific issues dealing with hygiene, sanitation and medical checkup of women and also the facility required for children and communicate the same as soon as possible to the Headquarter for doing the needful.'*

28. At this stage, the Court would indicate that the State does not appear serious in taking immediate remedial measures in the matter inasmuch as it has left it to the Prison Superintendents to prepare/obtain

3 hereinafter referred to as 'JPHCL'

estimates for the works recommended with the aid of JPHCL. The Prison Superintendent, being the junior-most officer in the hierarchy, cannot be expected to have much of a say, real or persuasive, to get things done at the higher/highest level. With this in mind, this Court had earlier indicated that the Chief Secretaries of the States/ Union Territories would be filing affidavits, with the idea so that all the recommendations could be scrutinised at the highest level, and consequently, whatever action would be required, could be taken by the State Government, eliminating any processual delays.

29. The State shall act in terms of the directions sought by the AC, being mindful of what we have penned above.

(F) STATE OF ODISHA

30. The AC's Note indicates that the affidavit filed by the Chief Secretary is not clear on one aspect - the Chief Secretary has forwarded minutes of meetings of the Committees of 13 Districts, whereas there are 30 Districts in the State of Odisha. It is not clear if the remaining Districts (17) have held their meetings, and if yes, what report/recommendation(s) have been made. To address the problem of overcrowding in 8 jails, *inter alia*, additional wards have been constructed in 29 selected jails enhancing the total capacity of inmates by 2240 during the years 2020-2021, 2021-2022 and 2022-2023. It is stated that additional wards are also under construction in 23 jails, which would enhance the inmate capacity by 1625.

31. For five districts, namely, Nabarangpur, Kandhamal Phulbani, Doegarh, Gajapati and Sundergarh, for which recommendations have been made by the Committee concerned, there is nothing to indicate as to what action has been taken on the same.

32. The State is directed to proceed with all possible expedition to ramp up the capacity and file a fresh affidavit before the next date.

(G) STATE OF KERALA

33. The affidavit by the Chief Secretary indicates overcrowding issues in 13 prisons.[4] Recommendations have also been made by the

4 For reference, the State of Kerala has 56 prisons.

Committees. Yet, nothing concrete is forthcoming as to what follow-up action, if any, has been taken by the State Government. As such, the AC has prayed for issuance of these directions:

> *'a) In some of the Districts in the State of Kerala, the 1st meeting was adjourned awaiting reports from the Superintendent of Prisons. It is therefore, humbly prayed that in such cases, a 2nd meeting may be held and recommendations to improve the conditions in the prison may be made.*
>
> *b) The State of Kerala may be directed to examine the recommendations made by the Committees in all the districts and take appropriate decisions prioritizing the cases which are urgent and which need immediate action and compliance affidavits may be filed before the next date of hearing.'*

34. The State is directed to act in terms of the AC's prayers extracted above and file a compliance affidavit before the next date.

(III) WAY FORWARD

35. Upon careful consideration of the stands taken by the States *supra* as also the oral submissions of various other States made through their respective learned counsel, we are constrained to observe that the State Governments/Union Territory Administrations have not fully woken up to the dire situation. Bereft of a sense of urgency, we sense a certain lethargy. It is most unfortunate that upon queries put by the Court to the learned counsel appearing for the States, the standard response received is that further time be given to come up with details. Obviously, learned counsel cannot address the Court without instructions.

36. There has been a detailed dialogue between the Court, the AC and the learned counsel, during the hearing. Many aspects and factors have been clarified to learned counsel appearing for the parties. We presume that learned counsel, having taken note of the same, would impress upon their respective clients i.e. the respective States or Union Territories (hereinafter referred to as 'UT') to act with diligence. *Ex consequenti,* we direct that appropriate response(s) shall be filed by way of additional affidavits personally affirmed by the Chief Secretary

of the State/UT concerned, at least a week before the next date of hearing, of course, with advance copies to the AC.

37. In addition to specific directions issued to certain States, it is categorically indicated that pending approval(s), be it for sanction of projects or identification of suitable land, the same be proceeded with and brought to their logical conclusion by the States/UTs within a period of ten weeks, reckoned from today.

38. Few learned counsel have requested that the Court may specify some common/ uniform parameters for States/UTs to create facilities in prisons. This suggestion is merited. To begin with, specifications/ parameters for jails may be in terms prescribed by and under the *Model Prison Manual 2016* (hereinafter referred to as the 'MPM') issued by the Government of India, Ministry of Home Affairs.

39. Learned Senior counsel for the State of Uttar Pradesh has submitted that as per the parameters in its latest Jail Manual,[5] the average area per prisoner is more than what is provided for in the MPM. It is canvassed that if the MPM specification is applied, then the capacity of prisons in Uttar Pradesh would increase substantially, with the current infrastructure alone.

40. We may note that perhaps mere existence of a large campus area would not *per se* mean that the capacity has been enhanced or augmented. What is required to be seen is that whether the requisite facilities for each individual prisoner are adequate in terms of sleeping area, mobility within the prison, kitchen/food, health facilities, other matters *etc.*

41. Thus, States/UTs, in their proposed affidavits, should address all issues holistically, including inmate-capacity enhancement/ augmentation. Other logistics such as creation of posts of wardens/ cooks/doctors/various jail staff etc. should also be factored in.

42. Before concluding, we may reiterate that prisoners are covered under Article 21 of the Constitution of India. In ***Sunil Batra (II) v Delhi Administration***,[6] this Court had pointedly answered that prisoners are persons who are entitled to Fundamental Rights even while in

5 We take it that the reference is to the Uttar Pradesh Jail Manual, 2022.

6 [1980] 2 SCR 557 : (1980) 3 SCC 488

custody. ***Rama Murthy v State of Karnataka***,[7] was a case where this Court had identified some problems plaguing jails in India, some of which continue to linger till today. Even before these cases, the view of this Court in respect of prisoners and undertrials was exposited in ***State of Maharashtra v Prabhakar Pandurang Sangzgiri***[8] and ***Mohan Patnaik v State of Andhra Pradesh***.[9] These are merely illustrative but sufficient to demonstrate the intent of this Court to secure basic facilities for those housed in prisons and were noticed in Orders/Judgment passed in this writ petition reported as **(2016) 3 SCC 700,[10] (2016) 10 SCC 17,[11] (2017) 10 SCC 658,[12] and (2018) 18 SCC 777.[13]** We expect all stakeholders to rise to the occasion and discharge the obligation cast on them as expeditiously as is possible.

43. The matter be next listed on 11th July, 2024 at the top of the Board.

Result of the case: Directions issued.

†*Headnotes prepared by:* Divya Pandey

7 (1997) 3 SCC 642

8 [1966] 1 SCR 702 : AIR 1966 SC 424

9 [1975] 2 SCR 24 : (1975) 3 SCC 185

10 Order dated 05.02.2016.

11 Order dated 03.10.2016.

12 Judgment dated 15.09.2017.

13 Order dated 25.09.2018.

[2024] 5 S.C.R. 1056 : 2024 INSC 447

National Investigation Agency New Delhi
v.
Owais Amin @ Cherry & Ors.

(Criminal Appeal No. 2668 of 2024)

17 May 2024

[M.M. Sundresh* and S.V.N. Bhatti, JJ.]

Issue for Consideration

Applicability of Section 196-A of Code of Criminal Procedure SVT., 1989 *vis-à-vis* the provisions and mandate contained in the Code of Criminal Procedure, 1973.

Headnotes†

Jammu & Kashmir Reorganisation Act, 2019 – s.103 – Code of Criminal Procedure SVT., 1989 – ss.4(1)(e), 196-A – Jammu and Kashmir State Ranbir Penal Code SVT., 1989 – s.120-B – Code of Criminal Procedure, 1973 – Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019 – Para 2(13) – Proceedings initiated under CrPC, 1989, non-compliance with s.196-A, CrPC, 1989 – Thus, cognizance for offence u/s.120-B of RPC, 1989 was not taken by trial Court in absence of authorization or empowerment for conveying a complaint as mandated u/s.196-A, CrPC, 1989 – CrPC, 1989 repealed by J & K Reorganisation Act, 2019 on 31.10.2019 – Compliance with s.196-A, if mandatory – CrPC, 1973, if would have retrospective application:

Held: There is nothing to infer either from the J & K Reorganisation Act, 2019 or the 2019 Order, that CrPC, 1973 will have a retrospective application – J & K Reorganisation Act, 2019 came into effect from 31.10.2019, which was the appointed day – Thus, CrPC, 1973 would govern the field only from 31.10.2019 onwards and therefore, has got no retrospective application – As mentioned in Table 3 of the Fifth Schedule of the J & K Reorganisation Act, 2019, followed by the introduction thereof, any investigation in currency at the time of repealing of any statute shall continue under CrPC, 1989 – CrPC, 1973 cannot be made applicable when CrPC, 1989 was still in force – Complaint was conveyed by the

* Author

District Magistrate to the Special Judge, NIA on 20.09.2019 – Chargesheet was filed on 25.09.2019 and the investigation was completed – J & K Reorganisation Act, 2019 came into existence on 31.10.2019 – Hence, on the day when the investigation stood completed, the CrPC, 1989 was in force within the Union Territory of J & K – Requirement of an authorization or an empowerment u/s. 196-A, CrPC, 1989 is mandatory for conveying a complaint, it being at the conclusion of investigation, would not preclude the investigating agency from complying with it thereafter – A mere non-compliance of an earlier procedure mentioned in the repealed Code by itself would not enure to the benefit of an accused, the procedure being a curable one, depending upon the facts and circumstances of the case – Omission caused by the appellant being a curable defect, would not enure to the benefit of the respondents, particularly when they were yet to be charged in the absence of such sanction or empowerment – Impugned judgment set aside insofar it confirmed the judgment of the Special Judge, NIA, in not taking cognizance for the offence punishable u/s. 120-B, RPC, 1989 – Appellant at liberty to comply with the mandate of s.196-A, CrPC, 1989. [Paras 19, 20, 25, 31, 32, 34, 35]

Jammu & Kashmir Reorganisation Act, 2019 – s.103 – Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019 – Para 2(13) – Code of Criminal Procedure SVT., 1989 – Existing laws replaced, application of new laws – Continuation as well as initiation of proceedings under old laws facilitated:

Held: Para 2(13) of the Order, 2019 does not merely deal with the previous operation of any law, but also any right, obligation or liability, apart from any penalty, forfeiture or punishment incurred – Sub-clause (d) of Clause 13 deals with the position *qua* an investigation in respect of any such right or obligation as mentioned in sub-clauses (a) to (c) – However, an addition was made to the effect that when an investigation, legal proceeding or remedy, for anything done under the old law which is inclusive of CrPC, 1989, the same would continue as if the Act, 2019 had not been passed – It is not only the continuation that has been facilitated, but also the initiation. [Para 24]

Case Law Cited

Nibaran Chandra v. Emperor **(1929) A.I.R. 1929 Calcutta 754 – referred to.**

List of Acts

Jammu & Kashmir Reorganisation Act, 2019; Code of Criminal Procedure SVT., 1989; Code of Criminal Procedure, 1973; Jammu and Kashmir State Ranbir Penal Code SVT., 1989; Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019; Penal Code, 1860; Explosive Substances Act, 1908; Jammu & Kashmir Public Property (Prevention of Damage) Act, 1985.

List of Keywords

Jammu & Kashmir Reorganisation; Code of Criminal Procedure, 1973 not retrospectively applicable; National Investigation Agency; NIA Court; Cognizance of offence; Cognizance of complaint; Sanction; Authorization or empowerment for conveying a complaint; Non-compliance of an earlier procedure; Old law repealed; Retrospective application; Right, obligation, liability, penalty, forfeiture or punishment incurred under old law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2668 of 2024

From the Judgment and Order dated 27.04.2021 of the High Court of Jammu & Kashmir and Ladakh at Jammu in Crl.A (D) No. 11 of 2020

Appearances for Parties

Surya Prakash V Raju, A.S.G., Mrs. Swati Ghirdiyal, Udai Khanna, Mrs. Sairica S Raju, Raghav Sharma, Ashutosh Ghade, Arvind Kumar Sharma, Advs. for the Appellant.

Muzaffar Iqbal Khan, D. Mahesh Babu, Shishir Pinaki, Dhanaeswar Gudapalli, Manoj Kumar, Ms. Mallika Das, Amber Jain, Devjee Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

M.M. Sundresh, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by the Division Bench of the High Court of Jammu & Kashmir at Jammu in Criminal

Appeal (D) No.11/2020 dated 27.04.2021 by which the judgment rendered by the Special Judge, National Investigation Agency (NIA) (3rd Additional Sessions Judge) Jammu, has been confirmed in part, while remitting the issue pertaining to the charges framed under Sections 306 and 411 of the Jammu and Kashmir State Ranbir Penal Code SVT., 1989 (hereinafter referred to as "**RPC, 1989**") along with Section 39 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "**UAPA, 1967**") for taking cognizance afresh.

3. Heard Mr. S.V. Raju, learned Additional Solicitor General appearing for the appellant, and Mr. D. Mahesh Babu, learned counsel appearing for the respondents. We have also perused the written submissions placed on record by the respondents.

BRIEF FACTS

4. A case was registered against the respondents in Case Crime No. 39/2019 under Sections 307, 120-B, 121, 121-A and 124-A of RPC, 1989, Sections 4 and 5 of the Explosive Substances Act, 1908, and Sections 15, 16, 18 and 20 of the UAPA, 1967 by the jurisdictional police.

5. The said case was re-registered by the appellant as RC-03/2019/NIA/JMU on 15.04.2019, subsequent to the order dated 12.04.2019, passed by the Ministry of Home Affairs (MHA), Government of India. A complaint dated 20.09.2019 was conveyed by the District Magistrate, Ramban by way of a communication to the NIA Court in tune with Sections 196 and 196-A of the Code of Criminal Procedure SVT., 1989 (hereinafter referred to as "**CrPC, 1989**"). Pursuant to the said complaint dated 20.09.2019, investigation was duly completed by the appellant and a chargesheet was filed on 25.09.2019.

6. Accordingly, the respondents were charge-sheeted for the offences under Sections 306, 309, 307, 411, 120-B, 121, 121-A and 122 of RPC, 1989, Sections 16, 18, 20, 23, 38 and 39 of UAPA, 1967, Sections 3 and 4 of Explosive Substances Act, 1908 and Section 4 of the Jammu & Kashmir Public Property (Prevention of Damage) Act, 1985, for making an attempt to ambush and ram the convoy of Central Reserve Police Force (CRPF) personnel by a Santro

car laden with explosives. Before their attempt could succeed, a blast occurred resulting in the respondents fleeing from the place of occurrence.

7. While taking cognizance, the Special Judge, NIA entertained the arguments of the respondents. Accordingly, he held that the complaint, as conveyed by the District Magistrate on 20.09.2019, was not in the prescribed form, and therefore does not satisfy the mandate as contemplated under Section 4(1)(e) of CrPC, 1989.

8. After holding so, the Special Judge, NIA proceeded to conclude that no cognizance can be taken for the offences charged under Sections 121, 121-A and 122 of the RPC, 1989 as the procedure contemplated under Section 196-B of CrPC, 1989 has not been followed. Furthermore, cognizance was also not taken for the offence committed under Section 120-B of RPC, 1989 for the reason that neither was there any authorization, nor was there any empowerment as required under Section 196-A of CrPC, 1989. Resultantly, cognizance was taken for the remaining offences.

9. Aggrieved by the decision of the Special Judge, NIA, both the appellant and the respondents filed their respective appeals. The Division Bench of the High Court of Jammu and Kashmir was pleased to hold that the Special Judge, NIA was wrong on two counts, namely, that the complaint made was in accordance with Section 4(1)(e) of CrPC, 1989, and in view of the discretion available under Section 196-B of CrPC, 1989, there is no question of undertaking any mandatory preliminary investigation.

10. The High Court went on to uphold the finding of the Special Judge, NIA on the question of authorization or empowerment as required under Section 196-A of CrPC, 1989, after satisfying itself with the answer given by the officer concerned, who was physically present before it.

11. Incidentally, for the remaining offences for which cognizance was taken, the High Court remitted the case to the Special Judge, NIA for its satisfaction before deciding to take cognizance for the offences punishable under Sections 306 and 411 of RPC, 1989 and Section 39 of UAPA, 1967. Insofar as this issue is concerned, due exercise has already been undertaken by the Special Judge,

NIA and therefore, it is academic in nature. In fact, the Special Judge, NIA has taken cognizance for the offences punishable under Sections 121, 121-A and 122 of RPC, 1989, along with Sections 306 and 411 of RPC, 1989, and under Section 39 of UAPA, 1967. Thus, we are not inclined to go into those offences for which the trial is pending at an advanced stage.

12. This leaves us with the only question to be decided in the appeal, which is on the applicability of Section 196-A of CrPC, 1989 vis-à-vis the provisions and mandate contained in the Code of Criminal Procedure, 1973 (hereinafter referred to as "**CrPC, 1973**").

13. For the sake of convenience, we have extracted the relevant provisions contained in CrPC, 1989 and the Code of Criminal Procedure, 1898 (hereinafter referred to as "**CrPC, 1898**"):

Section 4 of the CrPC, 1989

> **"4. Definitions**. — (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context: —
>
> xxx xxx xxx
>
> (e) **"Complaint". — "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence but it does not include the report of a police-officer"**
>
> (emphasis supplied)

Section 196 of the CrPC, 1989

> **"196. Prosecution for offences against the State**.—No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Ranbir Penal Code except section 127, and section 171-F, so far as it relates to the offence of personation, or punishable under section 108-A, or section 153-A, or section 294-A, or section 295-A or section 505 of the Ranbir Penal Code, **unless upon complaint made by order of, or under authority from**

the Government or District Magistrate or such other officer as may be empowered by the Government in this behalf."

(emphasis supplied)

Section 196-A of the CrPC, 1989

"196-A. Prosecution for certain classes of criminal conspiracy.

No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120-B of the Ranbir Penal Code, —

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence, to which the provisions of section 196 apply, unless upon complaint made by order of, or under authority from the Government or some officer empowered by the Government in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, life imprisonment or rigorous imprisonment for a term of two years or upwards, unless the Government, or District Magistrate empowered in this behalf by the Government has, by order in writing, consented to the initiation of the proceeding

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply, no such consent shall be necessary."

(emphasis supplied)

Section 196A of the CrPC, 1898

"**Section 196A. Prosecution for certain classes of criminal conspiracy**.—No Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code,

> (1) **in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of Section 196 apply, unless upon complaint made by order or under authority from the State Government or some officer empowered by the State Government in this behalf**, or
>
> (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government has, by order in writing, consented to the initiation of the proceedings:
>
> Provided that where the criminal consipracy is one to which the provisions of sub-section (4) of Section 195 apply no such consent shall be necessary."
>
> (emphasis supplied)

14. Section 4(1)(e) of CrPC, 1989 defines a complaint. Such a complaint includes an allegation made either orally or in writing. Certainly, there is no prescribed format for making a complaint, as even an oral allegation constitutes a complaint.

15. As per Section 196 of CrPC, 1989 which deals with the offences committed against the State, a jurisdictional court shall take cognizance only upon a complaint made by the order of, or under the authority from the Government, or a District Magistrate, or such other officer as empowered by the Government for the aforesaid purpose. Thus, Section 196 of CrPC, 1989 forecloses any other methodology than the one provided thereunder. The compliance is mandatory, failing which a Court cannot take cognizance under Section 196 of CrPC, 1989.

16. Section 196-A of CrPC, 1989 only deals with specified classes of criminal conspiracy for the purpose of prosecution. Section 120-B of RPC, 1989 deals with an offence pertaining to conspiracy, which

is *pari materia* to Section 120B of the Indian Penal Code, 1860. Sub-section (1) of Section 196-A of CrPC, 1989 speaks of the object of the conspiracy *qua* an illegal act other than an offence, a legal act by illegal means, or an offence to which Section 196 of CrPC, 1989 applies. For taking cognizance of such an offence, a complaint can only be made either by an order of the Government, or under its authority, or by an officer empowered by it. In the case of Section 196-A of CrPC, 1989, cognizance of a complaint can be taken by a Court only after satisfying itself of the due compliance of sub-section (1) of Section 196-A of CrPC, 1989 with respect to competence of the authority.

17. Though Sections 196 and 196-A of CrPC, 1989 seem to be similar insofar as the authority competent to convey a complaint is concerned, under Section 196 of CrPC, 1989, a District Magistrate can lodge it by himself, whereas, the same provision is not available under Section 196-A of CrPC, 1989. We may also note that Section 196-A of CrPC, 1989 is *pari materia* to Section 196A of CrPC, 1898.

THE JAMMU AND KASHMIR REORGANISATION ACT, 2019

18. We place reliance on the following provisions of the Jammu & Kashmir Reorganisation Act, 2019 (hereinafter referred to as "**the Act, 2019**") which are extracted below:

Section 95 of the Act, 2019

> **"95. Territorial extent of laws -** (1) **All Central laws in Table 1 of the Fifth Schedule to this Act, on and from the appointed day, shall apply in the manner as provided therein, to the Union Territory of Jammu and Kashmir and Union Territory of Ladakh**.
>
> (2) All other laws in Fifth Schedule, **applicable to existing State of Jammu and Kashmir immediately before the appointed day, shall apply in the manner as provided therein, to the Union Territory of Jammu and Kashmir and Union Territory of Ladakh**."
>
> (emphasis supplied)

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Fifth Schedule, Table 1 of the Act, 2019

"THE FIFTH SCHEDULE

(*See* Sections 95 and 96)

TABLE 1

CENTRAL LAWS MADE APPLICABLE TO THE UNION TERRITORY OF JAMMU AND KASHMIR; AND UNION TERRITORY OF LADAKH

S. No.	Name of the Act		Section/Amendments
1.	The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
2.	The Administrative Tribunal Act, 1985.		clause (*b*) of sub-section (2) of section 1 shall be omitted.
3.	The Anand Marriage Act, 1909.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
4.	The Arbitration and Conciliation Act, 1996.		Proviso to sub-section (2) of section 1 shall be omitted.
5.	The Prohibition of *Benami* Property Transactions Act, 1988.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
6.	The Charitable Endowment Act, 1890.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
7.	The Chit Funds Act, 1982.		In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted.
8.	The Code of Civil Procedure, 1908.		Clause (*a*) of sub-section (3) of section 1 shall be omitted.
9.	**The Code of Criminal Procedure, 1973.**		**In sub-section (2) of section 1, words, "except the State of Jammu and Kashmir" shall be omitted."**

(emphasis supplied)

Fifth Schedule, Table 3 of the Act, 2019

TABLE 3

STATE LAWS INCLUDING GOVERNOR'S ACTS WHICH ARE REPEALED IN UNION TERRITORY OF JAMMU AND KASHMIR; AND UNION TERRITORY OF LADAKH

S. No.	Name of the Act	Act/Ordinance No.
1.	The Jammu and Kashmir Accountability Commission Act, 2002.	XXXVIII of 2002
2.	The Jammu and Kashmir Advocates Welfare Fund Act, 1997.	XXVI of 1997
3.	The Jammu and Kashmir Agricultural Income Tax Act, 1962.	XXI of 1962
4.	The Jammu and Kashmir State Agricultural Produce Marketing Regulation Act, 1997.	XXXVI of 1997
5.	The Jammu and Kashmir Anand Marriage Act, 1954.	IX of 2011
6.	The Jammu and Kashmir Animal Diseases (Control) Act, 1949.	XV of 2006
7.	The Jammu and Kashmir Apartment Ownership Act, 1989.	I of 1989
8.	The Jammu and Kashmir Arbitration and Conciliation Act, 1997.	XXXV of 1997
9.	The Jammu and Kashmir Arya Samajist Marriages (Validation) Act, 1942.	III of Svt. 1999
10.	The Jammu and Kashmir Ayurvedic and Unani Practitioners Act, 1959.	XXVI of 1959
11.	The Jammu and Kashmir Banker's Books Evidence Act, 1920.	VI of 1977
12.	The Jammu and Kashmir Benami Transactions (Prohibition) Act, 2010.	V of 2010

13.	The Jammu and Kashmir Boilers Act, Samvat, 1991.	IV of Svt. 1991
14.	Buddhists Polyandrous Marriages Prohibition Act, 1941.	II of 1998
15.	The Jammu and Kashmir Cattle Trespass Act, 1920.	VII of 1977
16.	The Jammu and Kashmir Charitable Endowments Act, 1989.	XIV of 1989
17.	The Jammu and Kashmir Chit Funds Act, 2016.	XI of 2016
18.	The Jammu and Kashmir Christian Marriage and Divorce Act, 1957.	III of 1957
19.	The Jammu and Kashmir Cinematograph Act, 1933.	XXIV of 1989
20.	Code of Civil Procedure, Samvat 1977.	X of Svt. 1977
21.	**Code of Criminal Procedure, Samvat 1989.**	**XXIII of Svt. 1989**

(emphasis supplied)

19. The Act, 2019 came into effect from 31.10.2019, which was the appointed day as per Notification No. S.O. 2889(E) dated 09.08.2019. Section 95 of the Act, 2019 speaks of the application of the Central Laws to the Union Territory of the Jammu & Kashmir and Union Territory of Ladakh. The aforesaid notification provides a date of application i.e., 31.10.2019, for the implementation of the Fifth Schedule of the Act, 2019.

20. A perusal of Table 1 and Table 3 of the Fifth Schedule would clearly show that CrPC, 1973 would govern the field only from the appointed day and consequently the CrPC, 1989 stands repealed. To reiterate, it would come into effect only from the appointed day, and therefore has got no retrospective application. To make this position clear, the CrPC, 1973 shall be pressed into service from 31.10.2019 onwards, and thus certainly not before the appointed day.

THE 2019 ACT VIS-À-VIS THE JAMMU AND KASHMIR REORGANISATION (REMOVAL OF DIFFICULTIES) ORDER, 2019

21. We place reliance on Section 103 of the Act, 2019 and Para 2(13) of the Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019 (hereinafter referred to as "**the Order, 2019**") which are extracted below:

Section 103 of the Act, 2019

> **"103. Power to remove difficulties. — (1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty:**
>
> Provided that no such order shall be made after the expiry of a period of five years from the appointed day.
>
> (2) Every order made under this section shall be laid before each House of Parliament."
>
> (emphasis supplied)

Para 2(13) of the Order, 2019

> **"2. Removal of difficulties**. —The difficulties arising in giving effect to the provisions of the principal Act have been removed in the following manner, namely—
>
> xxx xxx xxx
>
> **(13) The Acts repealed in the manner provided in Table 3 of the Fifth Schedule, shall not affect—**
>
> > **(*a*) the previous operation of any law so repealed or anything duly done or suffered there under;**
> >
> > **(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed;**
> >
> > **(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or**

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed."

(emphasis supplied)

22. Section 103 of the Act, 2019 confers power upon the President of India to remove any difficulty that might arise in giving effect to the provisions of the Act, 2019. It has been conferred, so as to facilitate the application of new laws, which replaced the then existing ones.

23. In exercise of the powers conferred under Section 103 of the Act, 2019, the Order, 2019 was promulgated on 30.10.2019, with the appointed day being 31.10.2019. It was accordingly introduced after completion of the procedure contemplated under Section 103 of the Act, 2019.

24. Para 2(13) of the Order, 2019 concerns itself with the circumstances under which the earlier laws would not be affected. It does not merely deal with the previous operation of any law, but also any right, obligation or liability, apart from any penalty, forfeiture or punishment incurred. Sub-clause (d) of Clause 13 deals with the position *qua* an investigation in respect of any such right or obligation as mentioned in sub-clauses (a) to (c). However, an addition has been made to the effect that when an investigation, legal proceeding or remedy, for anything done under the old law which is inclusive of CrPC, 1989, the same would continue as if the Act, 2019 had not been passed. It is not only the *continuation* that has been facilitated, but also the *initiation*.

25. The aforementioned paragraph not only speaks of a mere right, but also about an obligation. Such an obligation or a right can either be with an individual, or a State, as the case may be. When the State undertakes the exercise of investigating an offence, it does so on behalf of the public. Thus, any investigation in currency at the time of repealing of any statute, as mentioned in Table 3 of the

Fifth Schedule, followed by the introduction of the Act, 2019, shall continue under CrPC, 1989. However, the application of law thereon would be the CrPC, 1973. While so, the CrPC, 1973 cannot be made applicable when the earlier one (i.e. CrPC, 1989) was still in force.

26. It is to be noted, that a mere non-compliance of an earlier procedure mentioned in the repealed Code by itself would not enure to the benefit of an accused, the procedure being a curable one, depending upon the facts and circumstances of the case. To put it differently, apart from the question of prejudice, an investigating agency is not debarred from proceeding further after complying with the omission committed earlier, by taking recourse to the repealed Code i.e., CrPC, 1989. It is for this reason, that the Order, 2019 with specific reference to Para 2(13) has been introduced in exercise of the power conferred under Section 103 of the Act, 2019.

27. A similar issue was dealt with, way back in the year 1929 by the High Court of Calcutta in **Nibaran Chandra v. Emperor, 1929 A.I.R. 1929 Calcutta 754.** Considering the said issue, Justice Mukherjee had rightly found a way out by giving liberty to the prosecution to proceed afresh, under Section 196A of CrPC, 1898:

> **"**The petitioners have been convicted under S. 120-B, I.P.C. Petitioner 1 has also been convicted under S. 384, I.P.C. and No. 2 under S. 384/114, I.P.C. **The ground upon which this rule has been issued is that the trial was vitiated as the sanction contemplated by S. 196-A, Criminal P.C. had not been accorded by the Local Government to the prosecution of the petitioners under S. 120-B, I.P.C.** Now the object of the conspiracy having been to commit an offence under S. 384, I.P.C., which is a non-cognizable offence the Court could not take cognizance of the said offence without the sanction of the Local Government or of the District Magistrate empowered in that behalf. In the explanation which the learned Magistrate has submitted in answer to the rule he has suggested that the convictions under Ss. 384 and 384/114, I.P.C. as against the petitioners 1 and 2 respectively may be maintained and that the sentence passed on them may be treated as having been passed under the said sections. Apart from anything else, this

course, in my opinion, is likely to result in prejudice to the petitioners. They had been put on their trial in respect of offences under Ss. 384 and 384/114 along with a charge under S. 120-B. It is just possible and indeed it is not unlikely that a good deal of evidence that was adduced on behalf of the prosecution in this case in order to establish the charge of conspiracy would not be relevant as against the petitioners on the substantive charges under Ss. 384 and 384/114, I.P.C. The trial held on charges which do not require sanction along with such as are not cognizable without sanction under S. 196-A, Criminal P. C., cannot be separated in this way.

I am accordingly of opinion that this rule should be made absolute and the convictions and sentences passed on the petitioners should be set aside and the fines if paid by them should be refunded. **It will be open to the prosecution to proceed afresh against the petitioners in respect of the charges under Ss. 384 and 384/114, I.P.C. or even as regards the charge under S. 120-B, I.P.C. provided that the requisite sanction under S. 196-A, Criminal P. C. has been duly obtained**. Such retrial, if it is to take place, will be held before some Magistrate other than the learned Magistrate who has already dealt with this case.

Rule made absolute."

(emphasis supplied)

SUBMISSIONS

28. Mr. S.V. Raju, learned ASG appearing for the appellant submitted that as the Act, 2019 had come into force, the impugned judgment is liable to be set aside.

29. *Per contra,* Mr. D. Mahesh Babu, learned counsel appearing for the respondents, by placing reliance upon the written arguments submitted that the impugned judgment correctly dealt with the legal position which was prevailing at the relevant time. When the complaint was conveyed, the CrPC, 1989 was in force. The repealing took place thereafter. The retrospective application of a procedural law is fairly well settled, and the procedure cannot

be made retrospectively applicable. Even the Act, 2019 does not specifically state that the CrPC, 1973 will apply retrospectively. On a conjoint reading of Section 103 of the Act, 2019, along with the Order, 2019, with particular reference to Para 2(13)(d), it is abundantly clear that the CrPC, 1989 ought to have been applied, as there was no dispute with respect to the non-compliance, which was duly recorded by the Court. Therefore, the impugned judgment will have to be sustained.

DISCUSSION

30. As stated, CrPC, 1989 stood repealed with effect from 31.10.2019 (i.e. the appointed day). On the very same day, the Act, 2019 came into existence. Therefore, the submission of Mr. S.V. Raju, that there is no need for getting the appropriate sanction or empowerment as mandated under Section 196-A of CrPC, 1989 cannot be countenanced.

31. There is nothing to infer either from the Act, 2019 or the Order, 2019 that CrPC, 1973 will have a retrospective application. However, the Order, 2019 did take into consideration all the difficulties that might arise by facilitating the continuance thereunder. We have no difficulty in holding that while an investigation could continue after its initiation under the CrPC, 1989, by way of the application of the CrPC, 1973, it cannot be stated that even for a case where there was a clear non-compliance of the former, it can be ignored by the application of the latter.

32. Para 2(13) confers sufficient power on the investigating agency to deal with such a situation. While we are holding that the requirement of an authorization or an empowerment is mandatory for conveying a complaint, it being at the conclusion of investigation, would not preclude the investigating agency from complying with it thereafter. It is an approval from an appropriate authority of the investigation having been completed. We are not dealing with the case where an approval is declined or rejected. Rather, it is a case where an authority has failed to exercise the said power in granting an authorization. Thus, we are in complete agreement with the reasoning adopted by the High Court of Calcutta in **Nibaran Chandra (*supra*).**

33. If we were to hold that even by way of a prospective application, notwithstanding the non-compliance under the CrPC, 1989, the

appellant shall be permitted to prosecute the respondents, we would only be applying CrPC, 1973 retrospectively, which as discussed is not permissible.

ON FACTS

34. On facts, it is an omission caused by the appellant which needs to be rectified. It being a curable defect, would not enure to the benefit of the respondents, particularly when they are yet to be charged in the absence of such sanction or empowerment. At this stage, it is pertinent to reiterate that the complaint was conveyed by the District Magistrate, Ramban to the Special Judge, NIA on 20.09.2019. Further, the investigation stood completed with the filing of the chargesheet on 25.09.2019. Whereas, the appointed day for the Act, 2019 was 31.10.2019. Hence, on the day when the investigation stood completed, the CrPC, 1989 was in force within the Union Territory of Jammu & Kashmir.

35. In such view of the matter, we are inclined to set aside the impugned judgment insofar as it confirms the judgment of the Special Judge, NIA, in not taking cognizance for the offence punishable under Section 120-B of the RPC, 1989. Accordingly, we give liberty to the appellant to comply with the mandate of Section 196-A of the CrPC, 1989, by seeking appropriate authorization or empowerment as the case may be. Needless to state, if such a compliance is duly made, then the Trial Court shall undertake the exercise of taking cognizance, and proceed further with the trial in accordance with law.

36. The appeal is accordingly allowed in part. Pending Applications, if any, stand disposed of.

Result of the case: Appeal partly allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 5 S.C.R. 1074 : 2024 INSC 436

Ravikumar Dhansukhlal Maheta & Anr.
v.
High Court of Gujarat & Ors.

(Writ Petition (c) No. 432 of 2023)

17 May 2024

[Dr. Dhananjaya Y. Chandrachud, CJI, J.B. Pardiwala* and Manoj Misra, JJ.]

Issue for Consideration

(i) What is the scope of principle of the 'Merit-cum-Seniority' in service jurisprudence; and (ii) Whether promotion of Civil Judges (Senior Division) to the cadre of District Judges in accordance with Rule 5(1) of the Gujarat State Judicial Service Rules, 2005 and the Recruitment Notice dated 12.04.2022 issued by the High Court of Gujarat is contrary to the principle of 'Merit-cum-Seniority' as laid down in All India Judges' Association (3).

Headnotes†

Constitution of India – Art. 32 and Art.226 – Maintainability of the Writ Petition under Article 32 – A preliminary objection was raised as regards the maintainability of the writ petition under Article 32 of the Constitution, on the ground that the petitioners have an efficacious alternative remedy available to them under Article 226 of the Constitution:

Held: Two judicial officers of the rank of Civil Judge (Senior Division) governed by the Gujarat State Judicial Service Rules, 2005 have invoked the jurisdiction under Article 32 of the Constitution – The availability of an alternative remedy does not in any manner affect the maintainability of the writ petition under Article 32 of the Constitution – The rule behind relegating a party to first avail the alternative remedy before knocking the doors of this Court is a rule of self-restraint that is exercised by this Court as a matter of convenience – Further, wherever the facts of the case are not in dispute, and the issue involves the interpretation of rules which are of significant importance having a far-reaching effect, it would be a fit case for this Court to exercise its discretion and entertain the writ petition under Article 32 even if there is an alternative remedy available. [Paras 40, 41]

* Author

**Ravikumar Dhansukhlal Maheta & Anr. v.
High Court of Gujarat & Ors.**

Gujarat State Judicial Service Rules, 2005 – The Legislative History and Scheme of the Gujarat State Judicial Service Rules, 2005 – discussed.

Gujarat State Judicial Service Rules, 2005 – Rule 5(1) with Rule 5(3) – Modes of recruitment:

Held: A combined reading of the Rule 5(1) with Rule 5(3) of the 2005 Rules makes it clear that there are three distinct modes of recruitment to the cadre of District & Sessions Judge which are as follows: – (I) 65% posts by promotion from the eligible Civil Judges (Senior Division) having a minimum of two-years of service on the basis of 'Merit-cumSeniority'; (II) 10% posts by promotion from eligible Civil Judges (Senior Division) with a minimum of five-years of service on basis of merit through a competitive examination and; (III) 25% posts by direct recruitment from the eligible members of the Bar on the basis of a written exam and viva voce. [Para 67]

Service Law – Evolution of the Principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' in Service Jurisprudence – discussed.

Service Law – Principle of 'Seniority-cum-Merit':

Held: The principle of 'Seniority-cum-Merit' postulates that: (i) Minimum requirement of merit and suitability which is necessary for the higher post can be prescribed for the purpose of promotion – (ii) Comparative Assessment amongst the candidates is not required – (iii) Seniority of a candidate is not a determinative factor for promotion but has a predominant role – (iv) Upon fulfilling the minimum qualifications, promotions must be based on *inter-se* seniority. [Para 98 (I)]

Service Law – Principle of the 'Merit-cum-Seniority':

Held: The principle of 'Merit-cum-Seniority' postulates that: (i) Merit plays a predominant role in and seniority alone cannot be given primacy; (ii) Comparative Assessment of Merit is a crucial, though not a mandatory, factor; (iii) Only where merit is equal in all respects can *inter-se* seniority be considered – Meaning that a junior candidate can be promoted over the senior if the junior is more meritorious. [Para 98 (II)]

Service Law – Principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' – Nature of these principles:

Held: The principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' are a flexible and a fluid concept akin to broad principles within which the actual promotion policy may be formulated – They are not strict rules or requirements and by no means can supplant or take the place of statutory rules or policies that have been formulated, if any – These principles are dynamic in nature very much like a spectrum and their application and ambit depends upon the rules, the policy, the nature of the post and the requirements of service – The principles applicable to promotion such as the principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' can best be described as two ends of a spectrum – They are broad categories or frameworks for promotion and do represent the actual modalities by which promotions are to take place – It is the rules and the promotion policy, along with the intention of the legislature or the selection board, as the case may be, that supplements these principles and delineates the actual modality of how promotion is to take place – Through these rules and promotion policy, the legislature or the selection body specifies the area and the parameters or the weightage which is to be given to the aspect of "Merit" and "Seniority" on the said spectrum. [Para 110]

Constitution of India – Art. 235 – High Court as a custodian of the District Judiciary under Article 235 of the Constitution:

Held: It is clear that when it comes to promotion of judicial officers of the District Judiciary, the control vests with the High Court under Article 235 of the Constitution – The High Court being the sole authority in this regard can clearly lay down rules and policies pertaining to promotions which includes the power to specify the criteria and parameters it deems most suitable and appropriate for the purpose of promotion and the manner in which promotion is to be made as long as it is within the contours of what has been laid down in All India Judges' Association (3). [Para 119]

Service Law – Objectives intended to be achieved through All India Judges' Association (3) – Two-fold objectives:

Held: (i) First, to ensure that unlike the traditional promotion policy under which seniority alone was considered for promotion, a new policy should be devised under which seniority would be considered for promotion, but only for those candidates who possessed the minimum necessary standard of suitability for the post, and; (ii) Secondly, to prevent loss of motivation amongst the relatively junior members of the service, a third category for promotion to

the Higher Judicial Service should be created, wherein promotions would be given strictly on the basis merit, to be ascertained through a limited departmental competitive examination – Thus, while the comparison of *inter-se* merit to determine the most meritorious candidates was the procedure to be adopted for filling up the seats under the newly created category, it was never the intention of this Court in the aforesaid decision to mandate the comparative assessment of merit in the category of regular promotions based on seniority – The only additional requirement which was provided for by the aforesaid decision for this category of candidates was the possession of certain minimum objectively determinable standard of suitability. [Paras 127, 128]

Service Law – Judiciary – Promotion – Introduction of a suitability test:

Held: The objective sought to be achieved by the introduction of a suitability test in the regular promotional category was limited to the assessment of a minimum standard of suitability – It would be incorrect to say that the marks scored by a candidate in the suitability test are proportional to the merit of the candidate – This can be understood with the aid of an illustration – Take a case wherein the minimum marks required to be obtained in the suitability test is 'x'; then for the purpose of 65% promotional quota, as soon as a candidate obtains 'x' marks in the suitability test, such a candidate becomes eligible for being considered for promotion in that category subject to their seniority *vis-à-vis* the other suitable candidates – It cannot be said that a candidate who obtains (x + 10) marks is more meritorious or more suitable than those candidates who obtain 'x' or (x + 5) marks in the suitability test – Every candidate who scores higher than or equal to 'x' marks in the suitability test is considered equally suitable and equally meritorious for the purpose of 65% promotional category. [Para 129]

Gujarat State Judicial Service Rules, 2005 – 'Merit-cum-Seniority' in context of:

Held: The term 'Merit-cum-Seniority' in context of 2005 Rules implies that both merit and seniority would be considered in the promotion of a candidate, with merit being determined on the basis of a suitability test – The exact modalities of how merit and seniority are to be apportioned is a legislative function and is to be performed keeping in mind the unique requirements and circumstances of

the organization – In the instant case, there is no fault with the promotion process adopted by the High Court of Gujarat as the same fulfils the twin requirements stipulated in All India Judges' Association (3) being: – (I) The objective assessment of legal knowledge of the judicial officer including adequate knowledge of case law and; (II) Evaluation of the continued efficiency of the individual candidates – The four components of the Suitability Test as prescribed under the recruitment notice dated 12.04.2022 comprehensively evaluate (i) the legal knowledge including knowledge of the case law through the objective MCQ – based written test AND (ii) the continued efficiency by evaluation of the ACRs, average disposal and past judgments of the concerned judicial officer. [Paras 132, 141(D), 141(E)]

Gujarat State Judicial Service Rules, 2005 – Suggestions to make the suitability test more meaningful:

Held: The High Court of Gujarat is proposed to amend its Rules appropriately in line with the Uttar Pradesh Higher Judicial Service Rules, 1975 where the recruitment process has been elaboratively laid down – The minimum standard to be objectively assessed by way of a suitability test should be made more efficacious and productive – The Court suggests the following: (i) Apart from the four components included in the Suitability Test, an additional fifth component in the form of an Interview or Viva Voce should also be included in order to assess the ability and knowledge of the candidates; (ii) The High Court may consider enhancing the minimum specified threshold of marks as prescribed in the suitability test and each of its component; (iii) The evaluation of judgments delivered by the judicial officer being considered for promotion should be of the last two years instead of one year; (iv) Instead of seniority being considered at the very last stage of the process, some marks may be allocated for seniority at the stage of suitability test and thereafter, the final select list may be prepared on the basis of total marks. [Para 140]

Service Law – Gujarat State Judicial Service Rules, 2005 – Suitability of each candidate should be tested on their own merit:

Held: What has been conveyed by this Court in All India Judges' Association (3) is that the suitability of each candidate should be tested on their own merit – The aforesaid decision does not speak about comparative merit for the 65% promotional quota – In other

words, what is stipulated is the determination of suitability of the candidates and assessment of their continued efficiency with adequate knowledge of case law. [Para 141A]

Service Law – Gujarat State Judicial Service Rules, 2005 – Promotion – 65% promotional quota – Suitability test – Requisite marks – Merit list:

Held: For the 65% promotional quota this Court in All India Judges' Association (3) did not state that after taking the suitability test, a merit list should be prepared and the judicial officers should be promoted only if they fall in the said merit list – It cannot be said to be a competitive exam – Only the suitability of the judicial officer is determined and once it is found that candidates have secured the requisite marks in the suitability test, they cannot be thereafter ignored for promotion – However, it is clarified that for the 65% promotional quota, it is for a particular High Court to prescribe or lay down its own minimum standard to judge the suitability of a judicial officer, including the requirement of comparative assessment, if necessary, for the purpose of determining merit to be objectively adjudged keeping in mind the statutory rules governing the promotion or any promotion policy in that regard. [Paras 141B, 141C]

Service Law – Gujarat State Judicial Service Rules, 2005 – It was contended that the High Court wrongly subjected all eligible candidates in the feeder cadre i.e. Civil Judge (Senior Division) to a process of assessment of a specified level of minimum merit and then proceeded to prepare the final select list strictly in accordance with the seniority of the candidates:

Held: This Court is of the view that if the contention of the petitioners were to be accepted then it would completely obliterate the fine distinction between the two categories of promotion in the cadre of District & Sessions Judge by way of 65% promotion on the basis of 'Merit-cum-Seniority' and 10% promotion strictly on the basis of merit – In other words, the 65% quota for promotion will assume the character of the 10% quota for promotion by way of a departmental competitive examination which is distinct in its nature since the latter is strictly based on merit. [Para 141F]

Service Law – Gujarat State Judicial Service Rules, 2005 – Whether promotion of Civil Judges (Senior Division) to the

cadre of District Judges in accordance with Rule 5(1) of the 2005 Rules and the Recruitment Notice dated 12.04.2022 issued by the High Court of Gujarat is contrary to the principle of 'Merit-cum-Seniority' as laid down in All India Judges' Association (3)**:**

Held: There was no fault with the promotion process adopted by the High Court of Gujarat as the same fulfils the twin requirements stipulated in paragraph 27 of All India Judges' Association (3) being: – (I) The objective assessment of legal knowledge of the judicial officer including adequate knowledge of case law and; (II) Evaluation of the continued efficiency of the individual candidates – The four components of the Suitability Test as prescribed under the recruitment notice dated 12.04.2022 comprehensively evaluate (i) the legal knowledge including knowledge of the case law through the objective MCQ-based written test AND (ii) the continued efficiency by evaluation of the ACRs, average disposal and past judgments of the concerned judicial officer – The impugned final Select List dated 10.03.2023 is not contrary to the principle of 'Merit-cum-Seniority' as stipulated in Rule 5(1)(I) of the 2005 Rules. [Paras 141D, 141E, 143]

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List of Acts

Constitution of India; Gujarat State Judicial Service Rules, 2005.

List of Keywords

Merit; Seniority; Promotion; Promotion process; Article 32 of the Constitution; Article 226 of the Constitution; Efficacious alternative remedy; Rule of self-restraint; Interpretation of rules; Issue having far-reaching effect; Discretion of the Court; Legislative History and Scheme of the Gujarat State Judicial Service Rules, 2005; Rule 5(1) of the Gujarat State Judicial Service Rules, 2005; Rule 5(3) of the Gujarat State Judicial Service Rules, 2005; Modes of recruitment; Principle of Merit-cum-Seniority; Principle of Seniority-cum-Merit; Article 235 of the Constitution; High Court as a custodian of the District Judiciary; Twin requirements stipulated in All India Judges' Association (3); Suitability test; Basis of suitability test; Objective assessment of legal knowledge; Evaluation of the continued efficiency; Enhancing the minimum specified threshold of marks in suitability test; Interview or Viva Voce in suitability test; Evaluation of judgments delivered by the judicial officer in suitability test; Marks for seniority at the stage of suitability test; 65% promotion on the basis of 'Merit-cum-Seniority'; 10% promotion strictly on the basis of merit; Statutory rules governing the promotion or any promotion policy.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 432 of 2023

(Under Article 32 of The Constitution of India)

Ravikumar Dhansukhlal Maheta & Anr. v.
High Court of Gujarat & Ors.

Appearances for Parties

R. Basant, P.S. Patwalia, Sr. Advs., Vivek Jain, Ms. Suchitra Kumbhat, Akshay Sahay, Kishan Chakawala, Rajat Jain, Sadiq Noor, Mehul Prasad, Purvish Jitendra Malkan, Advs. for the Petitioners.

V. Giri, Dushyant Dave, Shyam Divan, Sr. Advs., Ms. Vishakha, Ms. Vishwaja Rao, Shashank Shekhar Singh, Akshat Malpani, Ms. Ayushi Gaur, Sandeep Kumar Jha, Ms. Mayuri Raghuvanshi, Vyom Raghuvanshi, Ms. Akanksha Rathore, Puneet Jain, Ms. Deepanwita Priyanka, Jayesh Gaurav, Monarch K. Pandya, Ishwar Chandra Roy, Ms. Diksha Ojha, Ranjan Nikhil Dharnidhar, Ms. Nidhi Khanna, Sudipto Sircar, Rajeev Kumar Bansal, Madan Lal Daga, Parvinder, Shekher Kaushik, Ganesh Barowalia, Vidya Sagar, Rajesh Sonthalia, Kamal Mohan Gupta, Aditya Choksi, Arpit Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J.B. Pardiwala, J.

For the convenience of exposition, this judgment is divided in the following parts: -

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* Ed. Note: Pagination as per the original Judgment.

1. Two judicial officers of the rank of Civil Judge (Senior Division) governed by the Gujarat State Judicial Service Rules, 2005 (for short, the "**2005 Rules**") have invoked the jurisdiction of this Court under Article 32 of the Constitution. Their grievance against the High Court of Gujarat is that it erroneously applied the principle of 'Seniority-cum-Merit' in the recruitment undertaken by it in the year 2022 for promotion of Civil Judges (Senior Division) to the post of Additional District Judge against 65% quota, though Rule 5(1) of the 2005 Rules stipulates that the promotion shall be based on the principle of 'Merit-cum-Seniority'. In other words, it is contended that the High Court wrongly subjected all eligible candidates in the feeder cadre i.e., Civil Judge (Senior Division) to a process of assessment of a specified level of minimum merit and then proceeded to prepare

the final Select List strictly in accordance with the seniority of the candidates. This according to the petitioners is nothing but 'Seniority-cum-Merit'.

A. FACTUAL MATRIX

2. The High Court of Gujarat issued an advertisement/recruitment notice dated 12.04.2022 notifying a total of 68 vacancies in the cadre of District Judges for promotion of Civil Judges (Senior Division) against the 65% quota on the basis of 'Merit-cum-Seniority' and passing a Suitability Test as envisaged under Rule 5(1)(I) of the 2005 Rules. The said advertisement/recruitment notice reads as under: -

"HIGH COURT OF GUJARAT AT SOLA,

AHMEDABAD

Website: www.gujarathighcourt.nic.in AND https://hc-ojas.gujarat.gov.in

NO.RC/1250/2022

RECRUITMENT NOTICE - DISTRICT JUDGE (65%)

PROMOTION TO THE CADRE OF DISTRICT JUDGE (65%) FROM AMONGST THE SENIOR CIVIL JUDGES ON THE BASIS OF PRINCIPLE OF MERIT-CUM-SENIORITY AND PASSING A SUITABILITY TEST.

1. VACANCIES AND PAY-SCALE :

(i) In view of the guidelines of the Hon'ble Supreme Court in the case of ***Malik Mazhar Sultan & Anr. Vs. UP Public Service Commission & Ors.*** *and The Gujarat State Judicial Service Rules, 2005, as amended from time to time, The High Court of Gujarat has decided to fill up 68 (53+15) vacancies in the cadre of District Judges (65%) by promotion from amongst us the Senior Civil Judges (including ad-hoc Additional District Judges) having* ***not less than two years of qualifying service in that cadre*** *as on 25/03/2022, in the pay-scale of Rs. 51650-63260 plus Allowances as admissible under the Rules.*

**15 unfilled vacancies of 10% quota of year-2020 are to be filled up by regular promotion in view of*

Judgment dated 09.12.2021 of the High Court of Gujarat (Coram: - Honourable Ms. Justice Sonia Gokani and Honourable Mr. Justice Rajendra M. Sareen delivered in SCA/7915/2020 with SCA/13631 & 13458/2020 and by operation of proviso to Rule 5(1)(ii) of the Gujarat State Judicial Service Rules, 2005 amended by Notification dated 23.06.2011.

(ii) The High Court reserves its right to alter the number of vacancies.

(iii) The List showing eligible Senior Civil Judges (including ad-hoc Additional District Judges) included in the zone of consideration for being considered for promotion to the cadre of District Judges (65%) is placed on the High Court website and HC-OJAS Portal along with this Notice.

2. SCHEME FOR PROMOTION :

*Following are the **Four Components** for assessing the suitability of a Judicial Officer for promotion.*

Sr. No	***Components of Suitability Test***	***Marks***
1.	*Written Test (Objective Type - MCQs)*	*100*
2.	*Examination and Evaluation of Annual Confidential Reports for last five years*	*20*
3.	*Assessment of Average Disposal of last five years of the Judicial Officer concerned.*	*20*
4.	*Evaluation of Judgments delivered by the Judicial Officer concerned during the period of last one year.**	*60*

**Due to unprecedented time of COVID-19 pandemic in Year 2020 & 2021, the Subordinate Courts in the state were not functioning regularly. Hence, this time round, the Hon'ble Committee has decided for the instant Promotion Process to call upon the requisite Four Judgments rendered by the Officer concerned during the period between 01/01/2020 to 31/12/2021. However, this should not be treated as a precedent in upcoming Promotion Process.*

3. Written Test (Objective Type - MCQs) :

*(i) The Written Test (Objective Type - MCQs) shall consist of **01 (One) Paper of 100** Marks of duration of 02 Hours consisting of Objective Type Multiple Choice Questions (MCQs) each of 01 Mark. There will be no **Negative marking system**. The subject would be as under:*

Sr. No	***Subject***	***Marks***
1.	*Legal Knowledge [Detailed Syllabus attached herewith at Annexure-'A']*	*50*
2.	*Administrative Knowledge [GCS Rules 2002, Civil Manual, Criminal Manual, etc.]*	*25*
3.	*General Knowledge & Aptitude Test [Test of Reasoning, Numerical & Mental Ability & Psychological Test, etc.]*	*25*

*(ii) The Written Test (Objective Type - MCQs) shall be conducted on **OMR Sheet*** or by any other mode that would be decided by the High Court later on.*

**The OMR Sheets of the Written Test (Objective Type - MCQs) will be assessed/evaluated by the Computer as per entries made on OMR Sheet. As the evaluation is being done on the Computer by Scanning, there is no human intervention and hence, queries relating to rechecking of the OMR Sheets, subsequent to the Written Test (Objective Type - MCQs), will not be entertained by the High Court*

(iii) The Language of the Question Paper will be English.

(iv) Out of the abovementioned Four Components of Suitability Test, the Written Test (Objective Type - MCQs) will be conducted first. Nonetheless mere passing of Written Test (Objective Type - MCQs) by the Judicial Officers would not give him/her right of having secured the position in the Select List. It will be subject to passing of other 03 (Three) components as well.

(v) ACR, Disposal and Judgments of only those Judicial Officers who will secure minimum 40% Marks in Written Test (Objective Type - MCQs), will be called for after the declaration of the result of Written Test (Objective Type - MCQs).

4. ELIGIBILITY FOR PROMOTION :

The Judicial Officer, who obtains minimum 40% Marks in each Component and minimum 50% Marks in aggregate in the Grand Total of all Four Components, shall be eligible for being included in the Select List for promotion.

5. GENERAL INSTRUCTIONS :

(i) The date and venue of the Written Test (Objective Type - MCQs) will be declared by the High Court in due course.

(ii) The eligible Judicial Officers may download their E-call letter from the High Court websites viz. www.gujarathighcourt.nic.in and https://hc-ojas.gujarat.gov.in, as and when the same is made available by the High Court on the aforesaid websites.

(iii) The Judicial Officer attending the Written Test (Objective Type - MCQs) may be treated as on duty and may be admissible for TA/DA as applicable.

(iv) Result of the Written Test (Objective Type - MCQs) will be made available on the High Court websites and/or by any other mode that may be decided by the High Court.

(v) The Marks of Written Test (Objective Type - MCQs) would be communicated to all the Judicial Officers, whereas, the Marks of other 03 Components along-with the Total Marks obtained by the concerned, would be provided to only those who qualify in the Written Test (Objective Type - MCQs).

Such Marks shall be communicated by providing a link to a webpage on the HC-OJAS Portal with individual password (OTP – One Time Password) via SMS on his/her Registered Mobile Number, after the conclusion of the Selection Process

High Court of Gujarat,
Sola, Ahmedabad - 380 060.

Date: 12/04/2022 *Sd/-*
Registrar

(Recruitment and Finance)

Ravikumar Dhansukhlal Maheta & Anr. v.
High Court of Gujarat & Ors.

Syllabus For the LEGAL KNOWLEDGE of the Written Test (Objective Type - MCQs) :

(a) → The Constitution of India

→ *The Code of Civil Procedure, 1908,*

→ *The Transfer of Property Act, 1882,*

→ *The Specific Relief Act, 1963,*

→ *The Indian Partnership Act, 1932,*

→ *The Indian Contract Act, 1872,*

→ *The Sale of Goods Act, 1930,*

→ *The Limitation Act, 1963,*

→ *The Arbitration and Conciliation Act, 1996,*

→ *The Motor Vehicles Act, 1988,*

→ *The Commercial Courts Act, 2015*

→ *The Family Courts Act, 1984,*

→ *The Environment (Protection) Act, 1986,*

→ *The Wild Life (Protection) Act, 1972,*

→ *The Indian Penal Code, 1860,*

→ *The Code of Criminal Procedure, 1973,*

→ *The Indian Evidence Act, 1872,*

→ *The Narcotic Drugs & Psychotropic Substances Act, 1985,*

→ *The Negotiable Instruments Act, 1881,*

→ *The Protection of Children from Sexual Offence Act, 2012,*

→ *The Juvenile Justices (Care & Protection of Children) Act, 2015,*

→ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,*

→ *The Prevention of Corruption Act, 1988*

- ⟶ *The Electricity Act, 2003,*
- ⟶ *The Protection of Women from Domestic Violence Act, 2005*
- ⟶ *The Immoral Traffic (Prevention) Act, 1956*
- ⟶ *The Information Technology Act, 2000*
- ⟶ *The Indecent Representation of Women (Prohibition) Act, 1986*

(b) Legal Maxims

(c) Medical Jurisprudence

(d) Jurisprudence and Legal Phraseology"

3. The High Court along with the aforesaid advertisement/recruitment notice, also issued a list of 205 judicial officers in the cadre of Civil Judge (Senior Division) i.e., the feeder cadre, falling under the 'Zone of Consideration' for the aforesaid purpose of filling up the vacancies in the cadre of District Judges as against 65% quota.

4. The High Court prepared the list of 205 candidates falling within the zone of consideration by including the senior-most Civil Judges (Senior Division) not exceeding three-times the notified vacancies. In other words, the zone of consideration only included the 205 senior-most Civil Judges (Senior Division).

5. As per the advertisement/recruitment notice dated 12.04.2022, the suitability of the aforesaid 205 candidates falling within the zone of consideration, for the purpose of promotion, was to be assessed on the basis of four components which are being reproduced hereunder: -

Sr. No.	***Components of Suitability Test***	***Marks***
1.	*Written Test (Objective Type – MCQs)*	*100*
2.	*Examination and Evaluation of Annual Confidential Reports for last five years.*	*20*
3.	*Assessment of Average Disposal of last five years of the Judicial Officer concerned.*	*20*
4.	*Evaluation of Judgments delivered by the Judicial Officer concerned during the period of last one year.*	*60*

6. The aforesaid advertisement/recruitment notice dated 12.04.2022 further stipulated that all those judicial officers who obtain a minimum 40% marks in each of the abovementioned component and a minimum aggregate of 50% marks in all four components shall be eligible for being included in the Select List for promotion.

7. Pursuant to the aforesaid, the Written Test (Objective Type – MCQs) was conducted by the High Court and out of 205 candidates, a total of 175 judicial officers cleared the written test i.e., all those who were able to secure a minimum of 40% marks. Thereafter, the High Court called for the month-wise list of the judgments disposed of and the annual confidential reports (ACRs) of all 175 candidates who qualified.

8. After the evaluation of the ACRs, judgments and disposal rates, a total of 149 judicial officers were found to be eligible for promotion as they had secured a minimum 40% marks in each of the abovementioned component and a minimum aggregate of 50% marks in all the four components of the suitability test.

9. The High Court thereafter proceeded to prepare the final Select List dated 10.03.2023 wherein the seniormost 68 candidates amongst the aforementioned 149 eligible candidates were given promotion to the post of District Judge.

10. In such circumstances referred to above, the petitioners are here before this Court with the present petition under Article 32 of the Constitution.

i. Method of Promotion followed by the High Court of Gujarat.

11. For the better adjudication of the issues involved in the case at hand, it would be necessary to delineate the step-wise process of promotion undertaken by the High Court of Gujarat for the purpose of preparing the final Select List.

12. The process, as explained by the High Court in its counter affidavit and additional affidavit is as under: -

1.	Total number of Civil Judges (Senior Division) in Gujarat.	444
2.	Civil Judges (Senior Division) who fulfilled the eligibility criteria of a minimum of two-years of qualifying service.	417

3.	Senior-most of the Civil Judges (Senior Division) falling under the zone of consideration as per 1:3 ratio.	205
4.	Civil Judges (Senior Division) who appeared for the Suitability Test (MCQ's with no negative marking). (Seven candidates chose not to appear for the suitability test)	198
5.	Civil Judges (Senior Division) who secured 40% marks in the Suitability Test (MCQs with no negative marking).	175
6.	Total number of Civil Judges (Senior Division) who secured total of 50% marks and a minimum 40% marks in all four components being the Written Test, evaluation of ACRs, assessment of average disposal and evaluation of Judgments.	149
7.	Select List as per the notified vacancy prepared on the basis of seniority.	68

B. REFERENCE ORDER

13. The present writ petition was earlier heard by a two-Judge Bench of this Court wherein it was *prima facie* observed that in ***All India Judges' Association (3) v. Union of India & Ors.*** reported in **(2002) 4 SCC 247** while emphasizing on the need for merit-based criteria for promotion in the cadre of Higher Judicial Service, this Court had held that the promotion to the post of District Judge shall be on the basis of 'Merit-cum-Seniority'.

14. This Court further observed that the principle of 'Merit-cum-Seniority' lays greater emphasis on merit, and seniority plays a less significant role. Therefore, seniority should be considered only when merit and ability are equal.

15. This Court *prima facie* opined that the final Select List dated 10.03.2023 could be said to be in contravention of the principle of 'Merit-cum-Seniority' as envisaged in the rules and the decision in ***All India Judges' Association (3)*** (supra). However, in view of the importance of the matter and the observations made in ***All India Judges' Association (3)*** (supra), the matter was referred to the Bench of Hon'ble the Chief Justice of India. The relevant observations read as under: -

"8.1 It is also required to be noted that even as per the Recruitment Notice – District Judge (65%), the promotion to the cadre of District Judge (65%) from amongst the Senior Civil Judges shall be on the basis of principle of merit-cum-seniority and passing a suitability test. The suitability of a judicial officer for promotion is also provided in the Recruitment Notice, which consists of four components reproduced hereinabove. Thus, as per the statutory Rules and even as per the Recruitment Notice, the promotion to the cadre of District Judge (65%) shall be on the basis of principle of merit-cum-seniority and passing a suitability test. At this stage, it is required to be noted that the Rules, 2005 further amended in the year 2011, have been framed by the High Court pursuant to the directions issued by this Court in the case of All India Judges' Association and Ors. (supra). It is required to be noted that prior to the decision of this Court in the case of All India Judges' Association and Ors. (supra), the promotion in the cadre of Higher Judicial Service, i.e., District Judges and Additional District Judges were given on the basis of principle of seniority-cum-merit. Emphasising the need for merit-based criteria for promotion in the cadre of Higher Judicial Service, i.e., District Judges and Additional District Judges [...]

xxx xxx xxx

8.8 The law on the principle of "merit-cum-seniority is by now, settled by this Court in a catena of decisions. As observed, while applying the principle of "merit-cum-seniority", greater emphasis is given on merit and ability and seniority plays a less significant role. As observed, while applying the principle of "merit-cum-seniority", the seniority is to be given weight only when merit and ability are approximately equal.

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9. Thus, we are more than satisfied that the impugned Select List dated 10.03.2023 issued by the High Court and the subsequent Notification dated 18.04.2023 issued by the State Government granting promotion

to the cadre of District Judge are illegal and contrary to the relevant Rules and Regulations and even to the decision of this Court in the case of All India Judges' Association and Ors. (supra). Therefore, we are more than prima facie satisfied that the same as such are not sustainable. Though, we were inclined to dispose of the writ petition finally, however, as Shri Dushyant Dave, learned Senior Advocate appearing on behalf of some of the respondents - promotees has prayed not to dispose of the writ petition finally and, therefore, may consider the question of interim relief, we are not disposing of the writ petition finally. […]

10. Looking to the importance of the matter and the observations made by this Court in the case of All India Judges' Association and Ors. (supra), pursuant to which the High Court has amended the Rules and the Regulations, we are of the opinion that let the matter be heard by the Bench headed by Hon'ble the Chief Justice of India, however, subject to and after obtaining appropriate orders from the Hon'ble the Chief Justice of India on the administrative side. The Registry is directed to notify the present writ petition for final hearing on 08.08.2023."

(Emphasis supplied)

16. Accordingly, the present writ petition came to be referred to this Bench and was accordingly taken up for hearing.

C. SUBMISSIONS ON BEHALF OF THE PETITIONERS

17. Mr. P.S. Patwalia, learned Senior Counsel appearing for the petitioners submitted that the statutory rules as well as the decision in ***All India Judges' Association (3)*** (supra) stipulate that promotion to the cadre of District Judges against the 65% quota has to be on the basis of the principle of 'Merit-cum-Seniority'. Although the High Court has used the nomenclature 'Merit-cum-Seniority' yet the method ultimately followed for the purpose of promotion to the cadre of District Judge is nothing but 'Seniority-cum-Merit'.

18. He further submitted that the High Court in its methodology subjected all eligible candidates in the feeder cadre to a process of assessment of a specified minimum necessary merit and then proceeded to

promote the candidates found possessing the minimum requisite merit strictly in the order of seniority. He submitted that the said method is nothing but 'Seniority-cum-Merit'.

19. Finally, Mr. Patwalia submitted that where promotion is on the basis of 'Merit-cum-Seniority', seniority has to be considered only in the event merit is equal in all respects. In other words, seniority should be considered only if there is a tie between the candidates on their individual merit.

20. Mr. R. Basant, learned Senior Counsel submitted that in the procedure that came to be followed by the High Court for promotion, seniority has been applied and given effect twice - once at the stage of preparation of the zone of consideration and then again at the stage of preparing the final Select List.

21. He further submitted that by applying seniority at the last stage of preparing the final Select List, the principle of 'Merit-cum-Seniority' has been given a go-by and instead 'Seniority-cum-Merit' has been applied.

22. He also submitted that in cases of promotion on the principle of 'Merit-cum-Seniority', there is always an element of comparative merit and the promotion must be as per the *inter-se* merit of the persons who obtained the minimum marks. In this regard, strong reliance has been placed on the decisions of this Court in ***Rupa Rani Rakshit & Ors. v. Jharkhand Gramin Bank*** reported in **(2010) 1 SCC 345** and in ***Dr. Kavita Kamboj v. High Court of Punjab and Haryana & Ors.*** reported in **2024 SCC OnLine SC 254**.

23. He further submitted that 'Merit-cum-Seniority' is not a vague literary term, but carries a specific meaning in service jurisprudence. He submitted that the decision in ***All India Judges' Association (3)*** (supra) consciously substituted the earlier criteria of 'Seniority-cum-Merit' with 'Merit-cum-Seniority'.

24. In the last, Mr R. Basant submitted that this Court in a plethora of its decisions has consistently held that where a minimum benchmark is laid down and candidates having secured the minimum required marks are promoted on the basis of the seniority irrespective of the individual marks secured by them, it is an instance of 'Seniority-cum-Merit'.

D. SUBMISSIONS ON BEHALF OF THE HIGH COURT

25. Mr. V. Giri, learned Senior Counsel appearing for the High Court of Gujarat submitted that 'Merit-cum-Seniority' should not be conflated with Merit and that there is a clear distinction between the two concepts. He submitted that whilst merit is concerned only with the grade/credit of the candidate, the former not only checks the merit but also lays emphasis on seniority.

26. He submitted that if the interpretation of 'Merit-cum-Seniority' as canvassed by the petitioners is accepted, then the entire process of promotion would become solely based on merit and the aspect of seniority would be completely obliterated from the principle of 'Merit-cum-Seniority'.

27. He further submitted that doing so would have a far-reaching effect. The same would result in an amalgamation of the promotion process against 65% posts on the basis of 'Merit-cum-Seniority' and the process against 10% posts on the basis of strict merit in the cadre of District Judges and would completely do away with the fine distinction between the two modes of promotion.

28. Finally, Mr. Giri submitted that the High Court has been following the same methodology since 2011.

E. SUBMISSIONS ON BEHALF OF THE PROMOTED CANDIDATES

29. Mr. Dushyant Dave, learned Senior Counsel appearing for judicial officers who found place in the final Select List submitted that the writ petition under Article 32 ought not to be entertained as the petitioners have an alternative efficacious remedy of filing a writ petition under Article 226 of the Constitution before the High Court.

30. He submitted that in ***All India Judges' Association (3)*** (supra) the principle of 'Merit-cum-Seniority' and Suitability Test was provided only to objectively ascertain a minimum standard of merit for the purpose of promotion to the Higher Judicial Services in the cadre of District & Sessions Judge.

31. Mr. Dave submitted that merely having scored a few marks more than the other candidates is neither an indication of being tangibly more meritorious nor a cogent reason to completely negate the length of service of the senior candidates. He submitted that if the

interpretation as canvassed by the petitioners is accepted, it would cause undue hardship and result in unjust treatment to his clients whose names were included in the final Select List, as they would end up losing their precious years of seniority in service only on account of having obtained a few marks lesser compared to the petitioners.

32. Ms. Mayuri Raghuvanshi, learned Counsel appearing for some of the respondents submitted that the principle of 'Merit-cum-Seniority' does not mean that the length of service or seniority has no relevance. She submitted that the marks secured in the written examination and other tests are not indicative of merit as the marks may be obtained even without possessing other important qualities such as practical experience or by cramming.

33. She further submitted that the various decisions on the principle of 'Merit-cum-Seniority' as relied upon by the petitioners do not deal with judicial services and have not been delivered in the context of promotion of Civil Judges (Senior Division) to the cadre of District Judge. It was submitted that 'Merit-cum-Seniority', as stipulated in the 2005 Rules, should be read in line with the observations in ***All India Judges' Association (3)*** (supra).

34. Learned counsel further submitted that the reliance placed by the petitioners on the process of promotion followed by the High Court of Jharkhand and High Court of Calcutta is absolutely misplaced, as the statutory rules therein are not *pari-materia* to the 2005 Rules.

35. Finally, Ms. Raghuvanshi submitted that her clients whose names have been included in the final Select List, had also participated in the promotion process undertaken in the year 2020. Although her clients had scored higher marks compared to the other candidates in the 2020 recruitment process, yet they were not promoted as they were comparatively junior to the other officers. She submitted that the process which was followed by the High Court applying the principle of 'Merit-cum-Seniority' has been followed consistently since 2011. She submitted that deviating from the process as followed by the High Court will result in inequitable and unjust repercussions, as her clients who lost out on promotions in the previous recruitment process because of being relatively junior would again end up losing out on their promotions in this process despite being relatively senior.

F. POINTS FOR DETERMINATION

36. Having heard the learned counsels appearing for the parties and having gone through the materials on record, the two pivotal questions that fall for our consideration are as under: -

I. What is the scope of principle of the 'Merit-cum-Seniority' in service jurisprudence; and

II. Whether promotion of Civil Judges (Senior Division) to the cadre of District Judges in accordance with Rule 5(1) of the 2005 Rules and the Recruitment Notice dated 12.04.2022 issued by the High Court of Gujarat is contrary to the principle of 'Merit-cum-Seniority' as laid down in ***All India Judges' Association (3)*** (supra).

G. ANALYSIS

i. Maintainability of the present Writ Petition under Article 32.

37. At the outset, a preliminary objection was raised as regards the maintainability of the writ petition under Article 32 of the Constitution, on the ground that the petitioners have an efficacious alternative remedy available to them under Article 226 of the Constitution.

38. In ***Mohammed Ishaq v. S. Kazam Pasha & Anr.*** reported in **(2009) 12 SCC 748** this Court held that where Article 32 has been invoked, even where an alternative remedy exists, relegating the parties to avail the same is discretionary and a matter of convenience, and the same by no stretch restrains this Court to entertain the same. The relevant observations read as under: -

> *"23. On the preliminary issue of maintainability of the present writ petition, it is well-settled position of law that simply because a remedy exists in the form of Article 226 of the Constitution for filing a writ in the High Court concerned, it does not prevent or place any bar on an aggrieved person to directly approach the Supreme Court under Article 32 of the Constitution. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction under Article 32 where the party invoking the jurisdiction has an effective, adequate alternative remedy in the form of Article 226 of the Constitution. However, this*

rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law. At any rate it does not oust the jurisdiction of this Court to exercise its writ jurisdiction under Article 32 of the Constitution. We, therefore, reject the preliminary objection raised and proceed to examine the contentions raised in the writ petition on merits."

(Emphasis supplied)

39. In ***Maharashtra State Judicial Service Assn. & Ors. v. High Court of Judicature at Bombay & Ors.*** reported in **(2002) 3 SCC 244** this Court held that where the issue pertained only to the interpretation of the relevant rules and there was no dispute as regards the facts of the case by either side, the same could be entertained under Article 32 even though the alternative remedy under Article 226 was available. The relevant observations read as under: -

"1. [...] On behalf of the direct recruit respondents, a preliminary objection had been taken by Shri M.L. Verma that the dispute being one of inter se seniority within a cadre, the Court ought not to entertain a petition under Article 32, as the parties were entitled to approach the High Court under Article 226 against the administrative decision of the Bombay High Court. We have no doubt in our mind that an administrative decision of the Court could be assailed by filing a writ petition under Article 226 in the High Court itself, but this Court having entertained the petition under Article 32 by issuing rule on 8-12-2000 and the dispute being one which centres around interpretation of the relevant Rules and both the direct recruits and the promotees having made their stand known, and further, no disputed question on facts having arisen, we do not think it appropriate to direct the promotees to approach the High Court in the first instance. We, therefore, heard the parties at length on the merits of the matter."

(Emphasis supplied)

40. From the aforesaid, it is clear that the availability of an alternative remedy does not in any manner affect the maintainability of the writ

petition under Article 32 of the Constitution. The rule behind relegating a party to first avail the alternative remedy before knocking the doors of this Court is a rule of self-restraint that is exercised by this Court as a matter of convenience.

41. Further, wherever the facts of the case are not in dispute, and the issue involves the interpretation of rules which are of significant importance having a far-reaching effect, it would be a fit case for this Court to exercise its discretion and entertain the writ petition under Article 32 even if there is an alternative remedy available.

42. It is contended by the petitioners that they had to come before this Court invoking Article 32 of the Constitution instead of Article 226 because the impugned final Select List dated 10.03.2023 which is the subject matter of challenge had been ratified by the High Court in its Full Court meeting. We are not impressed with such a submission as the High Court on its judicial side can always review any decision or action taken by it on its administrative side. It would be erroneous to say that if any decision taken by the High Court on its administrative side is ultimately challenged on any legal ground on its judicial side, then the High Court may not undertake judicial review of such administrative decision dispassionately.

43. In the present case, the facts are not in dispute either at the end of the petitioners herein or at the end of the High Court or the respondents. Moreover, since the issues involve not just the interpretation of Rule 5(1)(I) of the 2005 Rules but also the decision of this Court in ***All India Judges' Association (3)*** (supra), we are of the considered opinion that the petition under Article 32 deserves to be entertained.

ii. The Legislative History and Scheme of the Gujarat State Judicial Service Rules, 2005.

a. **Shetty Commission on Judicial Reforms and the Decision of this Court in All India Judges' Association (3).**

44. The subject matter of the controversy with which we are concerned in the present litigation is with regard to the scheme and policy for promotions in the Higher Judicial Services, particularly to the cadre of Additional District & Sessions Judge. The genesis of the same can be traced back to the decision of this Court in ***All India Judges' Association (3)*** (supra).

45. The First Law Commission of India under the Chairmanship of Shri M.C. Setalvad in its 14th Report in the year 1958 expressed concerns over the growing problem of finding capable and competent judicial officers for the District Judiciary. It reported that most of the difficulties brought to the notice of the Commission had their origin in the inefficiency or inexperience of the judicial personnel on account of the falling standards in their recruitment. The relevant observations read as under: -

> ***"2. Subordinate Judiciary***
> *Personnel*
>
> 2. *As has been said repeatedly elsewhere, the problem of efficient judicial administration, whether at the level of the superior courts or the subordinate courts, is largely the problem of finding capable and competent judges and judicial officers. Delays in the disposal of cases and the accumulation of arrears are in a great measure due to the inability of the judicial officers to arrange their work methodically and to appreciate and apply the provisions of the Procedural Codes. […]*
>
> *xxx xxx xxx*
>
> *4. As we shall point out later, the problem has since grown in dimensions, because there is unmistakable testimony that the standards of the judicial officers recruited from the bar and other sources have, during recent years, fallen in a substantial degree for various reasons. That has been almost the unanimous view expressed by the witnesses before us. It is thus obvious that no scheme of reform of judicial administration will be effective or worth-while, unless the basic problem of providing trained and capable judicial personnel is satisfactorily solved. Before we can suggest adequate measures for raising the level of judiciary, we have to examine the causes which have led to the decline in its efficiency."*
>
> (Emphasis supplied)

46. Accordingly, the Law Commission made a slew of recommendations in order to deal with the afore-stated problems. The Law Commission, *inter-alia,* recommended devising a more robust mechanism for

recruitment and in-service training of judicial officers with a view to improve their calibre. It further recommended that a third source of recruitment to the Higher Judiciary i.e., the cadre of District & Sessions Judge, should be created. It stated that this third category should be recruited purely by way of a competitive examination, and recruitment through the existing two categories i.e., by promotion and from the Bar should continue as per the existing process. The Law Commission was of the view that the new avenue as recommended would enlarge the field of selection and bring in Judicial Officers of high calibre and brilliance. The relevant observations read as under: -

> *"10. If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable persons. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at there Bar should be done away with.*
>
> *Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive branch of Government and in private commercial firms. The scheme, it was pointed out, would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State."*
>
> (Emphasis supplied)

47. In ***All India Judges' Association (1) v. Union of India*** reported in **(1992) 1 SCC 119**, the issues pertaining to the working conditions of the District Judiciary throughout the country came up for consideration, including the issues pertaining to uniformity in the judicial cadres in different States and Union Territories, and for adequate provisions for in-service training and promotion.

48. This Court took notice of the aforesaid recommendations that were made by the First Law Commission of India in its Fourteenth Report in 1958, particularly with respect to improving the standard of the District Judiciary and widening the field of selection and promotion to the Higher Judiciary in a balanced manner so as to induct capable and efficient persons as Judicial Officers in the District Judiciary.

49. While this Court acknowledged that the creation of an All-India Judicial Service as proposed by the Law Commission may undermine the control of the High Courts over the District Judiciary, yet at the same time this Court suggested to the Union of India to undertake appropriate steps towards the implementation of the recommendations made by the Law Commission, as far as feasible, at the earliest, and directed the Central Government to consider setting up an All-India Judicial Service. The relevant observations read as under: -

> *"11. [...] We are of the view that the Law Commission's recommendation should not have been dropped lightly. There is considerable force and merit in the view expressed by the Law Commission. An All India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary. The reasons advanced by the Law Commission for recommending the setting up of an All India Judicial Service appeal to us.*
>
> *12. Since the setting up of such a service might require amendment of the relevant articles of the Constitution and might even require alteration of the Service Rules operating in the different States and Union territories, we do not intend to give any particular direction on this score particularly when the point was not seriously pressed but we would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done.*
>
> *xxx xxx xxx*
>
> *63. We would now briefly indicate the directions we have given in the judgment:*

(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard. [...]"

(Emphasis supplied)

50. Thereafter, review petitions came to be filed against the decision in ***All India Judges' Association (1)*** (supra) seeking certain modifications and clarifications in respect of the directions that were issued by this Court. The review petitions came to be disposed in ***All India Judges' Association (2) v. Union of India*** reported in **(1993) 4 SCC 288**, wherein *inter-alia* it was clarified that although the direction for setting up an All-India Judicial Service was only recommendatory, yet in view of the necessary and expedient nature of the recommendations made by the Law Commission, the Central Government should take an earnest initiative in realizing the same.

51. Pursuant to the directions issued by this Court in ***All India Judges' Association (1)*** (supra) and ***All India Judges' Association (2)*** (supra), the First National Judicial Pay Commission under the Chairmanship of Hon'ble Mr. Justice K.J. Shetty (Former Judge of this Court), more popularly known as the "Shetty Commission on Judicial Reforms" came to be constituted. After due deliberations, the Shetty Commission submitted its report on 11.11.1999, and responses to the same were filed by the States and Union Territories.

52. The recommendations made in the Shetty Commission's report along with the responses of the States/Union Territories were taken into consideration and the same ultimately culminated into the decision of this Court in ***All India Judges' Association (3)*** (supra).

(1) In the said decision, this Court, *inter-alia,* accepted the recommendation of the Shetty Commission that 75% of the posts in the cadre of District & Sessions Judge shall be filled by promotion from Civil Judge (Senior Division) and 25% of the posts shall be filled by direct recruitment from the Bar by way of a competitive examination encompassing a written examination and viva.

(2) At the same time, this Court was of the view that when it comes to appointment by promotion to the cadre of District & Sessions Judge, **(i)** some incentive for improving must exist for the judicial officers and **(ii)** a certain minimum standard ought

to be maintained in the cadre of District & Sessions Judge and further, there must be an objective method for testing the suitability of a Judicial Officer for promotion.

(3) Accordingly, this Court held that even within the quota of 75% there should be two methods of appointment by way of promotion. It held that 50% of the total posts shall be filled by promotion based on the principle of 'Merit-cum-Seniority' through a test for assessing the continued efficiency and adequate knowledge of case-law of the Judicial Officers and the remaining 25% of the posts shall be filled by promotion strictly on the basis of merit through a limited departmental competitive examination (LDCC) with an eligibility requirement of five-years of qualifying service as a Civil Judge (Senior Division).

(4) Thus, this Court directed that recruitment to the Higher Judicial Service i.e., in the cadre of District & Sessions Judge shall be through three different avenues, namely: -

(i) 50% by promotion of Civil Judges (Senior Division) on the basis of 'Merit-cum-Seniority' and passing a Suitability Test.

(ii) 25% by promotion strictly based on merit through a limited departmental competitive examination of Civil Judges (Senior Division) not having less than five-years qualifying service; and

(iii) 25% by direct recruitment from amongst the eligible advocates based on written and viva voce test.

(5) Accordingly, all the High Courts were directed to frame appropriate rules in terms of the aforesaid directions. The relevant observations read as under: -

> *"27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system.*

It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle

of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1)

(a) *50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;*

(b) *25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and*

(c) *25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.*

(2) Appropriate rules shall be framed as above by the High Courts as early as possible.

29. [...] As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on

merit by limited departmental competitive examination and 25 per cent by direct recruitment. [...]"

(Emphasis supplied)

53. Thereafter, in ***Malik Mazhar Sultan & Anr. (1) v. U.P. Public Service Commission*** reported in **(2006) 9 SCC 507**, this Court underscored the importance for filling up judicial vacancies on time and directed the High Courts to undertake necessary steps towards fixing a timeline for determining vacancies, issuing advertisements, conducting examinations, interviews and declaring results for final appointment. The relevant observations read as under: -

"23. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that the system works automatically and there is no delay in filling up of vacancies. [...]"

(Emphasis supplied)

54. The aforesaid was followed by the decision in ***All India Judges' Association (4) v. Union of India*** reported in **(2010) 15 SCC 170**, wherein this Court took note of the fact that various posts of the cadre of District & Sessions Judge earmarked for the 25% promotional quota strictly on the basis of merit were lying vacant on account of insufficiency of candidates or their inability to clear the competitive exam. In such circumstances, it was directed that the 25% promotional quota, to be filled on the basis of Merit, shall be reduced to 10% of the cadre strength, and the 50% promotional quota to be filled by 'Merit-cum-Seniority' shall be increased to 65% of the total seats. The relevant observations read as under: -

"6. Having regard to various strategies available, we are of the considered view that suitable amendment is to be made for this 25% quota of limited departmental competitive examination. We are also of the view, with the past experience, that it is desirable that 25% quota be reduced to 10%. We feel so as the required result, which

was sought to be achieved by this process could not be achieved, thus it calls for modification.

7. Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five years as Civil Judge (Senior Division). Every year vacancies are to be ascertained and the process of selection shall be taken care of by the High Courts. If any of the post is not filled up under 10% quota, the same shall be filled up by regular promotion. In some of the High Courts, process of selection of these 25% quota by holding limited departmental competitive examination is in progress, such process can be continued and the unfilled seats, if meritorious candidates are available, should be filled up. But if for some reason the seats are not filled up, they may be filled up by regular promotion and apply the usual mode of promotion process. Thus we pass the following order.

8. Hereinafter, there shall be 25% of seats for direct recruitment from the Bar, 65% of seats are to be filled up by regular promotion of Civil Judge (Senior Division) and 10% seats are to be filled up by limited departmental competitive examination. If candidates are not available for 10% seats, or are not able to qualify in the examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable."

(Emphasis supplied)

55. In ***Malik Mazhar Sultan & Anr. (3) v. U.P. Public Service Commission & Ors.*** reported in **(2009) 17 SCC 530** this Court, in view of the large number of vacancies in the promotional quota in the cadre of District & Sessions Judge, directed the High Courts to be practical in the matters of promotion and ensure timely filling up of the vacancies on the basis of the principle of 'Seniority-cum-Merit', deviating from the observations in ***All India Judges' Association (3)*** (supra) mandating promotion by 'Merit-cum-Seniority'. It further observed that seniority should have a predominant role in giving promotions to the Civil Judges (Senior Division) and that the High

Court may decline promotion only in case the Judicial Officer is not suitable for being promoted. The relevant observations read as under: -

> *"3. We see large number of vacancies of District Judges are lying vacant as the promotion of these posts are not being done timely by the High Court. Considering the large number of vacant posts of District Judges, the High Court should take timely action to fill up these vacancies keeping in mind the principle of seniority-cum-merit. The High Court may deny promotion to a Civil Judge (Senior Division) only in case he/she is not suitable for being promoted and the seniority should always have a predominant role in giving promotion to the Civil Judge (Senior Division) to the post of District Judge. If the posts of District Judges are not filled up in time it is likely that sessions cases may not have timely trial, thereby delaying the whole procedure of justice delivery system. We request the High Court to be practical in the matter of promotion and filling up the posts of the District Judges. [...]"*
>
> (Emphasis supplied)

b. Relevant Statutory Provisions of the Gujarat State Judicial Service Rules, 2005.

56. At this stage, it would be necessary to look into the statutory scheme and refer to the relevant provisions governing the promotion of Civil Judges (Senior Division) to the cadre of District & Sessions Judge in the State of Gujarat.

57. The 2005 Rules provide for the service conditions and policies pertaining to the Judicial Officers and the service framework of the District Judiciary in the State of Gujarat.

58. Rule 5 sub-rule (1) of the 2005 Rules provides for the various modes or methods of appointment to the cadre of District & Sessions Judge. Rule 5(1) of the 2005 Rules framed in accordance with the directions issued in ***All India Judges' Association (3)*** (supra), lays down three distinct modes of recruitment to the cadre of District & Sessions Judge. The said Rule reads as under: -

> *"**5. Method of recruitment, qualification and age limit.***
>
> *(1) Recruitment to the cadre of District Judges shall be as under, -*
>
> *(I) 50 per cent by promotion from amongst the Senior Civil Judges on the basis of **principle of merit-cum-seniority** and passing a suitability test.*
>
> *(II) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Senior Civil Judges having not less than five years qualifying service, and*
>
> *(III) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by the High Court*."

59. Rule 5(1) sub-clause (I) of the 2005 Rules provides that appointment to 50% of the posts in the cadre of District & Sessions Judge shall be by promotion from the cadre of Civil Judges (Senior Division) i.e., the feeder cadre, on the basis of the principle of 'Merit-cum-Seniority' and upon passing a Suitability Test. In other words, 50% of the posts of District & Sessions Judge shall be filled by promotions on the basis of the principle of 'Merit-cum-Seniority'.

60. Rule 5(2) sub-clause (II) of the 2005 Rules provides that 25% of the posts in the cadre of District & Sessions Judge shall be filled by promotions on the basis of merit through a limited departmental competitive examination.

61. Rule 5(2) sub-clause (III) provides the third method of recruitment, by which the remaining 25% of the posts in the cadre of District & Sessions Judge shall be filled by direct recruitment of the eligible advocates on the basis of a written exam and viva-voce.

62. Pursuant to the directions of this Court in ***All India Judges' Association (4)*** (supra), Rule 5 referred to above was amended by the Gujarat State Judicial Service (Amendment) Rules, 2011, whereby, the second category of posts being the 25% promotional quota to be strictly filled on the basis of merit, was reduced to 10% and the 50% promotional quota, to be filled on the basis of principle of 'Merit-cum-Seniority' and passing a Suitability Test, was increased to 65%.

63. In other words, the aforesaid 2011 amendment reduced the posts for promotion on the basis of merit from 25% to 10% and increased the posts for promotion on the principle of 'Merit-cum-Seniority' from 50% to 65% in the cadre of District & Sessions Judge.

64. Rule 5 sub-rule (3) further prescribes the eligibility criteria for the aforesaid two modes of promotion provided in Rule 5(1) of the 2005 Rules, as amended in 2011. The said rule reads as under: -

> *"**5. Method of recruitment, qualification and age limit.***
>
> *(3) (I) For being eligible for promotion against 65% of the total posts in the cadre of District Judges required to be filled by promotion on the basis of the principle of merit-cum-seniority, the qualifying service as Senior Civil Judge shall not be less than two years service in the cadre.*
>
> *(II) For eligibility for promotion against the remaining 10% posts required to be filled in by promotion strictly on the basis of merit through limited departmental competitive examination, the qualifying service as Senior Civil Judge shall not be less than five years."*

65. Rule 5 sub-rule (3)(I) of the 2005 Rules stipulates that a minimum of two-years of qualifying service in the feeder cadre i.e., as a Civil Judge (Senior Division) is required in order to be eligible to participate in the promotion process for the 65% posts in the cadre of District & Sessions Judge on the basis of the principle of 'Merit-cum-Seniority' as envisaged under Rule 5(1)(I). In other words, all Civil Judges (Senior Division), having a minimum of two-years of service, are eligible to be promoted to the 65% posts in the cadre of District & Sessions Judge on the basis of the principle of 'Merit-cum-Seniority'.

66. On the other hand, Rule 5 sub-rule (3)(II) provides for the requirement of a minimum of five-years of qualifying service in the feeder cadre i.e., as a Civil Judge (Senior Division), for participating in the promotion process for the 10% posts in the cadre of District & Sessions Judge on the basis of strict merit as provided under Rule 5(1)(ii) of the 2005 Rules. In other words, all Civil Judges (Senior Division) who have completed a minimum of five-years of service are eligible to be promoted to the 10% posts in the cadre of District & Sessions Judge on the basis of Merit through the competitive examination.

67. In other words, a combined reading of the aforesaid Rule 5(1) with Rule 5(3) of the 2005 Rules makes it clear that there are three distinct modes of recruitment to the cadre of District & Sessions Judge which are as follows: -

(I) 65% posts by promotion from the eligible Civil Judges (Senior Division) having a minimum of two-years of service on the basis of 'Merit-cum-Seniority';

(II) 10% posts by promotion from eligible Civil Judges (Senior Division) with a minimum of five-years of service on basis of merit through a competitive examination and;

(III) 25% posts by direct recruitment from the eligible members of the Bar on the basis of a written exam and viva voce.

iii. Evolution of the Principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' in Service Jurisprudence.

a. Concept of Promotion: The meaning and origin of seniority and merit as parameters.

68. Promotion is an integral part of any formal sector employment. The principal object of a promotion system is to secure the best possible incumbents for higher positions while maintaining the morale of the whole organization.[1] In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are *inter-se* seniority and comparative merit of employees who are eligible for promotion.

Understanding the meaning of Seniority and Merit

69. The Black's Law Dictionary defines 'seniority' as follows[2]: -

> "*Represents in the highest degree the right to work, and by seniority the oldest man in point of service, ability and fitness for the job being sufficient, is given choice of jobs, is first promoted within range of jobs subject to seniority, and is the last laid off, proceeding so on down the line to the youngest in point of service*."

1 *High Court of Calcutta v. Amal Kumar Roy* [1963] 1 SCR 437

2 Henry Campbell Black, *Black's Law Dictionary*, p. 1528 (6th Edn., 1968).

70. Weber, the sociologist, described "promotion according to seniority or to achievement" as an important component of an efficient bureaucracy.[3] Establishing a promotion system based on seniority is fundamental to modern management, which ensures that individuals joining an organization have opportunities for career advancement. Further, promotions based on seniority is tried and tested method because those who have been engaged at the employment for longer have had more time to refine the skills necessary for the higher posts.

What constitutes 'Merit'

71. According to the Cambridge Dictionary, merit is defined as the quality of being good and deserving. In the context of employment, it is the sum total of various qualities which are relevant for fulfilling the requirements of the employment.[4] There are multiple attributes of merit which must be taken into consideration such as character, integrity, and devotion to the assigned official duties. The manner in which the candidate discharges their final duties would also be a relevant factor.

72. Further, past performance is a relevant factor to judge the merit of the candidate, particularly in promotional posts, since it would indicate the capability of the candidate to discharge their duties effectively. Merely because any person possesses higher qualifications or higher marks in an examination does not mean that they are meritorious than others.[5]

73. In the United States, the Federal Civil Services Act of 1871, provides for filling of vacancies in higher positions by competitive promotion tests, wherever practicable. H. Eliot Kaplan, General Counsel of the New York Bar, in his "Law of Civil Services" writes that in some jurisdictions promotions may be made on a wider basis, the field of promotion being left to the discretion of the personnel agency.[6] He also notes that the eligibility requirements for promotion are usually not specified in the statutes but are usually left to be determined by

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3 H. Gerth and C.W. Mills, *From Max Weber: Essays in Sociology*, 199, 202 (Oxford University Press, New York, 1958).

4 *K.K. Parmar v. High Court of Gujarat* (2006) 5 SCC 789

5 *Kartar Kaur v. State* (1967) SLR 34

6 H. Eliot Kaplan, *The Law of Civil Services* (New York University Press, Mathew Bender & Company, New York, 1958).

rules of the personnel agency. Personnel agencies fix educational and experience requirements for eligibility to compete for promotion. A hint of the 'Merit-cum-Seniority' and 'Seniority-cum-Merit' principle can be traced in his words where he states that where the law requires that promotions be made from among those serving in the next lower grade, the incumbents of such lower positions would be deemed to be presumably qualified for promotion. For 'Merit-cum-Seniority', particularly, the competitive test/qualification criteria would serve to determine the relative excellence among those presumably qualified for promotion[7], so that those demonstrating superior merit and fitness would be available to fill the vacancies.[8]

74. In Britain, the 1854 Northcote-Trevelyan Report founded a public service system based on merit, where open competitive examinations were practiced under the principle of promotion by merit but also held that seniority and experience counted in some respects.[9]

75. Similarly, in France, the 19th century saw the introduction of the doctrine of the "Concours" or competitive examination to support the merit system in the civil service, yet giving seniority and experience due regard in promotion to higher ranks.[10]

76. During the British Raj, the East India Company adopted the principle of seniority for promotions. This principle was officially recognized in the Charter Act, 1793 and continued until the enactment of the Indian Civil Service Act, 1861. Apart from the seniority principle, considerations of merit, integrity, competence, and ability were also taken into account for promotions. This 'Seniority-cum-Merit' formula remained in practice until 1947.

77. The Indian Civil Service (hereinafter referred as the "**ICS**") system, initiated in the 19th century, encapsulated aspects of recruitment based on competitive examinations and seniority. For entry into the ICS, competitive examinations were conducted and for promotions

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7 *Id.*

8 Elman, B.A., *Political, social, and cultural reproduction via civil service examinations in late imperial China*, 50(1) Journal of Asian Studies, pp.7-28 (1991).

9 Jenifer Hart, *The genesis of the Northcote–Trevelyan report,* in Studies in the growth of nineteenth century government pp. 63-81 (Ed. Gillian Sutherland, Routledge & Kegan Paul, London, 1972).

10 Kaplan, N.I., *A changing culture of merit: French competitive examinations and the politics of selection*, pp. 1750-1820 (Columbia University Press, 1999).

to higher positions, seniority and experience were considered as important factors.

78. Under the Charter Act, 1833, following Lord Macaulay's Report of the Select Committee of British Parliament[11], the concept of competitive examinations in modern Civil Services in India was introduced in 1854. The Report recommended that the patronage-based system of East India Company should be replaced by a permanent Civil Service where candidates are recruited through competitive examinations.[12] As stated, competitive examinations were "designed to protect career employees against improper political influences or personal favouritism in the recruiting, hiring, promotion, or dismissal processes, to ensure that personnel management is conducted without discrimination".[13]

79. The First Pay Commission in 1947 recommended a blend of direct recruitment and promotion, suggesting that seniority be emphasized for roles requiring familiarity with office work, while merit be the basis for higher-level positions. Subsequent commissions, such as the Second Pay Commission in 1959 and the First Administrative Reforms Commission in 1969, echoed the importance of merit-based promotions alongside seniority.

80. The principle of seniority as a parameter of selection for promotion was found to be derived from the belief that competence is related to experience and that it limits the scope of discretion and favouritism. There is always an additional assumption that long-serving employees have demonstrated loyalty to the employing organization and so are entitled to reciprocal treatment.

81. However, in India, no government servant can claim promotion as their right because the Constitution does not prescribe criteria for filling seats in promotional posts. The Legislature or the executive may decide the method for filling vacancies to promotional posts based on the nature of employment and the functions that the candidate will be expected to discharge. The courts cannot sit in review to decide whether the policy adopted for promotion is suited to select

11 The Macaulay Committee's Report on the Indian Civil Service 1854.

12 History of the Commission, Union Public Service Commission.

13 S. REP. No. 969; recited from O'Rourke, 1993, p. 344.

the 'best candidates', unless on the limited ground where it violates the principle of equal opportunity under Article 16 of the Constitution.

b. Principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' in Service Jurisprudence.

82. This Court in its decision in ***State of Kerala & Anr. v. N.M. Thomas & Ors.*** reported in **(1976) 2 SCC 310** held that policies pertaining to promotions can be said to broadly fall within two distinct categories being: **(i)** promotions which are based on the principle of 'Merit-cum-Seniority' and, **(ii)** promotions which are based on the principle of 'Seniority-cum-Merit'. It further held that when it comes to promotions based on principle of 'Seniority-cum-Merit', a senior who has the minimum requisite merit shall be entitled to promotion even though there might be others who are more meritorious. The relevant observations read as under: -

> *"38. The principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit, Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. This will not violate Articles 14, 16(1) and 16(2). A rule which provides that given the necessary requisite merit, a member of the backward class shall get priority to ensure adequate representation will not similarly violate Article 14 or Article 16(1) and (2). [...]"*
>
> (Emphasis supplied)

83. This Court in ***State of Mysore v. Syed Mahmood*** reported in **(1968) 3 S.C.R. 363**, on the criterion of 'Seniority-cum-Merit' observed that any rule that mandates selection based on the principle of 'Seniority-cum-Merit', such rule mandates that the promotions must be determined through a selection process that evaluates "seniority, subject to the fitness of the candidate, to discharge the duties of the post from among persons eligible for promotion". In consequence, where promotion is based on the 'Seniority-cum-Merit' principle, the candidate cannot claim promotion as a matter of right on the grounds

of his seniority alone. Further, if the officer fails to discharge his duties of the higher post, he may be passed over by a junior officer.

84. In ***Jagathigowda, C.N. & Ors. v. Chairman, Cauvery Gramina Bank & Ors,*** reported in **(1996) 9 SCC 677**, while moving a step ahead, it was held that where promotion is based on the principle of 'Seniority-cum-Merit', it would still be open for the selection committee to take into consideration the performance appraisal forms to first ascertain the suitability of the candidates being considered for promotion. The relevant observations read as under: -

> *"8. [...] It is settled proposition of law that even while making promotions on the basis of seniority-cum-merit the totality of the service record of the officer concerned has to be taken into consideration. The performance appraisal forms are maintained primarily for the purpose that the same are taken into consideration when the person concerned is considered for promotion to the higher rank. The High Court, with respect, was not justified in holding that the performance appraisal could not be taken into consideration by the Director's Committee while considering the officers for promotion to the higher rank."*
>
> (Emphasis supplied)

85. This Court in ***Rajendra Kumar Srivastava & Ors. v. Samyut Kshetriya Gramin Bank & Ors.*** reported in **(2010) 1 SCC 335** held that where promotion is on the basis of 'Seniority-cum-Merit', the standard method is to first ascertain the candidates who possess the minimum required merit and thereafter making promotions strictly on the basis of seniority from among those who are found to possess the minimum necessary merit. It further held that the minimum requisite merit may be ascertained from either one or a combination of multiple processes of assessment. The relevant observations read as under: -

> *"11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of "seniority" and the principle of "merit-cum-seniority". Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a*

significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of either two or all the three of the aforesaid methods. There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.

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13. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of "seniority-cum-merit". What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit."

(Emphasis supplied)

86. In ***Dr. Kavita Kamboj*** (supra), this Court speaking eruditely through one of us, Dr. D.Y. Chandrachud, CJI., observed that the principle of 'Merit-cum-Seniority' is an approved method of selection where the emphasis is primarily on the comparative merit of the judicial officers being considered for promotion whereby even a junior who demonstrates greater merit than the senior can be considered for promotion. The relevant observations read as under: -

> *"45. [...] The principle of merit-cum seniority is an approved method of selection where merit is the determinative factor and seniority plays a less significant role. Where the principle of 'merit-cum seniority' is the basis, the emphasis is primarily on the comparative merit of the judicial officers being considered for promotion. Resultantly, even a junior officer who demonstrates greater merit than a senior officer will be considered for promotion."*
>
> (Emphasis supplied)

[Also see ***Central Council for Research in Ayurveda and Siddha and Anr. v. Dr. K. Santhakumari*** reported in **(2001) 5 SCC 60**]

87. This Court in ***B.V. Sivaiah & Ors. v. K. Addankl Babu & Ors.*** reported in **(1998) 6 SCC 720** whilst explaining the difference between the principle of 'Merit-cum-Seniority' vis-à-vis the principle of 'Seniority-cum-Merit', held as follows: -

(i) ***First,*** where promotion is based on the principle of 'Merit-cum-Seniority' a greater emphasis is laid on merit & the ability of the candidate and seniority is to be given weight where merit and ability are approximately equal. Whereas, when it comes to the principle of 'Seniority-cum-Merit', the promotion is to be made on the basis of seniority alone subject to having the minimum requisite merit and suitability of the candidate amongst the eligible persons. The relevant observations read as under: -

> *"9. The principle of 'merit-cum-seniority lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only where merit and ability are approximately equal. [...]*
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> *xxx xxx xxx*

18. We thus arrive at the conclusion that the criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

(Emphasis supplied)

(ii) ***Secondly,*** the principle of 'Merit-cum-Seniority' postulates the requirement of making a comparative assessment of merit, whereas no such comparative assessment is required where the criterion for promotion is based on the principle of 'Seniority-cum-Merit'. Even if the candidates have the same length of service, it is only to be determined whether the candidates possess the minimum required threshold of merit or not. The relevant observations read as under: -

"15. [...] Since comparation assessment of merit is required to made while applying the criterion of 'merit cum-seniority' and for 'seniority-cum merit' no such comparative assessment is required, the aforementioned observations in the case of C.R. Seshadri (supra) on which reliance has been placed cannot be regarded as correctly reflecting as what is meant by the criterion of 'seniority-cum-merit'.

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17. [...] We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is inter

se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to the such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service."

(Emphasis supplied)

(iii) ***Thirdly***, the Court concluded by observing that where the criterion of promotion is principle of 'Seniority-cum-Merit', marks can only be prescribed as a 'minimum qualifying requirement' and as such where promotion was being given to the eligible seniormost candidates on the basis of their individual marks, such promotion would be contrary to the principle of 'Seniority-cum-Merit'. The relevant observations read as under: -

"26. It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secure the prescribed minimum qualifying marks are selected for promotion on the basis of seniority. In the circumstances, it must be held that the High Court has rightly come to the conclusion that the mode of selection that was in fact employed was contrary to the principle of 'seniority-cum-merit' laid down in the Rules."

(Emphasis supplied)

88. This distinction was reiterated in ***Union of India and Ors. v. Lt. Gen. Rajendra Singh Kadyan & Anr.*** reported in **(2000) 6 SCC 698**, ***State of U.P. v. Jalal Uddin & Ors.*** reported in **(2005) 1 SCC 169** and ***Haryana State Electronics Development Corporation Ltd. & Ors. v. Seema Sharma & Ors.*** reported in **(2009) 7 SCC 311**.

89. This Court in ***Palure Bhaskar Rao & Ors. v. P. Ramaseshaiah & Ors.*** reported in **(2017) 5 SCC 783** reiterated the distinction between the principles of 'Seniority-cum-merit' and 'Merit-cum-Seniority'. As far as promotion by 'seniority-cum-merit' or seniority *per se*, the eligible senior cannot be superseded. Other things being equal, the senior automatically get promoted. But in the case of selection based on 'Merit-cum-Seniority', the senior candidate can be superseded if the candidate who is senior is not otherwise eligible to be considered according to the applicable service rules.

90. This Court in its decision in ***K. Samantaray v. National Insurance Co. Ltd.*** reported in **(2004) 9 SCC 286** reaffirmed that when it comes to promotion, apart from the two guiding principles that have come to be accepted namely; 'Seniority-cum-Merit' and 'Merit-cum-Seniority', a third model has also now come to be recognized as a mode of promotion known as the 'Hybrid Mode of Promotion'. This Court while explaining the 'Hybrid Mode of Promotion' observed that the requirement is that seniority is to be duly respected and merit is to be appropriately recognized. The relevant observations read as under: -

> *"10. [...] The third mode (apart from seniority-cum-merit and merit-cum-seniority modes) has been recognized. It has been described as a "hybrid mode of promotion". In other words, there is a third category of cases where seniority is duly respected and merit is appropriately recognized.*
>
> *11. While laying down the promotion policy or rule, it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating of any statutory scope of interference and other relatable matters. The decision in B. V. Sivaiah case (supra) is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions. It was the stand of the respondent-employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and*

codify the existing guidelines relating to promotions within officers cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts."

(Emphasis supplied)

91. In ***Bhagwandas Tiwari & Ors. v. Dewas Shajapur Kshetriya Gramin Bank & Ors.*** reported in **(2006) 12 SCC 574**, this Court observed that although the requirement of minimum marks for assessing merit can be prescribed for the purpose of promotion on the basis of 'Seniority-cum-Merit', yet where a very high requirement of minimum marks has been prescribed, the same would amount to laying greater emphasis on merit and thereby departing from the principle of 'Seniority-cum-Merit' and shifting towards to the principle of 'Merit-cum-Seniority' where merit and ability play a predominant role. The relevant observations read as under: -

"11. The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal.

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20. There is no basis, in the instant case, for the stand that for assessing merit a minimum number of marks has been prescribed. The contention that minimum marks were 45 out of 60, means that an employee is to secure 75% of marks. Such a high percentage cannot be a measure for prescribing minimum marks to assess merit. It obviously would be a case of shifting the focus to merit-cum-seniority principle. In para 37 of Sivaiah case this Court noted that minimum marks prescribed for assessing merit do not depart from the seniority-cum-merit principle. But the factual position is different here. There is no mention that

45 marks out of 60 relate to the prescription of minimum marks for assessing the merit. In Jalal Uddin case it was noted that in seniority-cum-merit greater emphasis is on seniority though it is not the determinative factor. In the case of merit-cum-seniority, merit becomes a determinative factor. In fact, the position noted by this Court in paras 19, 20, 24 and 25 of Sivaiah case dealt with almost identical fact situation, apart from para 16 of the judgment."

(Emphasis supplied)

92. In ***Shriram Tomar & Anr. v. Praveen Kumar Jaggi & Ors.*** reported in **(2019) 5 SCC 736**, for the purpose of promotion on the basis of 'Seniority-cum-Merit' it was stipulated that the assessment would be on the basis of a written test, interview and performance appraisal for a grand total of 100 marks out of which requirement of a minimum aggregate of 40% marks was prescribed. In addition to the above, a further requirement of minimum 12 marks in one of the components i.e., the interview had also been prescribed.

93.1 This Court held that the principle of 'Seniority-cum-Merit' postulates only one requirement i.e., once the minimum required merit is assessed, thereafter the promotion must be strictly in accordance with the seniority of the candidates having the requisite merit. How the minimum merit ought to be assessed is immaterial.

93.2 As such, prescribing of an additional requirement of minimum marks in any one component of assessment such as interview in addition to the requirement of aggregate minimum marks in the overall assessment process was permissible under the principle of 'Seniority-cum-Merit' provided that the ultimate promotion is taking place as per seniority. The relevant observations read as under: -

"13. [...] As the promotion to the post of Junior Management Scale II shall be made on the basis of seniority-cum-merit, the only requirement would be that after it is found that the candidates have possessed the minimum necessary merit, namely, minimum 40% qualifying marks in the written test

and minimum 12 marks each out of 20 marks each in interview and the performance appraisal reports respectively, thereafter the candidates are required to be promoted in the order of seniority, irrespective of anyone among them having obtained more marks."

(Emphasis supplied)

93. In ***Sujata Kohli v. Registrar General, High Court of Delhi and Ors.*** reported in (**2020) 14 SCC 58,** this Court observed that since both the channels of promotion to the cadre of District & Sessions Judge being (i) 65% promotion on basis of principle of 'Merit-cum-Seniority' and (ii) 10% promotion strictly on merit through competitive examination postulate the criterion of merit, it necessarily meant that: -

(i) ***First,*** for the purposes of any promotion through the above two channels, merit would have to play a major role in promotion through these channels and will acquire primacy and that seniority alone cannot be given primacy.

(ii) ***Secondly,*** the requirement of merit in such promotions cannot be less than the merit which is required at the entry level i.e., in the lower cadres.

(iii) ***Thirdly,*** that comparative assessment of merit is crucial, such as through the evaluation of the respective ACRs of the candidates.

Thus, this Court was of the view that the minimum requirement of grade 'A' in ACRs was in consonance with the policy envisaged by the abovementioned two channels of promotion and the relevant observations read as under: -

"14.3 [...] As noticed, two channels of recruitment to the posts in the cadre of District Judge have been provided: one by promotion from amongst the Civil Judges (Senior Division) and another by direct recruitment from the eligible persons. As regards promotion, the bifurcation is provided in the manner that 65% are to be recruited by way of promotion on the basis of merit-cum-seniority and 10% by promotion strictly on the basis of merit through limited competitive examination (vide Rule 7 and 7A). [...]

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15. Keeping the principles aforesaid in view, when we revert to the scheme of the Rules of 1970, the striking feature is that even at the entry level, the promotions are to be made either on merit-cum-seniority basis or on merit basis. Further, grant of Selection Grade and Super Time Scale is also on assessment of merit-cum-seniority10. In the given scheme of the Rules of 1970, it is difficult to countenance any suggestion that in DHJS, merit could be forsaken at any level or only seniority be given primacy in the matter relating to upward progression to the higher posts of District and Sessions Judge or Principal Judge, Family Court. Rather, looking to the nature of posts, in every higher progression, merit would play a major role and would, perforce, acquire primacy.

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19.1. [...] Viewed in the light of such requirements, it goes without saying that any upward progression in DHJS could only be on the higher requirements of merit and in any case, such requirements cannot be lesser than the requirements at entry level. In this view of the matter too, the Appellant was conscious of the fact that for upward movement in DHJS, merit would acquire primacy; and that seniority alone was not going to be decisive for promotion to the higher posts of District and Sessions Judge and the Principal Judge, Family Court. Although there is no requirement in law that criteria for promotion based on ACR alone be also notified but, in any case, in the scheme of the Rules and the requirements of the posts in question, the Appellant cannot contend that she was not aware of the position that comparative merit of the incumbents shall be a crucial factor for any upward progression in the cadre."

(Emphasis supplied)

c. 'Hybrid-Dynamic Mode of Promotion' in Service Jurisprudence.

94. What can be discerned from the aforenoted decisions is that this Court over the years has consistently held that where promotion is on the basis of the principle of 'Merit-cum-Seniority' a greater

emphasis is placed on merit, whereas, when the promotion is on the basis of the principle of 'Seniority-cum-Merit', a greater emphasis is laid on seniority.

95. One must be mindful that the terms 'Merit-cum-Seniority' or 'Seniority-cum-Merit' are not statutorily defined by the legislature.

96. These principles are judicial connotations that have been evolved over a period of years through various decisions of this Court and the High Courts whilst dealing with matters of promotion pertaining to different statutes and service conditions.

97. This Court in ***B.V. Sivaiah*** (supra), ***Rajendra Kumar Srivastava*** (supra), ***Shriram Tomar*** (supra), ***Sujata Kohli*** (supra) and a catena of other decisions has held that the principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' are conceptually different. Whilst explaining the difference between these two principles, this Court has only gone to the extent of laying down what these principles postulate for the purpose of promotion. In other words, this Court has only gone so far as to lay down what is permissible within the four corners of these principles and by no stretch of imagination has this Court in any manner held that such postulations are *stricto-sensu* required to be complied with.

98. The various decisions of this Court have only developed upon the principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' by explaining the criterions that may be postulated within the framework of these principles for the purpose of promotion. The scope of the aforesaid principles is summarized below: -

I) The principle of 'Seniority-cum-Merit' postulates that: -

i. Minimum requirement of merit and suitability which is necessary for the higher post can be prescribed for the purpose of promotion.

ii. Comparative Assessment amongst the candidates is not required.

iii. Seniority of a candidate is not a determinative factor for promotion but has a predominant role.

iv. Upon fulfilling the minimum qualifications, promotions must be based on *inter-se* seniority.

II) The principle of 'Merit-cum-Seniority' postulates that: -

i. Merit plays a predominant role in and seniority alone cannot be given primacy.

ii. Comparative Assessment of Merit is a crucial, though not a mandatory, factor.

iii. Only where merit is equal in all respects can *inter-se* seniority be considered. Meaning that a junior candidate can be promoted over the senior if the junior is more meritorious.

99. The underlying reason why the afore-stated postulations ought not be understood as mandatory stems from the very fact that they are not a result of a legislative creation, but rather one of judicial interpretation whilst dealing with different promotion policies, different service conditions, the varied nature and requirement of posts and more importantly different sets of rules. Since, these postulations have been laid down in different context and varied facts, it would be preposterous to say that such postulations will apply uniformly to all services and matters of promotion including the judicial services.

100. The principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' should by no means be regarded as rigid or inflexible in nature, otherwise, these judicial connotations would effectively assume the character of statutory stipulation laid down through various judicial pronouncements and would become applicable to all types of services, posts and promotions. This would lead to the transgression by the judiciary into the realms of policy making.

101. This Court in ***Lt. Gen. Rajendra Singh Kadyan*** (supra) whilst explaining the intricacies between the principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' made a pertinent observation that selection for promotion is based on different criteria depending upon the nature of the post and requirements of service, and that such criteria could be said to fall into three categories which include 'Merit-cum-Seniority' and 'Seniority-cum-Merit'.

102. In ***Palure Bhaskar Rao*** (supra) and ***Kavita Kamboj*** (supra) this Court equated the principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' as modes or methods of promotion. However, modes of promotion should not be conflated with modalities of promotion. The

expressions 'Merit-cum-Seniority' and 'Seniority-cum-Merit' in service jurisprudence are nothing but principles which are used to broadly categorize policies pertaining to promotions. They only lay down the broad framework within which specific policies of promotion can be elaborately laid down.

103. In ***Bhagwandas Tiwari*** (supra) this Court held that where for the purpose of promotion a high threshold of minimum required marks has been prescribed, the same would be an instance of 'Merit-cum-Seniority', even in the absence of a comparative assessment of merit, thus clearly indicating that these postulations are not mandatory. As even without an element of comparative merit, the promotion could be based on 'Merit-cum-Seniority', provided that merit is given prominence over seniority in the promotion process. Therefore, the only factor that sets apart 'Merit-cum-Seniority' from 'Seniority-cum-Merit' is whether emphasis is laid on merit or seniority. All other ancillary factors or postulations such as comparative merit or a minimum specified benchmark may or may not be material to these principles.

104. The fluid nature of the principles of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' is further evinced by the decision of this Court in ***K. Samantaray*** (supra) wherein although the policy stipulated that promotion would be on the basis of 'Seniority-cum-Merit', yet this Court after going through the elaborate promotion policy held that a third mode of promotion known as the "Hybrid Mode of Promotion" has come to be recognized by this Court, wherein it is open for the employer to specify the area and parameter of weight required to be given to merit and seniority for the purpose of promotion. It was further held that it is always open for the employer or the selection body to decide and stipulate their own criteria for adjudging the claims on the principles of 'Seniority-cum-Merit' or 'Merit-cum-Seniority' depending upon the class, category and nature of post and the requirements of efficiency.

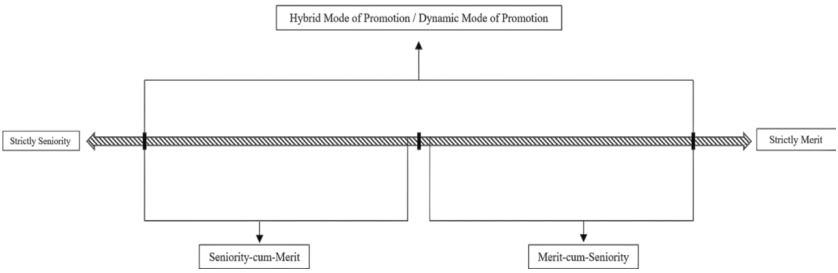
105. What can be discerned from the aforesaid is that, wherever the expression 'Merit-cum-Seniority' or 'Seniority-cum-Merit' has been supplemented by an elaborate promotion policy or statutory rules clearly indicating the parameters on which promotions are to be made, the mode of promotion assumes the character of a Hybrid or Dynamic Mode of Promotion as held in ***K. Samantaray*** (supra).

106. In such scenario, these principles serve as a beacon for the selection body which, in exercise of its delegated legislative powers, can formulate policies and lay down different criteria and conditions of assessment for the purposes of promotion. It does so by providing the selection body with the tools for formulating the promotion policy in the form of the aforementioned postulations or criteria which are permissible under these principles. Thereafter, the selection body can, as a conscious choice, decide the criteria it deems necessary or most suitable for the purpose of promotion keeping in mind the nature of the post, the requirements of service, etc.

107. For instance, where the promotion is based on 'Merit-cum-Seniority', the selection body may opt for a comparative assessment of merit, more particularly, in cases where the promotions are competitive in nature or it may say that seniority should only be considered where merit is equal in all respect if the post is of such nature that it requires significant knowledge and ability.

108. However, at the same time, this flexibility should not be understood as a complete autonomy. While the statutory rules or, in the absence of the same, the promotion policy formulated must be followed, they must at the same time have some nexus or bearing with the nature of the post and the requirements of service. For instance, where the promotion is based on 'Merit-cum-Seniority' and the nature of promotion allows for superseding a senior, the selection body whilst formulating the promotion policy cannot *simpliciter* as a matter of choice refuse to provide for assessment of comparative merit, as the promotion herein is by its nature an accelerated form of promotion and as such comparative assessment becomes crucial.

109. The principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' are a flexible and a fluid concept akin to broad principles within which the actual promotion policy may be formulated. They are not strict rules or requirements and by no means can supplant or take the place of statutory rules or policies that have been formulated, if any. These principles are dynamic in nature very much like a spectrum and their application and ambit depends upon the rules, the policy, the nature of the post and the requirements of service. The sketch below illustrates the broad spectrum in which these principles operate: -



110. Thus, the principles applicable to promotion such as the principle of 'Merit-cum-Seniority' and 'Seniority-cum-Merit' can best be described as two ends of a spectrum. They are broad categories or frameworks for promotion and do represent the actual modalities by which promotions are to take place. It is the rules and the promotion policy, along with the intention of the legislature or the selection board, as the case may be, that supplements these principles and delineates the actual modality of how promotion is to take place. Through these rules and promotion policy, the legislature or the selection body specifies the area and the parameters or the weightage which is to be given to the aspect of "Merit" and "Seniority" on the said spectrum.

111. No doubt while construing the rule of 'Seniority-cum-Merit' or 'Merit-cum-Seniority', some of the observations of the decided cases are not uniform. In ***State of Mysore v. C. R. Seshadri & Ors.*** reported in **AIR 1974 SC 460**, Krishna Iyer, J., held that if the criterion for promotion is one of 'Seniority-cum-Merit', comparative merit may have to be assessed, if length of service is equal or an outstanding junior is available for promotion.

112. The decision of this Court in ***Sujata Kohli*** (supra) has been strongly relied upon on behalf of the petitioner herein, however the same is of no avail to them, as in the said case this Court had no occasion to examine the meaning of the expression 'Merit-cum-Seniority' in reference to ***All India Judges' Association (3)*** (supra). This Court in ***Sujata Kohli*** (supra) only went so far as to say that 'Merit-cum-Seniority' means that neither merit can be forsaken nor seniority alone can be given primacy. 'Merit-cum-Seniority' only stipulates that a balance must be maintained between 'Merit' and 'Seniority' with 'Merit' playing a more predominant role in the selection process.

113. Similarly, the decision in ***Dr. Kavita Kamboj*** (supra) has also been strongly relied upon by the petitioners, but it is of no avail to them, as the limited question that was involved in the said case was whether minimum marks could be specified for the written exam and the viva voce separately.

114. While laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter or the weightage to be given in respect of merit and seniority separately, so long as the policy is not a colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters. [See ***K. Samantaray*** (supra)]

d. High Court as a custodian of the District Judiciary under Article 235 of the Constitution.

115. We should be mindful of the fact that the High Court by virtue of its power under Article 235 of the Constitution undertook the recruitment process for the purpose of promotion. The High Court followed the procedure which it had been following without any departure since 2011. In such circumstances, had the High Court departed from the method of promotion which it had been following since 2011, it could have been argued on behalf of the respondents that they had legitimate expectation that the High Court would not deviate from the method or process they had been adopting since 2011.

116. In the aforesaid context we may make a reference to ***R. v. Inland Revenue Commissioners, ex parte M.F.K Underwriting Agents Ltd.*** reported in **[1990] 1 W.L.R. 1545** where Lord Justice of Appeal, Thomas Bingham, while invoking fairness as a rationale for protecting legitimate expectations, expressed the following: -

> *"If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it [...] The doctrine of legitimate expectation is rooted in fairness."*

117. In ***Madan Mohan Choudhary v. State of Bihar*** reported in **(1999) 3 SCC 396** this Court held that the High Court's control over the District Judiciary under Article 235 of the Constitution is comprehensive and

extends to a variety of matters including promotion. The relevant observations read as under: -

> *"22. In order to ensure their independence, the control over the subordinate courts has been vested in the High Court under Article 235 [...]*
>
> *23. Under this Article, the High Court's control over the subordinate judiciary is comprehensive and extends over a variety of matters, including posting, promotion and grant of leave. The three words, namely, "posting", "promotion" and "grant of leave" used in this article are only illustrative in character and do not limit the extent of control exercised by the High Court over the officers of the subordinate judiciary.*
>
> *xxx xxx xxx*
>
> *26. From the scheme of the Constitution, as set out above, it will be seen that though the officers of the subordinate judiciary are basically and essentially government servants, their whole service is placed under the control of the High Court and the Governor cannot make any appointment or take any disciplinary action including action for removal or compulsory retirement unless the High Court is "consulted" as required by the constitutional impact of both the Articles 233 and 234 and the "control" of the High Court indicated in Article 235."*
>
> (Emphasis supplied)

118. In ***High Court of Judicature for Rajasthan v. P.P. Singh & Anr.*** reported in **(2003) 4 SCC 239**, it was held that laying down merit criteria for appointment to selection grade was well within the domain of the High Court under Article 235 of the Constitution. The relevant observations read as under: -

> *"18. It is beyond any pale of controversy that the control over the subordinate courts within the meaning of Article 235 of the Constitution of India is that of the High Court. Such control of the High Court includes general superintendence of the working of the subordinate courts, disciplinary control over the presiding officers, disciplinary proceedings,*

transfer, confirmation and promotion and appointment etc. Such control vested in the High Court is complete. [...]

xxx xxx xxx

24. The submission on behalf of the respondents to the effect that in the matter relating to fixation of criteria for the purpose of appointment to the selection grade, the two-Judge Committee could not be made without consulting all the Judges is stated to be rejected. The said submission is based on a total misconception. Laying down the merit criteria for appointment to the selection grade also was within the domain of the High Court. It could not only lay down such criteria but also amend or modify the same from time to time. [...]'

(Emphasis supplied)

119. From the aforesaid discussion, it is clear that when it comes to promotion of judicial officers of the District Judiciary, the control vests with the High Court under Article 235 of the Constitution. The High Court being the sole authority in this regard can clearly lay down rules and policies pertaining to promotions which includes the power to specify the criteria and parameters it deems most suitable and appropriate for the purpose of promotion and the manner in which promotion is to be made as long as it is within the contours of what has been laid down in ***All India Judges' Association (3)*** (supra). Thus, now the only question that remains to be considered is, what is the meaning assigned to "Merit-cum-Seniority" by ***All India Judges' Association (3)*** (supra).

iv. What is 'Merit-cum-Seniority' for the purpose of Promotion to the cadre of District & Sessions Judges?

a. Intention behind the decision in All India Judges' Association (3).

120. The entire controversy revolves around the interpretation of Rule 5(1) of the 2005 Rules which provides that 65% of the total posts in the cadre of District & Sessions Judge shall be filled by promotion on the basis of the principle of 'Merit-cum-Seniority'.

121. As discussed in the foregoing parts of this judgment, the decision of this Court in ***All India Judges' Association (3)*** (supra) has laid

down the method of recruitment to the posts in the Higher Judicial Service, i.e., District Judges and Additional District Judges. Prior to the said decision, there were only two sources for recruitment to the Higher Judicial Service – ***first***, by promotion from amongst the members of the District Judicial Service; and ***secondly***, by direct recruitment from among the members of the Bar.

122. This Court in ***All India Judges' Association (3)*** (supra), with a view to enhance the efficiency of the District judiciary and to create an avenue of accelerated promotions for the relatively junior members of the service, introduced two methods of appointment, one by way of promotion, wherein 50% of the total posts were to be filled by promotion on the basis of the principle of 'Merit-cum-Seniority' through a test assessing the continued efficiency and adequate knowledge of case-law of the judicial officers, and the remaining 25% of the posts were to be filled up by promotions strictly on the basis of merit through the limited departmental competitive examination. At the cost of repetition, the relevant observations read as under: -

> *"27. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent*

of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard."

(Emphasis supplied)

123. The expressions "*certain minimum standard, objectively adjudged*" and "*in order to ascertain the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law*" in ***All India Judges' Association (3)*** (supra) clearly indicate that the intention was to test each candidate on their own merit as this Court never mandated that a comparative assessment of merit was also required. In other words, what is stipulated is the determination of suitability of the candidates and assessment of their efficiency based on whether they possess adequate knowledge of case law. It goes without saying that some standards of suitability and efficiency for continued service is required. The High Court may deny promotion to a Civil Judge (Senior Division) only in case the candidate is not suitable for being promoted to the post of District & Sessions Judge. It was never the intention of this Court that after taking the suitability test, a list should be prepared based on *inter-se* merit and the judicial officers should be promoted only if they fall in the said merit list. It cannot be said to be a competitive exam. Only the suitability of the judicial officer is to be assessed and once it is found that the candidate has secured the requisite marks in the suitability test, they cannot be thereafter ignored for promotion.

124. The first change brought around was the introduction of a mandatory assessment of the suitability of the members of the District Judicial Service before promoting them to the Higher Judicial Service. The concept of assessment of suitability was introduced to ensure that a

certain minimum standard is maintained in the Higher Judicial Service. The method of devising a suitability test for this purpose was left to the respective High Courts. However, broad guiding principles were laid down by this Court on the contours of the suitability test. It was directed that the suitability test must objectively test the following: -

a. Whether the candidate possesses legal knowledge?

b. Whether the candidate has displayed continued efficiency during his tenure in the feeder cadre?

c. Whether the candidate possesses adequate knowledge of case law?

125. The second change introduced by the aforesaid decision was the creation of a third category of recruitment to the Higher Judicial Service. While the allocation of seats for direct recruitment from the members of the Bar was kept at 25% of the total posts in the Higher Judicial Service, the erstwhile promotional category was split up into two categories – ***firstly***, 50% of the posts in the Higher Judicial Service were directed to be filled by promotion on the basis of 'Merit-cum-Seniority'; and ***secondly***, the remaining 25% of the seats were directed to be filled by promotion strictly on the basis of merit, through a limited departmental competitive examination.

126. We are of the view that the principle of 'Merit-cum-Seniority' stipulated in Rule 5(1) of the 2005 Rules should be understood in accordance with what has been observed by this Court in paragraphs 27 & 28 respectively of ***All India Judges' Association (3)*** (supra).

127. It is amply clear from the aforesaid decision that this Court intended to achieve two-fold objectives –

(i) ***First***, to ensure that unlike the traditional promotion policy under which seniority alone was considered for promotion, a new policy should be devised under which seniority would be considered for promotion, but only for those candidates who possessed the minimum necessary standard of suitability for the post, and;

(ii) ***Secondly***, to prevent loss of motivation amongst the relatively junior members of the service, a third category for promotion to the Higher Judicial Service should be created, wherein promotions would be given strictly on the basis merit, to

be ascertained through a limited departmental competitive examination.

128. Thus, while the comparison of *inter-se* merit to determine the most meritorious candidates was the procedure to be adopted for filling up the seats under the newly created category, it was never the intention of this Court in the aforesaid decision to mandate the comparative assessment of merit in the category of regular promotions based on seniority. The only additional requirement which was provided for by the aforesaid decision for this category of candidates was the possession of certain minimum objectively determinable standard of suitability. As long as a candidate possesses this standard of suitability, it cannot be said that this Court intended, by the aforesaid decision, to subject such a candidate to a mandatory comparative merit assessment akin to the limited departmental competitive examination and disregard the seniority of such a candidate to prefer those candidates who may have scored a few marks more than him in the suitability test.

129. The objective sought to be achieved by the introduction of a suitability test in the regular promotional category was limited to the assessment of a minimum standard of suitability. It would be incorrect to say that the marks scored by a candidate in the suitability test are proportional to the merit of the candidate. This can be understood with the aid of an illustration – take a case wherein the minimum marks required to be obtained in the suitability test is '*x*'; then for the purpose of 65% promotional quota, as soon as a candidate obtains '*x*' marks in the suitability test, such a candidate becomes eligible for being considered for promotion in that category subject to their seniority vis-à-vis the other suitable candidates. It cannot be said that a candidate who obtains (x + 10) marks is more meritorious or more suitable than those candidates who obtain 'x' or (x + 5) marks in the suitability test. Every candidate who scores higher than or equal to 'x' marks in the suitability test is considered equally suitable and equally meritorious for the purpose of 65% promotional category.

130. We have discussed in detail in the foregoing paragraphs that the concepts of 'Merit-cum-Seniority' or 'Seniority-cum-Merit' are flexible in nature and do not prescribe any fixed or strait-jacket definitions. These definitions take character and substance from the context in which they are employed. Their full import and nuances only become

visible when they are exposed to the guiding light of the overall promotional policy of the organisation. The concept of promotions in the District Judiciary is a peculiar one, and one that must be analysed in its own unique context. Unlike most cases on promotions decided by this Court where the interpretation or incorrect implementation of the promotion policy contained in a statute have been in question, the present case of promotions to the Higher Judicial Service is one in which the statutory framework itself was created after the decision in ***All India Judges' Association (3)*** (supra). Thus, any dispute arising out of the respective rules of promotions of different States/Union Territories as devised by their respective High Courts must be construed in the context of various decisions which have ultimately shaped such rules.

131. How 'Merit-cum-Seniority' will apply to promotions within an organization will ultimately depend on the statutory rules, if any, or the promotional policy of such an organisation. We have discussed in detail in the preceding paragraphs that the objective of this Court in ***All India Judges' Association (3)*** (supra) was to create a new category for accelerated promotions and to introduce a test to ascertain the suitability of candidates in the regular promotional category. While the newly created category was strictly based on merit, the due weightage on seniority in the regular promotional category was not diluted in any manner except for the introduction of the suitability test. We are aware that in a number of decisions of this Court, the term 'merit' has been infused with a competitive and comparative character, however, we are of the opinion that whether the term 'merit' includes a comparative element can only be ascertained from the context in which it is employed and not in isolation from it. Merit only indicates an assessment of qualities which are relevant for the post. It is not synonymous to scores in the competitive examination. Competitive examinations are merely one of the many ways in which the merit of the candidate is determined. This Court in ***All India Judges' Association (3)*** (supra) notes that merit must be determined based on a limited competitive examination with respect to the 25% (now 10%) of the seats which are to be filled by merit. Thus, this Court clarifies that merit in the context of the 25% (now 10%) of the seats must be determined through the competitive examination while for the 50% (now 65%) of the seats must be determined based on an assessment of specific suitability parameters. Whether the idea of

a 'minimum threshold merit' would be antithetical to the concept of 'Merit-cum-Seniority' would again depend on the context and the manner in which the minimum threshold is applied.

132. The term 'Merit-cum-Seniority' in context of 2005 Rules implies that both merit and seniority would be considered in the promotion of a candidate, with merit being determined on the basis of a suitability test. The exact modalities of how merit and seniority are to be apportioned is a legislative function and is to be performed keeping in mind the unique requirements and circumstances of the organization. In the present case, the merit of a candidate is assessed by means of a suitability test, as prescribed under paragraph 27 of the decision in ***All India Judges' Association (3)*** (supra).

133. The contours of the words 'Merit-cum-Seniority' are drawn by this Court in the lines immediately following these words. The phrase "*for this purpose*", as it appears in paragraph 27 of the aforesaid decision, acts as a bridge between the words – "Merit-cum-Seniority" – their substance. For the purpose of 65% promotional quota, this Court, in the said paragraph, has defined "*merit*" as the possession of a minimum standard, or suitability. This Court deliberately did not impart any competitive or comparative character to the term and such intention should be kept in mind while interpreting the term 'Merit-cum-Seniority' for the purpose of the 65% promotional quota.

134. The suitability test assesses multiple aspects of a candidate's merit like knowledge of law, quality of judgments, ACRs, etc. along with the efficiency of the candidate exhibited during the tenure already served. The suitability test is devised in such a manner that all candidates who clear the test can be said to possess more or less the same level of merit. Once a list of all similarly meritorious candidates is prepared, seniority is applied to select the candidates for promotion. Although seniority is applied at the last stage of the selection process, yet merit still plays the pre-dominant role as a candidate who does not possess the necessary suitability becomes ineligible for promotion irrespective of their seniority.

135. We are of the view that it would be incorrect to hold that merely because the test was not one of comparative merit and as seniority was applied at the final stage of the selection process, the process cannot be said to be one not adhering to the principle of 'Merit-cum-Seniority'. As long as 'Merit-cum-Seniority' is applied in the manner it

has been explained in the decision in ***All India Judges' Association (3)*** (supra), wherein both merit and seniority are considered, and merit plays the dominant role, the process of promotion cannot be said to be violative of the principle of 'Merit-cum-Seniority'. The expressions used in the rules should be interpreted bearing in mind the principles enunciated in the aforesaid decision, and not on the basis of the various decisions of this Court that have been decided in entirely different factual situations. Further, if the principle of 'Merit-cum-Seniority' is applied as argued by the petitioners, there would necessarily be no difference between the categories of 'merit' (10%) and 'Merit-cum-Seniority' (65%). It must be noted that the minimum qualifying service for the 65% category according to the 2005 Rules is two-years while that for the 10% category is five-years. Thus, appointment to the former category given the lesser years of minimum service allows relatively junior candidates to supersede the senior candidates based on the suitability test. Thus, while candidates who have two to five years of service will not be eligible to apply for promotion for the 10% promotional quota, they may still have the opportunity to apply and be considered for the 65% quota based on securing a minimum of 40% (and 50% aggregate) in each of the following indicators which measures the merit of the candidate: suitability test, evaluation of ACR, assessment of average disposal and evaluation of judgments. Thus, it is beyond any doubt that the criteria prescribed for promotion of candidates to the 65% promotional quota complies with the principle of 'Merit-cum-Seniority'.

136. Words used in a judgment are not to be read as words of a statute, but should be understood in the context of the facts of a given case. (See ***Ambica Quarry Works v. State of Gujarat*****, (1987) 1 SCC 213**; ***Bharat Petroleum Corporation Ltd. v. NR Vairamani*****, (2004) 8 SCC 579**, ***Municipal Corporation Delhi v. Mohd Yasin***, **(1983) 3 SCC 229**). The attempt on the part of the petitioners is to persuade us to take the view that the connotation 'Merit-cum-Seniority' as figuring in the 2005 Rules, should be strictly understood as all merit and no seniority. This is not correct to our understanding. Such attempt must necessarily fail as the words "Merit-cum-Seniority" as they figure in the 2005 Rules read in conjunction with paragraphs 27 and 28 respectively of ***All India Judges' Association (3)*** (supra), should be interpreted in the context in which they have been used

by this Court – which we have discussed elaborately in the foregoing paragraphs

137. The petitioners have relied on the decision of this Court in ***Thampanoor Ravi v. Charupara Ravi*** reported in **(1999) 8 SCC 74** to contend that the term "Merit-cum-Seniority" has acquired a technical meaning and thus, should be given the meaning which is used ordinarily in relation to it. The relevant passage from the said decision is extracted here: -

> *"22. In ascertaining the meaning of an expression used in a statute, certain norms are adopted. If the legislature has used an expression which has acquired a technical meaning and such expression is used ordinarily in the context of a particular branch of law, it must be assumed that because of its constant use the legislature must be deemed to have used such expression in a particular sense as is understood when used in a similar context. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal sense and no other. In this context, we may refer to the weighty observation in the decision of this Court in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [AIR 1958 SC 560 : 1959 SCR 379] that a term of well-recognised import in the general law should be accepted as confining the meaning in interpreting the Constitution. If the expression "undischarged insolvent" has acquired a special meaning under the law of insolvency, we must understand that that is the meaning that is sought to be attributed to the expression used in Article 191(1) (c) of the Constitution."*

138. The aforesaid contention of the petitioner deserves to be rejected for two good reasons: -

(1) ***First***, the observations in the said case have been made in the context of a technical meaning used in a statute. In the present case, the term 'Merit- cum-Seniority' as it appears in the 2005 Rules has been imported verbatim from the decision in ***All India Judges' Association (3)*** (supra) and thus has to be assigned the meaning as given to it in the said case. Thus, it cannot be

said that 'Merit-cum-Seniority' should be assigned the same meaning as understood in other decisions of this Court, or as assigned to it in different statutory provisions.

(2) ***Secondly,*** the term 'Merit-cum-Seniority', as elaborately discussed hereinabove, is a term of flexible meaning and the exact contours of it depend on the context and the policy in furtherance of which it is used.

139. In ***Malik Mazhar Sultan & Anr. (3)*** (supra) this Court directed the High Courts to be practical in matters of promotion to the cadre of District & Sessions Judges and held that the 65% promotion quota of the cadre of District & Sessions Judges should be filled on the basis of the principle of 'Seniority-cum-Merit'. This Court further held that seniority should have a predominant role in giving promotions to Civil Judge (Senior Division) and that the High Court may deny only in case the judicial officer is not suitable for being promoted. The relevant observations read as under: -

> *"3. We see large number of vacancies of District Judges are lying vacant as the promotion of these posts are not being done timely by the High Court. Considering the large number of vacant posts of District Judges, the High Court should take timely action to fill up these vacancies keeping in mind the principle of seniority-cum-merit. The High Court may deny promotion to a Civil Judge (Senior Division) only in case he/she is not suitable for being promoted and the seniority should always have a predominant role in giving promotion to the Civil Judge (Senior Division) to the post of District Judge. If the posts of District Judges are not filled up in time it is likely that sessions cases may not have timely trial, thereby delaying the whole procedure of justice delivery system. We request the High Court to be practical in the matter of promotion and filling up the posts of the District Judges. It is also brought to our notice that as the promotion policy itself is not working properly, a large number of Civil Judges (Junior Division) are continuing in the same post, causing stagnation from about 15 to 18 years. This is because the timely promotion is not being taken care of by the High Court and this should be corrected at the earliest. Now*

we are told that a total number of 217 posts have been advertised for appointment of Civil Judges (Junior Division) and 12 posts of District Judges (direct).”

(Emphasis supplied)

H. FEW SUGGESTIONS TO MAKE THE SUITABILITY TEST MORE MEANINGFUL

140. We have exhaustively discussed and explained the true meaning to be assigned to the principle of ‘Merit-cum-Seniority’ in context of Rule 5(1) of the 2005 Rules. However, we are of the view that this debate should not come to an end as we propose to convey to the High Court of Gujarat to amend its Rules appropriately in line with the Uttar Pradesh Higher Judicial Service Rules, 1975 where the recruitment process has been elaboratively laid down. We are also of the view that the minimum standard to be objectively assessed by way of a suitability test should be made more efficacious and productive. In this regard, we would like to suggest the following: -

(i) Apart from the four components included in the Suitability Test, an additional fifth component in the form of an Interview or Viva Voce should also be included in order to assess the ability and knowledge of the candidates.

(ii) The High Court may consider enhancing the minimum specified threshold of marks as prescribed in the suitability test and each of its component.

(iii) The evaluation of judgments delivered by the judicial officer being considered for promotion should be of the last two years instead of one year.

(iv) Instead of seniority being considered at the very last stage of the process, some marks may be allocated for seniority at the stage of suitability test and thereafter, the final select list may be prepared on the basis of total marks.

I. CONCLUSION

141. We summarise our final conclusion as under: -

(A) What has been conveyed, in so many words, by this Court in ***All India Judges’ Association (3)*** (supra) is that the suitability of each candidate should be tested on their own merit. The

aforesaid decision does not speak about comparative merit for the 65% promotional quota. In other words, what is stipulated is the determination of suitability of the candidates and assessment of their continued efficiency with adequate knowledge of case law.

(B) For the 65% promotional quota this Court in ***All India Judges' Association (3)*** (supra) did not state that after taking the suitability test, a merit list should be prepared and the judicial officers should be promoted only if they fall in the said merit list. It cannot be said to be a competitive exam. Only the suitability of the judicial officer is determined and once it is found that candidates have secured the requisite marks in the suitability test, they cannot be thereafter ignored for promotion.

(C) However, we clarify that for the 65% promotional quota, it is for a particular High Court to prescribe or lay down its own minimum standard to judge the suitability of a judicial officer, including the requirement of comparative assessment, if necessary, for the purpose of determining merit to be objectively adjudged keeping in mind the statutory rules governing the promotion or any promotion policy in that regard.

(D) We find no fault with the promotion process adopted by the High Court of Gujarat as the same fulfils the twin requirements stipulated in paragraph 27 of ***All India Judges' Association (3)*** (supra) being: -

(I) The objective assessment of legal knowledge of the judicial officer including adequate knowledge of case law and;

(II) Evaluation of the continued efficiency of the individual candidates.

(E) The four components of the Suitability Test as prescribed under the recruitment notice dated 12.04.2022 comprehensively evaluate **(i)** the legal knowledge including knowledge of the case law through the objective MCQ - based written test **AND (ii)** the continued efficiency by evaluation of the ACRs, average disposal and past judgments of the concerned judicial officer.

(F) We are of the view that if the contention of the petitioners were to be accepted then it would completely obliterate the fine distinction between the two categories of promotion in the cadre

of District & Sessions Judge by way of 65% promotion on the basis of 'Merit-cum-Seniority' and 10% promotion strictly on the basis of merit. In other words, the 65% quota for promotion will assume the character of the 10% quota for promotion by way of a departmental competitive examination which is distinct in its nature since the latter is strictly based on merit.

(G) Deviating from the process of promotion duly followed by the High Court of Gujarat since 2011 would cause grave prejudice to those judicial officers who lost out in the previous selections to the Higher Judicial Service despite having scored higher marks in the suitability test since, judicial officers who were relatively senior were promoted to the cadre of District & Sessions Judges. Accepting the argument of the petitioners would completely flip the process and displace the respondents once again, for a contrary reason.

142. We clarify that this judgment shall not be construed to invalidate the promotions to the Higher Judicial Service granted by other High Courts based on a construction of their own rules and requirements of service in the state judiciary. If any challenge to such promotion process is pending, it shall be dealt with independently by the High Court or the forum where any issue is pending.

143. For all the foregoing reasons, we have reached the conclusion that the impugned final Select List dated 10.03.2023 is not contrary to the principle of 'Merit-cum-Seniority' as stipulated in Rule 5(1)(I) of the 2005 Rules.

144. In the result, the present petition fails and is hereby dismissed. Interim Order granted earlier stands vacated.

145. The parties shall bear their own costs.

146. Pending application(s), if any, shall also stand disposed of.

Result of the case: Petition dismissed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 5 S.C.R. 1148 : 2024 INSC 377

Chander Bhan (D) Through LR Sher Singh
v.
Mukhtiar Singh & Ors.

Civil Appeal No. 2991 of 2024

03 May 2024

[Sudhanshu Dhulia* and Prasanna B. Varale, JJ.]

Issue for Consideration

(1) Whether respondent-purchasers were unaware of lis-pendens and could claim to be bona-fide purchasers and be entitled to protection u/s.41 of the Transfer of Property Act, 1882; (2) Whether the principle of lis-pendens as enshrined u/s.52 would apply in the State of Punjab; and (3) When would the doctrine of *lis-pendens* take effect.

Headnotes†

Transfer of Property Act, 1882 – ss.52 and 41 – Transaction hit by *lis pendens* – Agreement to sell property between Appellant and Respondent No.3-owner – Appellant paid earnest money – Later, filed suit for injunction – Injunction order in favour of Appellant – Same day, Respondent No.3 executed release deed in favour of Respondent no.4 who executed sale deed in favour of Respondent Nos.1 & 2 – Suit for specific performance by Appellant – Erroneously dismissed by High Court – Order of temporary injunction was operating when transactions qua the suit property were executed by respondents – Respondents 1-2 (subsequent purchasers) bound by *lis pendens* and cannot claim to be *bonafide* purchasers, in peculiar facts of the case – Not entitled to protection u/s.52.

Held: 1. Explanation to s.52 clarifies that pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the plaint – Further, that such pendency would extend till a final decree is passed and such decree is realised – In the present case, the release deed was executed after the suit for temporary injunction was filed by the appellant, hence, the

* Author

release made by respondent no.3 in favour of respondent no.4 would be covered by the doctrine of *lis pendens* – Respondent no. 4 executed the registered sale deed in favour of respondents 1-2 during the operation of the temporary injunction order – Thus, the alienation made by respondents, cannot operate against the interests of the appellant considering he had obtained an order of temporary injunction in his favour – Subsequent purchasers will be bound by doctrine of lis pendens and cannot claim they are *bonafide* purchasers because they were not aware of the injunction order, looking at the peculiar facts of the present case. [Paras 19, 20, 22]

2. Release Deed executed by respondent no. 3 in favour of respondent no. 4 and the Sale Deed executed by respondent no. 4 in favour of respondents 1-2 is without any legal sanctity – Alienation made by respondents cannot operate to the disadvantage of the appellant – Respondent no.3 directed to accept the balance sale consideration from the appellant and execute the agreement to sell in favour of the appellant. [Paras 24, 25]

Doctrines/ Principles – Principle of *lis pendens* as enshrined u/s.52 – Applicability – In the State of Punjab – Transfer of Property Act, 1882 – ss.52 and 1.

Held: By virtue of s.1 of the Transfer of Property Act, 1882 the provisions of the said Act are not applicable in the States of Punjab, Delhi or Bombay; subject, of course to certain exceptions – However, even if s.52 is not applicable in its strict sense in the present case (where subject land situated in Punjab) then too the principles of *lis-pendens*, which are based on justice, equity and good conscience, would certainly be applicable. [Para 17]

Transfer of Property Act, 1882 – s.52, Explanation to – Pendency of suit commences from date on which the plaintiff presents the suit.

Held: Explanation to s.52 clarifies that pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the suit i.e. the date of presentation of plaint or institution of proceedings in court of competent jurisdiction.– Further, such pendency would extend till a final decree is passed and such decree is realised. [Para 18]

Case Law Cited

Shivshankara and Another v. H.P. Vedavyasa Char [2023] 6 SCR 359 **: 2023 SCC OnLine SC 358 – relied on.**

Rajendra Singh v. Santa Singh [1974] 1 SCR 381 **: AIR 1973 SC 2537;** *Dev Raj Dogra v. Gyan Chand Jain* [1981] 3 SCR 174 **: (1981) 2 SCC 675;** *Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna* [2013] 8 SCR 215 **: (2013) 10 SCC 258;** *Kanshi Ram v. Kesho Ram,* **AIR 1961 P&H 299;** *Sardar Kar Bachan Singh v. Major S Kar Bhajan Singh,* **AIR 1975 P&H 205 – referred to.**

List of Acts

Transfer of Property Act, 1882; Evidence Act, 1872.

List of Keywords

Doctrine of *Lis pendens; Bona-fide* purchaser; Equity; Injunction; Agreement for Sale; Release Deed.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2991 of 2024

From the Judgment and Order dated 03.10.2019 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 2746 of 2012

Appearances for Parties

Rameshwar Singh Malik, Sr. Adv., Jitesh Malik, Abhay Singh, Mrs. Leelawati Suman, B C Bhatt, Satish Kumar, Advs. for the Appellant.

Narender Hooda, Sr. Adv., Rahul Rathore, Shaurya Lamba, Ms. Sukhmani Bajwa, Dr. Surender Singh Hooda, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

1. The appeal filed by the appellant presently before us challenges the Judgement and order dated 03.10.2019, passed in a second appeal by the Punjab and Haryana High Court. The impugned Judgement of the High Court has reversed the concurrent findings of the trial court

and the first appellate court and has consequently dismissed the suit of specific performance filed by the appellant-plaintiff, although a partial relief was granted to the appellant by return of the earnest money to the appellant, with interest.

2. The facts leading to this appeal are that on 10.11.2002 appellant and respondent no. 3 entered an agreement to sell relating to 16 "Kanals" of land for a total consideration of Rs. 8 lakhs, where Rs. 2.50 lakhs was paid at the time of agreement and remaining Rs. 5.50 lakhs was to be paid at the time of execution of sale deed, which was to be executed on or before 10.11.2004.

3. After the agreement to sell but before the date of the execution of the sale deed the present appellant having received the knowledge that respondent no. 3 was likely to alienate the suit property, files a suit for permanent injunction on 21.07.2003 against respondent no. 3 where an order of temporary injunction was passed in his favour on 28.07.2003. On the very same day, i.e., 28.07.2003 respondent no. 3 though executes a "release deed" in favour of his son, Harvinder Singh (respondent no. 4), for which mutation was also sanctioned.

4. Subsequent to the Release Deed, respondent no. 4, son of respondent no.3, executed a registered sale deed dated 16.06.2004 in favour of Mukhitar Singh and Baljeet Singh (respondent nos. 1-2) for the suit land.

5. The appellant then files a suit for specific performance before the Additional Civil Judge, Senior Division, Jind, as the defendant i.e. present respondent No.3 did not come forward even on the last day i.e. 10.11.2004 to execute the sale deed. In his Written Statement, respondent no. 3, takes the defence that the agreement for sale was signed by him, but under a "misconception". It is contended that the appellant/plaintiff had taken the defendant to a shop for being a witness and had fraudulently obtained his signatures on the agreement to sell. Respondents 1 and 2, on the other hand, claimed to be *bonafide* purchasers for valuable consideration and sought protection under Section 41 of the Transfer of Property Act, 1882 (hereafter "Act of 1882").

6. The Trial Court, nevertheless decreed the suit of the appellant with costs and directed respondent no. 3 to accept balance sale consideration and execute the agreement to sell. It was held that

respondent no. 3 had admitted about the execution of the agreement to sell in the earlier suit for injunction filed by the appellant, and further Vijay Singh (PW-5) had verified the execution of the agreement. The Trial Court did not give any credence to the objections of the defendants (present respondents No. 3 and 4). Both these defendants, father and son respectively, had refused to depose in the witness box. An adverse inference was drawn against them by the Court, on this aspect as well.

7. An interesting development, meanwhile took place before the Trial Court. PW-7 who was the lawyer of the appellant in the injunction suit, had become an attesting witness of the "sale deed" executed by respondent no. 4 in favour of respondent nos. 1-2. The Trial Court, thus observed that from the deposition of PW-7 during cross-examination, PW-7 had committed a breach of privileged communication and violated Section 126 of the Evidence Act, 1872.

8. No appeal against this Judgement was filed by respondents 3 and 4. All the same, an Appeal was filed by respondents 1 and 2 before the Additional District Judge, Jind which was dismissed on 06.03.2012. While reiterating the findings of the Trial Court, the First Appellant Court had observed that since PW-7 was the attesting witness of the sale deed in favour of respondent 1-2 and also the advocate of the appellant in the injunction suit, therefore, it can be safely presumed that respondents 1-2 would have been aware of the injunction, and consequently their defence of *bonafide* purchaser can never be accepted. While dismissing the appeal, the Appellate Court observed that the respondents had colluded together to defeat the just claim of the plaintiff, i.e., the appellant before this Court.

9. Respondents 1-2 then filed their Second Appeal before the Punjab and Haryana High Court at Chandigarh, which was allowed vide order dated 03.10.2019, which is presently under challenge before us. The High Court in the impugned order has reversed the judgements of the trial court and the First Appellate Court, though it held that the plaintiff, i.e., the present appellant was entitled to the relief of refund of earnest money along with 8% interest per annum from date of agreement till date of judgement and 6% interest per annum from date of the date of judgement till realization of the amount.

10. Primarily three factors weighed with the High Court. Firstly, the Release Deed and order of temporary injunction were executed

and passed on the same day i.e. 28.07.2003 and it was, therefore, not possible to determine that the Release Deed was in violation of the injunction order. Secondly, the suit for permanent injunction was ultimately dismissed as withdrawn so the protection afforded by the order of temporary injunction would subsume with the dismissal of the main suit. Thirdly, in the deposition and cross-examination of PW-7, there was no admission that he had informed respondents 1-2 about the order of temporary injunction in favour of the appellant. Although respondents 3 and 4 refused to depose in the witness box, yet respondents 1-2 had both appeared as a witness and from their deposition, it cannot be inferred that they were aware of the injunction order. Thus, the High Court concluded that respondents 1-2 were *bonafide* purchasers for valuable consideration and deserved protection under Section 41 of the Act of 1882. The relevant observations of the High Court are reproduced below:

> *"In the suit for permanent injunction, land measuring 16 kanals out of khewat No. 322 khata No. 435 total measuring 86 kanal 14 marlas was the subject matter. Neither Harvinder Singh nor the present appellants were party to the said litigation. The interim injunction against alienation was allowed vide order dated 28.7.2003, the date a lawyer appeared on behalf of Iqbal Singh @ Pala Singh and filed memo of appearance. The release deed in favour of defendant No. 2 Harvinder Singh was executed by Iqbal Singh @ Pala Singh defendant No. 1 on 28.7.2003. There is no evidence on record as to the time when injunction order was passed by the trial court and the time when the release deed was executed and registered in favour of Harvinder Singh. This apart, sale in violation of an injunction order passed by the courts would not render the transaction void ab initio and, at best, proceedings under Order 39 Rule 2A of the Code can be initiated by the aggrieved party. There is nothing on record suggestive of the fact that respondent-plaintiff initiated any such proceedings against Iqbal Singh or Harvinder Singh. Moreover, the injunction order dated 28.7.2003 also lost its life the moment suit for permanent injunction was later dismissed in the year 2004. Counsel for the respondent-plaintiff has failed to cite any provision*

in law or a precedent that if suit property is transferred in favour of the vendor of a litigant claiming bona fide purchaser during pendency of earlier litigation, he is not entitle to protection under Section 41 of the TP Act irrespective of whether he was aware of pendency of that litigation or otherwise. The release deed in favour of defendant No. 2 and sale deed in favour of the appellants were subject to outcome of suit for injunction that was eventually dismissed by the Court. In this view of the matter, findings of the courts to reject plea of bona fide purchaser of the appellants on account of pendency of suit for permanent injunction are not based upon any legal ground, thus, unjustified."

11. While allowing the second appeal, the High Court though has upheld the concurrent findings as to the execution of the agreement to sell, and that the appellant had paid Rs. 2.50 lakhs as earnest money to respondent no. 3. Consequently, the High Court gave the alternate relief to the appellant, as indicated above.

12. On behalf of the appellant, we have heard learned counsel Mr. Rameshwar Singh Malik, Sr. Advocate and Mr. Narender Hooda, Sr. Advocate on behalf of respondents 1-2. Though service by way of publication was done for respondents 3 and 4, they have not entered appearance.

13. Mr. Narender Hooda, Sr. Adv for the respondents/defendants has relied on the findings of the High Court to submit that respondents 1-2 made due enquiries about the suit property, however, the revenue records did not indicate that another agreement to sell was executed in favour of the appellant. Further, it is argued that PW-7 had never informed them about the injunction order passed in favour of the appellant. Thus, they are the *bonafide* purchasers for valuable consideration and possession has been taken over by the respondents 1-2 since 2004 subsequent to which, they have renovated the land and installed a pump there as well.

14. Mr. Rameshwar Singh Malik, Sr. Adv on behalf of the appellant/plaintiff would on the other hand submit that the High Court committed a grave error in reversing the concurrent findings of the Courts below. The transaction *qua* the suit property was executed by the respondents

after the appellant obtained an order of temporary injunction from the Trial Court, hence the entire transactions would be hit by *lis pendens* given under Section 52 of the Act of 1882. Even otherwise, the High Court has upheld the findings of the Courts below that the agreement to sell in favour of the appellant as well as the acceptance of earnest money was duly proved. Lastly, the respondent nos. 3 and 4 never preferred any appeal against the judgements passed by the lower courts so they have attained finality *qua* them, which is indicative of the collusion between the respondents.

15. In order to appreciate the rival contentions of the parties, it will be appropriate to reproduce the relevant provisions of the Transfer of Property Act, 1882, the benefit of which is being claimed by both parties. Section 41 of the Act of 1882 which governs the principle of *bonafide* purchaser for valuable consideration is reproduced below:

> ***"41. Transfer by ostensible owner.—*** *Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:*
>
> *Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."*

Similarly, Section 52 of the Act of 1882 governs the principle of *lis pendens* and is reproduced below:

> ***"52. Transfer of property pending suit relating thereto.—****During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government, of [any] suit or proceeding [which is not collusive and] in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.*

[Explanation.—For the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]"

16. The object underlying the doctrine of *lis pendens* is for maintaining *status quo* that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience. This Court has clarified this position in a catena of cases. Reference may be made here of some, such as: ***Rajendra Singh** v. **Santa Singh**, **AIR 1973 SC 2537***; ***Dev Raj Dogra** v. **Gyan Chand Jain** **(1981) 2 SCC 675***; ***Sunita Jugalkishore Gilda** v. **Ramanlal Udhoji Tanna** **(2013) 10 SCC 258***.

17. It must be stated here though that by virtue of Section 1 of the Transfer of Property Act, 1882 the provisions of the said Act are not applicable in the States of Punjab, Delhi or Bombay; subject, of course to certain exceptions. Yet, in the case of ***Kanshi Ram** v. **Kesho Ram**,* **AIR 1961 P&H 299** the Punjab and Haryana High Court has held that since the explanation to Section 52 is based on equity and good conscience this principle can be applicable. Recently, this Court in ***Shivshankara and Another** v. **H.P. Vedavyasa Char**, **2023 SCC OnLine SC 358*** held as follows:

"….Even if it is taken for granted that the provisions under Section 52 of the Transfer of Property Act are not applicable as such in the case on hand it cannot be disputed that the principle contained in the provision is applicable in the case on hand. It is a well-nigh settled position that wherever TP Act is not applicable, such principle in the said provision of the said Act, which is based on justice, equity and good conscience is applicable in a given similar circumstance, like Court sale etc….."

In short, there can be no doubt that even if Section 52 of T.P Act is not applicable in its strict sense in the present case then too the principles of *lis-pendens,* which are based on justice, equity and good conscience, would certainly be applicable.

18. Keeping this in mind, the explanation to Section 52 which was inserted by the Act No. XX of 1929, clarifies that pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the suit. Further, that such pendency would extend till a final decree is passed and such decree is realised.

19. In the facts of the present case, the suit for permanent injunction was filed on 21.07.2003 which is prior to the execution of release deed, i.e., 28.07.2003. Thus, since the release deed is executed after the suit for temporary injunction was filed by the appellant, the alienation made by respondent no. 3 in favour of respondent no. 4 would be covered by the doctrine of *lis pendens*.

20. In other words, the appellant filed a suit for permanent injunction on 21.07.2003 and obtained an order of temporary injunction on 28.07.2003. As on 21.07.2003 the doctrine of *lis pendens* would take its effect. The release deed executed by respondent no. 3 in favour of respondent no. 4 was of 28.07.2003, which is subsequent to the filing of the suit. Respondent no. 4 executed the registered sale deed in favour of respondents 1-2 on 16.06.2004 which is during the operation of the temporary injunction order. Thus, the alienation made by respondents, cannot operate against the interests of the appellant considering he had obtained an order of temporary injunction in his favour. The same position has been held by this Court in a recent decision of ***Shivshankara and Another*** *v.* ***H.P. Vedavyasa Char*** (Supra), which has similar facts in the context of an injunction order.

21. Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of *lis pendens* the defence of the respondents 1-2 that they are *bonafide* purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected.

22. We are presently not getting into the deposition of PW-7 though it is unusual and also whether respondents 1-2 had knowledge of the injunction, even though we find no substantial reasons for the High Court to base its entire decision on the deposition of this witness (PW-7). We are going by the settled position that subsequent

purchasers will be bound by *lis pendens* and cannot claim they are *bonafide* purchasers because they were not aware of the injunction order, looking at the peculiar facts of the present case.

23. Respondents 1-2 have also claimed they have made substantial alterations to the property by investing money and they have also installed a submersible pump. However, this cannot be the basis for the respondents to claim any sort of compensation or stake any sort of claim against the property. (*See:* ***Sardar Kar Bachan Singh v. Major S Kar Bhajan Singh, AIR 1975 P&H 205***)

24. Consequently, the Release Deed dated 28.07.2003 executed by respondent no. 3 in favour of respondent no. 4 and the Sale Deed dated 16.06.2004 executed by respondent no. 4 in favour of respondents 1-2 is held to be without any legal sanctity. There was an order of temporary injunction operating at the time when these transactions were made and the alienation made by the respondents cannot operate to the disadvantage of the appellant. Since the parties to these proceedings are bound by the doctrine of *lis pendens* the respondents 1-2 cannot take the protection of *bonafide* purchasers for valuable consideration.

25. Consequently, this appeal is allowed, the Judgement dated 03.10.2019 passed by the Punjab and Haryana High Court in RSA No. 2746 of 2012 is set aside. The decree in favour of the appellant is upheld. The respondent no. 3 is directed to accept the balance sale consideration of Rs.5,50,000 from the appellant and execute the agreement to sell dated 10.11.2002 in favour of the appellant, within 3 months from today.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Harshit Anand, Hony. Associate Editor
(Verified by: Kanu Agrawal, Adv.*)*

[2024] 5 S.C.R. 1159 : 2024 INSC 455

Government of NCT of Delhi & Anr.
v.
M/s BSK Realtors LLP & Anr.

(Civil Appeal No. 6604 of 2024)

17 May 2024

[Surya Kant, Dipankar Datta and Ujjal Bhuyan, JJ.]

Issue for Consideration

a) Whether the dismissal of a civil appeal preferred by one appellant in the first round operates as *res judicata* against the other appellant in the second round before this Court; b) Whether suppression of the first round of litigation by the appellants constitutes a material fact, thereby inviting an outright dismissal of the appeals at the threshold; c) Does the doctrine of merger operate as a bar to entertain the civil appeals in the present case; d) Whether the previous determination of the rights of subsequent purchasers in an *inter se* dispute precludes the same issue from being reconsidered between the same parties.

Headnotes†

Land Acquisition Act, 1894 – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Whether the dismissal of a civil appeal preferred by one appellant in the first round operates as *res judicata* against the other appellant in the second round before this Court:

Held: In the lead matter before this Court or for that matter the other appeals, the co-respondents before the High Court, namely, GNCTD and DDA did not have conflicting interests – *Inter se* them, neither was there any disputed issue, nor could have the High Court possibly adjudicated on any such issue – Before this Court too, in the first round, there was no issue on which GNCTD and DDA were at loggerheads – In the light of this, in accordance with the legal principle, the applicability of *res judicata* is negated – *Res judicata*, as a technical legal principle, operates to prevent the same parties from relitigating the same issues that have already been conclusively determined by a court – However, it is crucial to note that the previous decision of this Court in the first round would not operate as *res judicata* to bar a decision on the lead matter and the

other appeals; more so, because this rule may not apply hard and fast in situations where larger public interest is at stake – In such cases, a more flexible approach ought to be adopted by courts, recognizing that certain matters transcend individual disputes and have far-reaching public interest implications. [Paras 23 and 25]

Land Acquisition Act, 1894 – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Whether suppression of the first round of litigation by the appellants constitutes a material fact, thereby inviting an outright dismissal of the appeals at the threshold:

Held: Law is well settled that the fact suppressed must be material in the sense that it would have an effect on the merits of the case – The concept of suppression or non-disclosure of facts transcends mere concealment; it necessitates the deliberate withholding of material facts—those of such critical import that their absence would render any decision unjust – Material facts, in this context, refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory – This principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judicial process – Nevertheless, this Court has carefully considered the orders issued during the first round of litigation, which are alleged to have been suppressed – Despite reviewing these orders, there are no compelling reason to dismiss the appeals based solely on the prior dismissal of appeals filed by some other appellant/ authority. [Paras 30 and 31]

Land Acquisition Act, 1894 – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Does the doctrine of merger operate as a bar to entertain the civil appeals in the instant case:

Held: The concept of public interest need not be viewed narrowly only on the yardstick of loss to public exchequer and that these are the cases where public at large has acquired interest in the public infrastructures already complete or in process of completion, this Court is satisfied that if the doctrine of merger is applied mechanically in respect of Groups A (deals with M.A.s filed by the appellants-authorities primarily pleading change in law and

seeking recall of the judgments and orders of this Court dismissing the Civil Appeals and/or Review Petitions in the first round) and B.1 (includes cases where Civil Appeals were dismissed in the first round, and now an SLP (now Civil Appeal) is pending before this Court in the second round) cases, it will lead to irreversible consequences – This Court is satisfied that the element of disparity between Groups A and B.1 cases *visà-vis* cases falling in Group C is liable to be eliminated and this can only be done by invoking extraordinary power under Article 142 of the Constitution of India so that complete justice is done between the expropriated landowners, the State and its developing agencies and most importantly the public in general who has acquired a vested right in the public infrastructure projects. [Para 41]

Land Acquisition Act, 1894 – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Delhi Lands (Restrictions on Transfers) Act, 1972 – Whether the previous determination of the rights of subsequent purchasers in an *inter se* dispute precludes the same issue from being reconsidered between the same parties:

Held: Group E cases deal with allegations regarding fraud by landowners by suppressing subsequent sale transactions, ownership title disputes, etc – It is settled that transfer of land in respect of which acquisition proceedings had been initiated, after issuance of Notification under section 4(1) of the 1894 Act, is void and a subsequent purchaser cannot challenge the validity of the notification or the irregularity in taking possession of the land – Also, the structure of the Delhi Lands (Restrictions on Transfers) Act, 1972 clearly indicates that any subsequent sale of the specified land without prior permission from the competent authority is not allowed, and if such sale is done through concealment, it amounts to fraud – The law with respect to "who" can invoke section 24(2) of the 2013 Act has been well settled after the decision of this Court in Shiv Kumar wherein it was held that subsequent purchasers do not have the locus to contest the acquisition and/or claim lapse of the acquisition proceedings – Coming to the specifics of each case qua subsequent purchasers or disputes regarding the title of the subject lands, this Court has clarified the scope of inquiry in Delhi Development Authority v. Tejpal and others – As far as the concealment of material facts regarding

subsequent sale transactions, earlier round of litigations etc. are concerned, it is noted that the landowners and affected parties are under no obligation to either confirm or deny the allegations levelled against them – Nor this Court has directed the appellants to furnish original records or documents to substantiate their claim of concealment and suppression of material facts – Engaging in a factual inquiry at such an advanced stage of the legal process, especially without providing adequate opportunities to all parties, may not be fair – The cases listed in Group E involve complex questions of fact and this Court being the Court of the last resort, ought not to be involved in such elaborate factfinding exercise – Therefore, deem it appropriate to remit these cases to the High Court for proper adjudication on points of law as well as facts. [Paras 42, 44, 45, 46, 48]

Doctrine/Principles – *Res judicata* – discussed.

Doctrine/Principles – Doctrine of merger – Exception:

Held: This Court takes notice of the exception carved out by this Court in Kunhayammed, to the effect that the doctrine of merger is not of universal or unlimited application and that the nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which could have been laid shall have to be kept in view – The exception that has been carved out in Kunhayammed, will only be permissible in the rarest of rare cases and such a deviation can be invoked sparingly only – However, among such exceptions, the extraordinary constitutional powers vested in this Court under Article 142 of the Constitution of India, which is to be exercised with a view to do complete justice between the parties, remains unaffected and being an unfettered power, shall always be deemed to be preserved as an exception to the doctrine of merger and the rule of stare decisis. [Para 33]

Public Interest – Land Acquisition – Elements of Public interest:

Held: a) While balancing the interest of the public exchequer against that of individuals, there are many other interests at stake, and it might not be possible to undo the acquisitions without causing significant cascading harms and losses to such other interests; b) Since development projects have either begun or most of the acquired lands have already been deployed for essential public projects such as hospitals, schools, expansion of metro, etc., the

effect of non-condonation of delay would go beyond mere financial loss to the exchequer and would extend to the public at large; c) It would be like unscrambling the egg if compensation paid would have to be clawed back or possession taken would have to be reversed; d) In many cases, the development projects might also have to be undone – The reversal of possession of even a small plot lying on projects such as an under-construction metro corridor would be practically impossible; e) These are the cases where rights are vested to the public at large given the public infrastructure that has come up on a large number of acquired lands; f) The fresh acquisition, if so is required to be done by the State, would be at the expense of delaying the construction of critical public infrastructure in our national capital – When balancing public with private interest, the comparative interest on the landowners would be nominal as compared to the public at large; and g) The multiplicity of contradictory judicial opinions on section 24 (2) of the 2013 Act has made the present set of circumstances sui generis – The constant flux in the legal position of law has posed significant challenges for the State and its authorities. [Para 40]

Case Law Cited

Indore Development Authority v. Manoharlal **[2020] 3 SCR 1 : (2020) 8 SCC 129 – followed.**

State of Gujarat and Others v. M.P. Shah Charitable Trust and Others **[1994] 3 SCR 163 : (1994) 3 SCC 552;** *Mathura Prasad Bajoo Jaiswal and Others v. Dossibai N.B. Jeejeebhoy* **[1970] 3 SCR 830 : (1970) 1 SCC 613;** *S.J.S. Business Enterprises (P) Ltd v. State of Bihar and Others* **[2004] 3 SCR 56 : (2004) 7 SCC 166;** *Arunima Baruah v. Union of India and Others* **[2007] 5 SCR 904 : (2007) 6 SCC 120 – relied on.**

Delhi Development Authority v. Tejpal and Others **Civil Appeal No. 6798 of 2024 arising out of SLP (Civil) No. 26697/2019;** *Pune Municipal Corporation v. Harakchand Mistrimal Solanki* **[2014] 1 SCR 783 : (2014) 3 SCC 183;** *Govt (NCT) of Delhi v. Manav Dharam Trust and Another* **[2017] 4 SCR 232 : (2017) 6 SCC 751;** *Shiv Kumar and Another v. Union of India and Others* **[2019] 13 SCR 695 : (2019) 10 SCC 229;** *Kunhayammed and Others. v. State of Kerala and Another* **[2000] Supp. 1 SCR 538 : (2000) 6 SCC 359;** *Pune Municipal Corporation v. Harakchand Misirimal Solanki* **(2020) SCC OnLine SC 1471 – referred to.**

Ranjana Bhatia v. Govt. of NCT of Delhi and another **(2014) SCC OnLine Del 2151;** *Sparsh Properties Pvt. Ltd. v. Union of India and Others* **(2014) SCC OnLine Del 6659 – referred to.**

Munni Bibi (since deceased) and Another v. Tirloki Nath and Others **AIR (1931) PC 114 – referred to.**

List of Acts

Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Delhi Lands (Restrictions on Transfers) Act, 1972; Constitution of India; Supreme Court Rules, 2013.

List of Keywords

Land Acquisition; Res judicata; Interest reipublicae ut sit finis litium; Salus populi suprema lex esto; Public interest; Doctrine of merger; Article 142 of the Constitution of India; Elements of Public interest; Balancing the interest of the public exchequer; Public infrastructure; Balancing public with private interest; Fraud by Landowners; Concealment and suppression of material facts; Subsequent sale transactions; Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 4(1) of the Land Acquisition Act, 1894.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6604 of 2024

From the Judgment and Order dated 11.01.2016 of the High Court of Delhi at New Delhi in WPC No.7442 of 2015

With

C.A. Nos. 6605, 6606, 6607, 6608, 6610, 6611, 6612, 6613 and 6649 of 2024, M.A. No. 277 of 2023 In C.A. No. 8492 of 2016, M.A. …. D.No. 39901 of 2022, M.A. No. 278 of 2023, M.A. ... D.No. 674 of 2023, M.A. ... D.No. 3577 of 2023, M.A. No. 346 of 2023, M.A. ... D.No. 5711 of 2023, C.A. No. 542 of 2016, C.A. Nos. 6614, 6615 and 6650 of 2024, Conmt. Pet.(C) No. 189 of 2019 In C.A. No. 2690 of 2017, C.A. Nos. 6651, 6616, 6618, 6652, 6619, 6653, 6620, 6621, 6622, 6623, 6624, 6625, 6626, 6627, 6628, 6654 and 6655 of 2024, Slp(C) D.No. 21746 of 2022, C.A. Nos. 6629 and 6656 of 2024, M.A. ... D.No. 39898 of 2022, M.A. ... D.No. 40951 of 2022, M.A. ... D.No.

42177 of 2022, M.A. ... D.No. 1215 of 2023, M.A. ... D.No. 1713 of 2023, M.A. No. 1888 of 2023 In C.A. No. 352 of 2023, C.A. Nos. 6630, 6631, 6632 and 6633-6634 of 2024, M.A. No. 806 of 2020 in C.A. No. 2690 of 2017, C.A. Nos. 6981, 6635, 6636, 6637, 6638, 6639, 6640, 6641, 6642 and 6643 of 2024, SLP(C) D.No. 18142 of 2022, C.A. Nos. 6658 and 6644 of 2024, SLP(C) D. No.19142 of 2022, C.A. No. 6659 of 2024, SLP(C) D. No.19687 of 2022, C.A. Nos. 6660, 6648, 6661, 6662, 6647 and 6663 of 2024, SLP(C) D. Nos. 20104 and 20203 of 2022, C.A. Nos. 6645, 6664 and 6646 of 2024 and M.A. ... D.No. 32991 of 2023.

Appearances for Parties

R. Venkataramani, Attorney General, Ms. Aishwariya Bhati, K M Nataraj, A.S.Gs., Ms. Rachna Shrivastva, Sanjay Poddar, V. Chitambaresh, Gopal Sankaranarayanan, C.A. Sundaram, Dhruv Mehta, Ashish Dholakia, Jayant Mehta, Vinay Garg, Ravinder Sethi, Kailash Vasdev, A.K Panda, Sr. Advs., Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, Rahul Pandey, AVS Kadyan, Chintan Singhal, Ms. Sonali Jain, Abhishek Pandey, Raman Yadav, Kartikay Aggarwal, Ms. Sujeeta Srivastava, Ms. Monika, Ms. Poornima Singh, Ms. Manisha Chava, Ms. BLN Shivani, Rustam Singh Chauhan, Ms. Niharika Ahluwalia, Ms. Sonakshi Chaturvedi, M/s. Saharya & Co., Varun Punia, Ms. Manika Tripathy, Ashutosh Kaushik, Rony John, Ms. Astha Tyagi, Nishit Agrawal, Ms. Prachi Bajpai, Chandra Prakash, Ms. Shalini Chandra, Ashwani Kumar, Kedar Nath Tripathy, Ram Naresh Yadav, Ms. Malvika Kapila, Ms. Tanwangi Shukla, Nitin Mishra, Ms. Sunieta Ojha, Ms. Vasudha Priyansha, Vineet Malhotra, Mohit Paul, Vishal Gohri, Ms. Rangoli Seth, Ms. Sanjleena Lal, N. Balraj, Soumik Ghosal, Pankaj Bhagat, Ms. Trisha Chandran, Vishal Sinha, Ms. Prerna Raman, Zafar Inayat, Ms. Rohini Musa, A. Gupta, M. C. Dhingra, Sumit Bansal, Udai Bir Singh Kochar, Utsav Garg, Mrs. Madhavi Yadav, Ms. Prashi Tyagi, Vikrant Yadav, Yashraj Singh Deora, Priyesh Mohan Srivastava, Abhishek Singh, Ms. Sonal K Chopra, Bharat Arora, Manikya Khanna, Raghav Bhatia, Sharath Sampath, Aprit Kumar Singh, Tarun Mehta, Aditya Krishna, M/s. Vedya Partners, Siddharth Batra, S.K. Raout, Chinmay Dubey, Ms. Shivani Chawla, Ms. Archna Yadav, Rhythm Katyal, Ashutosh Chugh, Pratyush Arora, Kunal Yograj Verma, Jasbir Singh Malik, Ms. Chandni Sharma, Ms. Divya Mishra, Manish Paliwal, Udaibir

Singh Kochar, Parv Garg, Pawas Kulshreshtha, Karandeep Singh Rekhi, Puneet Sharma, Mahesh Prasad, Ms. Aashi Gupta, Shambu Prasad, Sher Singh, Alok K. Prasad, B.L. Shivhare, Rajesh Singh Chauhan, Mukesh Kumar Maroria, Ms. Sushma Suri, Ranjit Kumar Sharma, Rajeev Ghawana, Neelaksh Sharma, Vikalp Chandela, T.V.S. Raghavendra Sreyas, Siddharth Vasudev, Ms. Kiran Ahlawat, Prithvi Pal, S K Rout, Dr. N. Pradeep Sharma, Ganesh Singh, Priyonkoo Anjan Gogoi, Amit Acharya, Mayank Gupta, Ms. Sristhi Jain, Onkar Prasad, Ms. Shruti Vaibhav, Aman Mehrotra, Pramod B. Agarwala, Chandra Bhushan Prasad, Gagan Gupta, Udaibir Kochar, R.B. Singh, Mohit Kumar Gupta, Arvind Kumar Gupta, Vikas Kumar, Mukesh Kumar Verma, Vikas Gupta, Vivek Gupta, Lav Kumar Agrawal, Nikhil Tyagi, Ajay Marwah, Vinay K. Shailendra, Jagjit Singh Chhabra, Saksham Maheshwari, Abhimanyu Bhandari, N.S. Vasisht, M.P. Bhargava, Ms. Rooh-e-hina Dua, Sahib Kochhar, T. Mahipal, Ms. Charu Ambwani, N S Vasisht, Ms. Jyoti Kataria, M P Bhargava, Aashu Tyagi, Varun Kapur, Mehmood Umar Faruqui, Bankey Bihari, Rajender Pd. Saxena, N.P. Sahni, Vineet Sinha, V.S. Tomar, Rabin Majumder, Rajiv Ranjan Dwivedi, Ms. Rashmi Malhotra, Ravi Bharuka, Aman Mohit Hingorani, Arvind Kumar Sharma, Ms. Smita Maan, Vishal Maan, Aditya Singh, Aakash Sehrawat, Ms. Sunita Sharma, Hariom Singh R., Shalinder Saini, Ms. Mitali Gupta, Ishaan Sharma, Ms. Sambhaavi Sharma, Govind Kumar, Ms. Shagun Sabharwal, Mrs. Sunita Sharma, Balendu Shekhar, Anukalp Jain, A.K Kaul, Rohit Pandey, Amrish Kumar, Gurmeet Singh Makker, Nachiketa Joshi, Pratyush Shrivastava, Prashant Rawat, Rajan Kumar Chourasia, Annirudh Sharma-ii, Ms. Rukhmini Bobde, Ms. Sakshi Kakkar, Ms. Jyoti Mendiratta, Rakesh Kumar-I, Ms. Arti Singh, Mukul Kumar, Ms. Prachi Bajpai, Krishan Kumar, Dharamraj Ohlan, Ms. Charu Nagpal, Krishan Kaushik, Chirag Singhal, Mukesh Kumar, Vishwa Pal Singh, Dr. Rajeev Sharma, Prashant Sharma, Dharmendra Sharma, Vipin Kumar Sharma, Raghuvir Sharma, Ms. Devjani Deka Bharali, Ms. Meena Hasan, Anil Kaushik, Aishwary Jaiswal, Tarun Johri, Anil Kumar Panwar, Rajinder Juneja, Gaurav Singh, Advs. for the appearing parties.

Petitioner-in-person

Respondent-in-person

Applicant-in-person

Judgment / Order of the Supreme Court

Judgment

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1. In view of the reasons assigned in the judgment pronounced by Hon'ble Surya Kant, J., speaking for the three of us minutes before in ***Delhi Development Authority v. Tejpal and others***,[1] delay in presentation of all the Special Leave Petitions ("SLPs", hereafter) under consideration stands condoned except those mentioned in Group B.2, which have been rendered infructuous as discussed later in this judgment, and Group D which we have directed to be de-tagged for separate listing.

2. Special leave is granted in all the SLPs except those in Group B.2 and Group D.

A. PREFACE

3. We are confronted with a peculiar situation where the Latin maxim *"interest reipublicae ut sit finis litium"* (it is in the interest of the State

* Ed. Note: Pagination as per the original Judgment.

1 Civil Appeal No……of 2024 arising out of SLP (Civil) No. 26697/2019

that there be an end to litigation) notwithstanding, it is the State itself that has initiated a second round of litigation before this Court after culmination of the first round and sown the seeds for days' of hearing engaging our attention to erudite arguments from learned counsel on both sides. We are now tasked to decide on which side the Court should lean.

4. The quest for primacy between private interest and public interest has been a matter of debate for years together; the scales, however, seem to have tilted, ever so slightly, in favour of the latter. Yet, between the devil and the deep sea, we endeavour to construct a bridge—a '*setu'*—to strike a harmonious balance for the greater good; all, while adhering to the enduring Latin dictum *"salus populi suprema lex esto"*, a principle that reinforces the paramountcy of the people's welfare as the supreme law.

5. There is one other aspect which needs emphasis. Justice, alone of all virtues, implies a notion of duty. As Judges of this Court, we are duty-bound to not only uphold the law but also ensure its consistent application. In navigating through the crisis, chaos, and confusion presented by the several sets of appeals before us, we are committed to ensure consistency, clarity, and coherence and strike a delicate, yet, necessary balance to arrive at a harmonious resolution. In the course of rectifying the aftermath of rulings and overrulings, and grappling with complexities surrounding questions of limitations, maintainability, merger doctrine, etc., our commitment to justice remains resolute.

6. With these prefatory words, we now proceed to decide the various sets of appeals before us.

B. BRIEF RESUME OF FACTS

7. While there are multiple civil appeals, which we are tasked to decide, a particular SLP[2] was referred to a Bench of three Judges by a Bench of two Judges *vide* order dated 21st July, 2022. In view of grant of leave by us, this would be treated as the lead matter.

8. We place on record that it is pursuant to the said order dated 21st July, 2022 that all these appeals have been listed before us, in deference to orders made by the Hon'ble the Chief Justice of India.

2 Diary No. 17623/2021

9. Before delving deep into the intricacies presented by these civil appeals, it would be apposite to trace the factual trajectory of the lead matter culminating in the present stage:

a) The facts are noticed from the Civil Appeal[3] arising out of the Writ Petition[4] instituted before the High Court of Delhi ("High Court", hereafter) by the first respondent, M/s BSK Realtors LLP. Land acquisition proceedings had been initiated under the Land Acquisition Act, 1894 ("1894 Act," hereafter) to acquire several parcels of lands. Land belonging to M/s BSK Realtors LLP comprised in Khasra No.623(5-10) measuring 5 bighas 10 biswas in Chattarpur village also formed part of the proceedings. The High Court *vide* its judgment and order dated 11th January, 2016 allowed the writ petition. In so allowing, it relied on the decision of this Court in ***Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others***[5] and similar line of decisions. It was held in ***Pune Municipal Corporation*** (supra) that if any one of the two ingredients of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act", hereafter) was attracted, i.e., either the physical possession of the land was not taken or the compensation was not paid, as the case may be, the acquisition proceedings under challenge would be deemed to have lapsed. As a matter of fact, the High Court found all the ingredients of section 24(2) of the 2013 Act as interpreted by the Supreme Court to be satisfied despite Award No.15/87-88 dated 5th June 1987 and hence, declared the acquisition proceedings to have lapsed.

b) Aggrieved thereby, the beneficiary of the acquisition proceedings-Delhi Development Authority (second respondent herein) ("DDA", hereafter), carried such judgment and order in appeal praying for it to be set aside. After granting leave, a Bench of two Hon'ble Judges of this Court *vide* judgment and order dated

3 GNCTD & Anr. v. M/S BSK Realtors LLP & Anr., Diary No. 17623/2021

4 W.P. (C) No. 7442/2015

5 (2014) 3 SCC 183

31st August, 2016 dismissed the Civil Appeal.[6] It was observed that the issue, in principle, had already been adjudicated against DDA in a previous judgment and order of a co-ordinate Bench of this Court in a related matter.[7] DDA was granted extension by a period of one year to avail the liberty of initiating acquisition proceedings afresh under section 24(2) of the 2013 Act. This marked the culmination of the first round of litigation.

c) However, on 06th March, 2020, the decision in ***Pune Municipal Corporation*** (supra) was overturned by a Constitution Bench of five Hon'ble Judges in ***Indore Development Authority v. Manoharlal and others*** ***[5-Judge, lapse]***[8] holding that land acquisition proceedings lapse only when the twin conditions are met, i.e., non-payment of compensation to the landowners together with failure of the State to take physical possession of the acquired lands. Leveraging this, Government of NCT of Delhi (first appellant herein) ("GNCTD", hereafter) approached this Court through a SLP[9] (the lead matter) wherein M/s BSK Realtors LLP and DDA were impleaded as the first and second respondents, respectively. It was contended on behalf of GNCTD that the judgment and order dated 11th January, 2016 rendered by the High Court ought to be reconsidered in view of ***Manoharlal*** ***[5-Judge, lapse]*** (supra).

d) A preliminary objection *qua* the maintainability of the SLP was raised by M/s BSK Realtors LLP. The first contention in line with the doctrine of merger was that the order of the High Court dated 11th January, 2016 had merged with the order dated 31st August, 2016 of this Court whereby the civil appeal at the instance of DDA was dismissed. Such dismissal, M/s BSK Realtors LLP further contended, was after grant of leave and by a speaking order upon hearing all the parties involved. M/s BSK Realtors LLP also contended that the order dated 11th January, 2016, upon its merger with the order dated 31st August, 2016, ceased to exist and GNCTD being a party to the

6 Civil Appeal No. 8670/2016

7 Civil Appeal No. 8477/2016 arising out of SLP (Civil) No. 8467/2015

8 [2020] 3 SCR 1 : (2020) 8 SCC 129

9 Diary No. 17623/2021

civil appeal filed by DDA, the same would disentitle GNCTD from initiating a new round of litigation to have the order dated 11th January, 2016 reversed on the specious ground that the decision in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) has been rendered after dismissal of the civil appeal of DDA, overruling the decision in ***Pune Municipal Corporation*** (supra). Accordingly, it was submitted that the SLP not being maintainable deserved outright dismissal.

e) Observing that the issue requires deeper examination, a Bench of two Hon'ble Judges, *vide* the said order dated 21st July, 2022, directed that the matter be placed before a three-Judge Bench. The relevant portion of the said order is extracted hereunder:

> "According to the land-losers, rejection of challenge to the declaration of lapsing at the instance of Authority or State, would dis-entitle the other (i.e., Authority or State) to maintain successive petition against the same judgment; and especially where in the earlier round leave to appeal was granted by this Court and the appeal had been disposed of after hearing all concerned. In other words, the doctrine of merger is being invoked to buttress this preliminary objection.
>
> On the other hand, Ms. Aishwarya Bhati, learned Additional Solicitor General is relying on the observations/dictum of the Constitution Bench of this Court in *Indore Development Authority vs. Manoharlal & Ors.* reported in (2020) 8 SCC 129 to contend that the effect of the declaration or conclusion recorded therein is to efface all the orders passed in the concerned special leave petition or civil appeal following the decision in *Pune Municipal Corporation & Anr. Harakchand Misirmal Solanki & Ors.* reported in 2014 (3) SCC 183 — which has been expressly overruled and as noted in paragraph 365 of the reported decision. (Indore Development Authority).
>
> It is urged that the effect of such overruling is to efface all the orders, including passed by this Court relying on Pune Municipal Corporation (Supra).

> […]
>
> Suffice it to observe that these matters require deeper examination, for which the same need to be placed before the three Judge Bench for hearing on 17.08.2022."
>
> (underlining ours, for emphasis)

10. As observed above, it is by virtue of this order that we now have the occasion to decide the issue raised by parties on both the sides.

C. JUDICIAL TRAJECTORY

11. Having noticed the facts in the lead matter, we must at this stage acknowledge the predicament of being faced with a peculiar dusty situation where we are tasked not only to clear our path to adjudicate a similar issue on separate fronts but also to ensure that the law on this matter settles the dust so raised. This exercise would necessitate harmonising the different routes that we are bound to traverse to reach the same destination. Hence, notwithstanding the expense of reiterating the foregoing, it is imperative to navigate the broader judicial trajectory that has brought us to the current stage.

a) Relying upon the decision of this Court in ***Pune Municipal Corporation*** (supra) and similar line of decisions, the High Court *vide* various judgments and orders, allowed writ petitions filed by the several affected landowners ("landowners", hereafter).

b) Discontented, the aggrieved authorities [being the respondents in the writ petitions including DDA, GNCTD, Land Acquisition Collector ("LAC", hereafter), and Land & Building Department ("L&B", hereafter)] carried such judgments and orders independently by way of their respective SLPs impleading the other, however, as a co-respondent. This triggered the first round of litigation ("first round", hereafter) yielding diverse outcomes which are categorized as follows: first, in some cases, leave was granted but the civil appeals were subsequently dismissed (or allowed, in handful of cases); second, in some cases, leave was not granted and the SLPs were dismissed *in limine*; and third, where SLPs/civil appeals are still pending adjudication.

c) Dismissal of the civil appeals/SLPs brought about a quietus. However, in the light of change in law consequent to the decision

in ***Manoharlal*** ***[5-Judge, lapse]*** (supra), such of the authorities (DDA, GNCTD, LAC, and L&B) who had not earlier challenged the judgments and orders of the High Court declaring land acquisition proceedings as lapsed, approached this Court by way of SLPs/Miscellaneous Applications ("M.A.s", hereafter)/ Review Petitions. This triggered the second round of litigation ("second round", hereafter), however, with the status of the aggrieved authorities being transposed. For instance, filing of SLP by GNCTD impleading DDA as the second respondent in the lead matter, as noticed above, whereas GNCTD was the second respondent in the first round initiated by DDA.

d) Upon the appeals being placed before us, we are entrusted with resolving the issue, or for that matter issues, outlined later in the judgment.

12. Since the authorities (DDA, GNCTD, LAC, and L&B) jointly harbour a shared grievance and individually act as appellants in the ongoing proceedings, they will be collectively denoted as "appellants" hereafter, notwithstanding the transposition of the authorities as parties or their status as respondents in the second round. Insofar as the affected landowners are concerned, they shall be referred to as "landowners" or "aggrieved parties", as the context would require.

D. CATEGORIZATION OF CASES

13. Each of the Civil Appeals/M.A.s before us may necessitate separate directions. We have, therefore, categorised them in six groups based on varied outcomes in the first round of litigation and their respective status in the second round of litigation for ease of reference.

14. A brief overview of the groups we have carved out for the facility of reference is as under:

a) **Group A** deals with M.A.s filed by the appellants-authorities primarily pleading change in law and seeking recall of the judgments and orders of this Court dismissing the Civil Appeals and/or Review Petitions in the first round.

b) **Group B.1** includes cases where Civil Appeals were dismissed in the first round, and now an SLP (now Civil Appeal, leave having been granted by us) is pending before us in the second round.

c) Cases categorized under **Group B.2** encompass the following scenarios:

i. Four cases where the Civil Appeals of the appellants-authorities were allowed in the first round and the SLPs, filed during the pendency of the appeals in the first round, are pending before us in the second round (present batch).

ii. One case where the appeal, filed by the appellant-authority subsequent to the SLP pending before us in the present round, was allowed after granting leave.

d) **Group C.1** covers a case where an SLP was dismissed *in limine* in the first round, and now an SLP (now Civil Appeal, leave having been granted by us) is pending before us in the second round. In this particular case, the land acquisition proceedings would lapse following the test laid down in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) as the twin conditions under section 24(2) of the 2013 Act are met [non-payment of compensation to the landowners together with failure of the State to take physical possession of the acquired lands].

e) **Group C.2** covers a case where an SLP was dismissed *in limine* in the first round, and now an SLP (now Civil Appeal, leave having been granted by us) is pending before us in the second round. In this particular case, land acquisition proceedings would not lapse following the test laid down in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) as the twin conditions under section 24(2) of the 2013 Act are not met.

f) **Group C.3** involves cases where during pendency of the SLP in the first round, the appellants approached this Court with a fresh SLP owing to a change in law. While in some cases both the SLPs (now Civil Appeals) are pending before us in the present batch, in some cases, the other SLP is pending separately and is not part of the present batch. There are also a few cases where there is only one SLP filed and the same is now pending as a Civil Appeal in the present batch after grant of leave.

g) **Group D** are miscellaneous matters which have been tagged incorrectly with the present batch and they follow separate

directions. Group D also involves cases where no notice has been issued by this Court till date.

h) Cases falling under **Group E** generally involve allegations related to subsequent sale transactions by landowners. There are certain cases where this position is admitted. Some cases also include allegations regarding the ownership title of the land in question. Additionally, in a few instances, the appellants claim that the land in question is vested in Gaon Sabha, a fact which the landowners and affected parties have suppressed. These cases require thorough fact-finding, as determined later, and are therefore addressed separately. Cases categorized under Group E may overlap with Groups A to C (excluding Group B.2, which we propose to dismiss as infructuous *infra*). As a result, any directions issued under Group E are intended exclusively for that category alone, and such cases shall be automatically excluded from the purview of Groups A to C. For added clarity, it is stated that all cases falling under Group E are proposed to be remitted to the High Court, regardless of their classification within the aforementioned categories.

i) We set out hereinbelow in tabular form the cases covered by the aforesaid groups:

GROUP	SUB-GROUPS	DESCRIPTION	TOTAL NUMBER OF CASES
GROUP A (M.A.s)	Not Applicable	M.A.s filed by the appellants-authorities primarily pleading change in law and seeking recall of the judgments and orders of this Court dismissing the Civil Appeals and/or Review Petitions in the first round.	2
GROUP B (Civil Appeal in first round)	**Group B.1**	Civil Appeal dismissed in the first round; SLP pending in the second round (present batch)	40
	Group B.2	Civil Appeal allowed in the first round; SLP pending in the second round (present batch)	5

GROUP C (SLP in first round)	**Group C.1**	SLP dismissed *in limine* in the first round; SLP pending in the second round (present batch) • *Land acquisition proceedings would lapse following the test laid down in* ***Manoharlal*** ***[5-Judge, lapse]*** *(supra) as the twin conditions under section 24(2) of the 2013 Act are met [non-payment of compensation to the landowners together with failure of the State to take physical possession of the acquired lands].*	1
	Group C.2	SLP dismissed *in limine* in the first round; SLP pending in the second round (present batch) • *Land acquisition proceedings would not lapse following the test laid down in* ***Manoharlal*** ***[5-Judge, lapse]*** *(supra) as the twin conditions under section 24(2) of the 2013 Act are not met.*	1
	Group C.3	SLP from either the first round or both rounds is pending in the present batch • *Land acquisition proceedings would not lapse following the test laid down in* ***Manoharlal*** ***[5-Judge, lapse]*** *(supra) as the twin conditions under section 24(2) of the 2013 Act are not met.*	16
GROUP D (Miscellaneous matters)	**Group D.1**	• Cases filed by landowners; • Cases seeking a different relief; • Cases where no notice has been issued either on delay or on merits	5
	Group D.2	Cases where no notice has been issued either on delay or on merits	11
TOTAL			**81**

GROUP E (Suppression of facts *qua* subsequent purchaser/title etc.)	Not Applicable	Cases where the landowners are alleged to have committed fraud by suppressing facts regarding them being subsequent purchasers and/or the land being vested in Gaon Sabha	32
Note: Cases categorized under Group E, owing to their distinct facts and circumstances, may overlap with Groups A to C (excluding Group B.2, which we propose to dismiss as infructuous). As a result, any directions issued under Group E are intended exclusively for that category alone, and such cases shall be automatically excluded from the purview of Groups A to C. For added clarity, it is stated that all cases falling under Group E shall be remanded back to the High Court, regardless of their classification within the aforementioned categories.			

A detailed table listing each case along with its respective group has been appended to this order for easy reference.

E. SUBMISSIONS

15. Given the significance of the present exercise, an array of distinguished counsel from both sides — including the learned Attorney General, learned Additional Solicitor General, and other senior counsel — appeared before us. While it may not be necessary for the purpose of disposal of these appeals to record in detail the extensive submissions made at the Bar by them, for the sake of completeness, we propose to provide a concise overview of the arguments presented.

16. Counsel for the appellants prayed for allowing the civil appeals, while advancing the following arguments:

On merger, res judicata, and prospective overruling:

a) The doctrine of merger is neither a doctrine of constitutional law nor a doctrine having statutory recognition. It is merely a common law doctrine founded on principles of propriety and does not have universal applicability. Even a speaking order dismissing the SLP would not attract the doctrine.

b) Law declared by the Constitution Bench in ***Manoharlal [5-Judge, lapse]*** (supra) applies retrospectively from 01st January, 2014. Earlier decision of the previous court shall not operate as *res judicata*, if the law has been altered.

c) In the first round, the appellants/authorities were arrayed as respondents merely as a formality, without being adequately heard. As a result, the doctrines of merger or *res judicata* do not apply and the judgment and order issued by this Court in the first round is not binding on these authorities. Such a situation could allow anyone to come forward, get the appeal dismissed, and conclude the *lis* forever, which is an undesirable outcome.

d) By virtue of principles flowing from Rule 4 read with Rule 33 of Order XLI, Code of Civil Procedure ("CPC" hereafter), this Court possesses ample authority to do complete justice, aligned with principles of justice, equity, and good conscience. The mere fact that a petitioner who filed the SLP in the second round was a party to the first round as a respondent would not warrant the application of the doctrine of *res judicata*.

e) Decisions rendered in the preceding round of litigation, solely relying on judgments that have since been invalidated and effaced, within a brief timeframe, should not be permitted to result in a miscarriage of justice under the pretext of the doctrine of merger. Each case possesses unique and distinct facts, even if they pertain to a common subject.

f) Any factual claim involved in the present appeals may be remanded to the High Court to ensure proper adjudication and prevent miscarriage of justice.

On subsequent purchasers contesting acquisition proceedings:

g) A judgment or decree obtained through fraudulent means is void and non-existent in the eyes of the law and can be contested even in a collateral proceeding.

h) Purchasers subsequent to the issuance of a Notification under section 4(1) of the 1894 Act lack the entitlement to assert the lapse of acquisition proceedings on any grounds. In cases where landowners engaged in fraudulent activities by entering into subsequent sale transactions with prior knowledge of the Notification under section 4(1) of the 1894 Act, such subsequent purchasers lack entitlement to initiate a case for declaration. They do not acquire any legal rights in the land, as the sale is fundamentally void *ab initio*, thereby disqualifying them from asserting the lapse of acquisition proceedings or claiming the land under the policy.

i) Although the Bench of two Hon'ble Judges in ***Govt (NCT) of Delhi v. Manav Dharam Trust and another***[10] had recognised the right of the subsequent purchasers, such decision is no longer good law in view of the same being overruled by a Bench of three Hon'ble Judges in ***Shiv Kumar and another v. Union of India and others***[11] and such decision having found approval in ***Manoharlal*** ***[5-Judge, lapse]*** (supra).

On principles of consistency and public interest

j) The constitutional tenets of consistency, the rule of law, and the principle of *"actus curiae neminem gravabit"* embody the fundamental and foundational principles of justice.

k) The Government and Public Sector Undertakings, acting in the public interest and with good faith, aim to avoid burdening the court dockets unnecessarily.

l) However, the appeals at hand present a unique situation not hitherto dealt with by any judicial pronouncement of this Court and bearing in mind the gravamen of the appellants' complaint and the extent of public interest at stake, the Court may not take a view which would throw asunder the developmental works undertaken by the appellants on the acquired lands.

17. Counsel for the landowners and the affected parties urged this Court to dismiss the appeals at the outset, being devoid of merits. The following submissions were advanced by them:

On merger:

a) In cases where this Court had previously granted leave and dismissed the appeal, the doctrine of merger would apply and the judgment and order of the High Court would stand merged into the judgment and order of this Court. The judgment and order of the High Court cannot thereafter be challenged by any party, as it has ceased to exist. The doctrine applies regardless of whether the appeal has been dismissed through a speaking or a non-speaking order.

10 [2017] 4 SCR 232 : (2017) 6 SCC 751

11 [2019] 13 SCR 695 : (2019) 10 SCC 229

b) Additionally, whether there has been a discussion of facts in the judgment(s) of this Court will be immaterial as it has resulted in a merger with the judgment and order of the High Court where the facts were discussed.

On res judicata

c) The principles of *res judicata* and analogous principles embodied in section 11, CPC and its Explanations clearly apply to the present appeals. Even an erroneous decision, whether on facts or law, would bind the parties. The acquiring authorities (GNCTD, LAP, L&B Department), and the beneficiary (DDA) share a common interest in the acquisition of land for public purpose. When either of the parties litigates, one is deemed to litigate on behalf of all interested parties. Thus, the dismissal of a civil appeal preferred by one of the authorities, would act as *res judicata* against the other authority.

d) The appellants were granted one-year period to commence fresh acquisition proceedings. With the expiry of this timeframe, the State's right has been closed for all intents and purposes. It cannot now contest this Court's order and assert a reversal of the lapse of acquisition proceedings.

On subsequent purchasers contesting acquisition proceedings:

e) None of the appeals has alleged any form of fraud practised by the affected parties. Legal principles dictate that when fraud is asserted, it must be expressly pleaded in accordance with the provisions of Order VI Rules 2 & 4, CPC. The law does not permit unsubstantiated assertions to be made solely through oral arguments. The appellants have not succeeded in establishing that a subsequent sale transaction occurred with prior knowledge after the Notification under section 4(1) of the 1894 Act. Without evidence of such foresight and dishonest intention, the claim of fraud cannot be substantiated.

f) The decisions of the High Court in ***Ranjana Bhatia v. Govt. of NCT of Delhi and another***[12] and ***Sparsh Properties Pvt. Ltd. v. Union of India and others***[13] sanctioned subsequent

12 (2014) SCC OnLine Del 2151

13 (2014) SCC OnLine Del 6659

purchasers to pursue a declaration of a right that had already vested in the landowners under the deeming provision of section 24(2) of the 2013 Act. These decisions were given a further seal of approval by the decision of a Bench of two Hon'ble Judges of this Court in ***Manav Dharam Trust*** (supra). Therefore, the *change in law* occasioned by its overruling in ***Shiv Kumar*** (supra) cannot be utilised as a crutch to claim that subsequent purchasers cannot seek a declaration of lapsing.

g) In any event, the decision in ***Shiv Kumar*** (supra) is not good law and requires reconsideration by a larger Bench of this Court.

F. ANALYSIS

18. Having heard the arguments presented by both sides at length on different issues, we propose segmenting our analysis accordingly. The following issues emerge for our consideration:

a) Whether the dismissal of a civil appeal preferred by one appellant in the first round operates as *res judicata* against the other appellant in the second round before us?

b) Whether suppression of the first round of litigation by the appellants constitutes a material fact, thereby inviting an outright dismissal of the appeals at the threshold?

c) Does the doctrine of merger operate as a bar to entertain the civil appeals in the present case?

d) Whether the previous determination of the rights of subsequent purchasers in an *inter se* dispute precludes the same issue from being reconsidered between the same parties?

F.1 Res judicata

19. The first issue we noticed at the start of our analysis stems from the submission pertaining to *res judicata.* Counsel for the landowners, pressing the applicability of the principle of *res judicata* to the present appeals, submitted that the dismissal of a Civil Appeal preferred by one of the appellants in the first round, would act as *res judicata* against the other in subsequent round/s of litigation. The appellants contested the same and submitted that *res judicata* would not apply to the current proceedings.

20. Would the rule of *res judicata* operate against the co-respondents before the High Court, namely GNCTD and DDA, and preclude us from looking into the merits of the present set of appeals, is the question that we propose to examine and answer now.

21. Nearly a century ago, a Bench of three Hon'ble Judges of the Privy Council in ***Munni Bibi (since deceased) and another v. Tirloki Nath and others***[14] laid down the following three conditions for the application of *res judicata* between co-defendants:

> "(1.) There, must be a conflict of interest between the defendants concerned; (2.) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims; and (3.) the question between the defendants must have been finally decided."

22. In ***State of Gujarat and others v. M.P. Shah Charitable Trust and others***,[15] a Bench comprising two Hon'ble Judges ruled that the principle of *res judicata* applies only when there has been a directly and substantially disputed issue between the parties, which the court has heard and conclusively resolved. The relevant extract of the decision is extracted hereunder:

> "17. […] For attracting the rule of res judicata between co-defendants — according to the terms in Section 11 of the Civil Procedure Code which provision of course is not, in terms, applicable to proceedings in a writ petition — it is necessary that there should have been some issue directly and substantially in controversy between them which has been heard and finally decided by the court. Same would be the position, where a plea of res judicata is sought to be raised between co-respondents in a writ petition, on the general principles of res judicata. Since the said basic requirement is not satisfied, the said judgment cannot be treated as res judicata between the trust and the Government.
>
> (underlining ours, for emphasis)

14 AIR 1931 PC 114

15 [1994] 3 SCR 163 : (1994) 3 SCC 552

23. In the lead matter before us or for that matter the other appeals, the co-respondents before the High Court, namely, GNCTD and DDA did not have conflicting interests. *Inter se* them, neither was there any disputed issue, nor could have the High Court possibly adjudicated on any such issue. Before this Court too, in the first round, there was no issue on which GNCTD and DDA were at loggerheads. In the light of this, in accordance with the aforementioned legal principle, the applicability of *res judicata* is negated.

24. A brief review of the ruling in ***Mathura Prasad Bajoo Jaiswal and others v. Dossibai N.B. Jeejeebhoy***[16] will also guide us to the resolution of the second issue on the applicability of *res judicata*. In the said decision, the first-instance court and the High Court rejected an application seeking fixation of standard rent, holding that the provisions of the Rent Act did not extend to open land, relying upon an earlier decision. However, this Court later overturned the said decision, affirming the applicability of the Rent Act to open land as well. When A filed a fresh application, B opposed it, claiming it was barred by *res judicata*. Dismissing this argument and affirming the application's viability, a Bench of three Hon'ble Judges of this Court observed thus:

> "5. But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the 'matter in issue' may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are

16 [1970] 3 SCR 830 : (1970) 1 SCC 613

not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

[…]

10. A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly, by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

11. It is true that in determining the application of the rule of res judicata the Court is not concerned with the

> correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression 'the matter in issue' in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."
>
> (underlining ours, for emphasis)

25. The law, as we noticed aforesaid, aptly resolves the first issue. *Res judicata*, as a technical legal principle, operates to prevent the same parties from relitigating the same issues that have already been conclusively determined by a court. However, it is crucial to note that the previous decision of this Court in the first round would not operate as *res judicata* to bar a decision on the lead matter and the other appeals; more so, because this rule may not apply hard and fast in situations where larger public interest is at stake. In such cases, a more flexible approach ought to be adopted by courts, recognizing that certain matters transcend individual disputes and have far-reaching public interest implications.

F.2 Suppression of material facts by appellants

26. Counsel on behalf of the landowners have contended that the conduct of the appellants disqualifies them from seeking any relief.

They assert that the appellants filed the present appeals, specifically under Group B.1, without disclosing that civil appeals filed by another appellant/authority against the same impugned order has already been dismissed. Furthermore, this action is deemed as providing an inaccurate declaration under Order XXI Rule 3(2) of the Supreme Court Rules, 2013.

27. Before addressing the aforesaid contention, we may refer to the law laid down in this regard.

28. A Bench of two Hon'ble Judges of this Court in ***S.J.S. Business Enterprises (P) Ltd v. State of Bihar and others***[17] held that a fact suppressed must be material; that is, if it had not been suppressed, it would have influenced the merits of the case. It was held thus:

> "13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken […]
>
> 14. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable (sic), the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. […] the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits."

29. Further, a Bench of two Hon'ble Judges of this Court in ***Arunima Baruah v. Union of India and others***[18] following the aforesaid dictum, held thus:

17 [2004] 3 SCR 56 : (2004) 7 SCC 166

18 [2007] 5 SCR 904 : (2007) 6 SCC 120

> "12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."

30. Law is well settled that the fact suppressed must be material in the sense that it would have an effect on the merits of the case. The concept of suppression or non-disclosure of facts transcends mere concealment; it necessitates the deliberate withholding of material facts—those of such critical import that their absence would render any decision unjust. Material facts, in this context, refer to those facts that possess the potential to significantly influence the decision-making process or alter its trajectory. This principle is not intended to arm one party with a weapon of technicality over its adversary but rather serves as a crucial safeguard against the abuse of the judicial process.

31. Nevertheless, we have carefully considered the orders issued during the first round of litigation, which are alleged to have been suppressed. Despite reviewing these orders, we find no compelling reason to dismiss the appeals based solely on the prior dismissal of appeals filed by some other appellant/authority.

F.3 Merger

32. Extensive arguments have been advanced by the parties on the aspect of applicability/non-applicability of the doctrine of merger, either by relying upon or distinguishing the decision in ***Kunhayammed and***

others. V. State of Kerala and another,[19] rendered by a Bench of three Hon'ble Judges of this Court. For the purpose of a decision on these appeals *qua* cases under Groups A and B.1, we do not consider it necessary to opine either way.

33. However, in the light of the settled propositions on the doctrine of merger and the rule of *stare decisis*, we respectfully concur with ***Kunhayammed*** (supra) and the decisions that have followed the same. We also take notice of the exception carved out by this Court in ***Kunhayammed*** (supra), to the effect that the doctrine of merger is not of universal or unlimited application and that the nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which could have been laid shall have to be kept in view. The exception, in our considered opinion, that has been carved out in ***Kunhayammed*** (supra), will only be permissible in the rarest of rare cases and such a deviation can be invoked sparingly only. We, however, hasten to add that among such exceptions, the extraordinary constitutional powers vested in this Court under Article 142 of the Constitution of India, which is to be exercised with a view to do complete justice between the parties, remains unaffected and being an unfettered power, shall always be deemed to be preserved as an exception to the doctrine of merger and the rule of *stare decisis*.

34. We may now at this stage look back to the Preface of this order where we have encapsulated our predicament to not only uphold the law but also to ensure its consistent application. It is our duty to enable consistency, clarity and coherence and strike a delicate balance through harmonious resolutions regardless of the crisis, chaos and confusion created by inconsistent judicial opinions on section 24(2) of the 2013 Act, making the present batch of *lis* a *sui generis* dispute.

35. In this regard, it would be worthwhile to notice the conclusions recorded in ***Manoharlal [5-Judge, lapse]*** (supra) and what followed in the aftermath thereof. The conclusions read as follows:

> "***Conclusions of the Court***
>
> 365. Resultantly, the decision rendered in *Pune Municipal Corpn.* Is hereby overruled and all other decisions in which *Pune Municipal Corpn.*[1] has been followed, are also

19 [2000] Supp. 1 SCR 538 : (2000) 6 SCC 359

overruled. The decision in *Sree Balaji Nagar Residential Assn.* cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In *Indore Development Authority* v. *Shailendra*[5], the aspect with respect to the proviso to Section 24(2) and whether 'or' has to be read as 'nor' or as 'and' was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(*a*) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(*b*) of the 2013 Act under the 1894 Act as if it has not been repealed.

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

366.4. The expression 'paid' in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then

all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the 'landowners' as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(*b*).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as

> on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.
>
> 366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

36. Soon after the decision in ***Manoharlal [5-Judge, lapse]*** (supra) was pronounced, applications for recall of the judgment in ***Pune Municipal Corporation*** (supra) came to be filed. By an order dated 16th July, 2020 in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki [Recall Order]***,[20] a Bench of three Hon'ble Judges allowed such applications, thereby recalling the judgment in ***Pune Municipal Corporation*** (supra).

37. The net result of the aforesaid judicial decisions is that the judgment in ***Pune Municipal Corporation*** (supra) loses its precedential value, having been recalled, although the said decision would be binding *inter partes*. We are informed that applications to recall the order dated 16th July, 2020 have since been filed but are yet to be considered. Be that as it may.

38. At this stage, we may advert to the factual scenario of the cases in hand. These cases can be, in a way, further categorized as pre-***Manoharlal [5-Judge, lapse]*** (supra). On the other hand, the cases which fall in Groups C, are where SLPs were dismissed *in limine* in the first round and/or such SLPs are pending in the second round. These cases, given the binding nature of the law laid down in ***Manoharlal [5-Judge, lapse]*** (supra), are covered by that decision against the landowners. It is a totally fortuitous and an incidental circumstance that one SLP arising out of the

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same acquisition may have been converted into a civil appeal and dismissed by this Court but another SLP, again arising out of the same acquisition, either might have been dismissed without granting leave or is still pending. The necessary consequence is that one parcel of land stands acquired and vested in the State free from all encumbrances under the 1894 Act whereas another parcel of adjoining land stands released on account of the acquisition having lapsed under section 24(2) of the 2013 Act. It is also quite possible that the parcel of land *qua* which the acquisition is deemed to have lapsed already stands utilized fully or partially for the development of public infrastructure, and on the other hand the parcel of the land which has vested in the State is still lying unutilized as the public project is yet to be completed.

39. This piquant situation created not by an act of State and rather being a consequence of inconsistent judicial pronouncements of this Court, has led to hostile discriminatory treatment to identically placed landowners. If not cured, it will lead to unexplained disparities. Not only this, it would cause a serious crisis and chaos as several projects of paramount public importance like the construction of metro, flyovers, schools, hospitals or other public utilities will have to be halted until the State re-acquires such parcels of land which are compelled to be released on account of acquisition *qua* them having lapsed in the pre-***Manoharlal*** ***[5-Judge, lapse]*** (supra) era. The consequences are extremely grave and would be totally detrimental to public interest.

40. The concept of 'public interest' need not be elaborately explained by us here for the reason that we have succinctly explained the same in our judgment pronounced separately in ***Tejpal*** (supra). There, we have summed up the following elements of 'public interest', which we employ *mutatis mutandis* in this batch of cases also:

a) While balancing the interest of the public exchequer against that of individuals, there are many other interests at stake, and it might not be possible to undo the acquisitions without causing significant cascading harms and losses to such other interests;

b) Since development projects have either begun or most of the acquired lands have already been deployed for essential public projects such as hospitals, schools, expansion of metro, etc., the

effect of non-condonation of delay would go beyond mere financial loss to the exchequer and would extend to the public at large;

c) It would be like unscrambling the egg if compensation paid would have to be clawed back or possession taken would have to be reversed;

d) In many cases, the development projects might also have to be undone. The reversal of possession of even a small plot lying on projects such as an under-construction metro corridor would be practically impossible;

e) These are the cases where rights are vested to the public at large given the public infrastructure that has come up on a large number of acquired lands;

f) The fresh acquisition, if so is required to be done by the State, would be at the expense of delaying the construction of critical public infrastructure in our national capital. When balancing public with private interest, the comparative interest on the landowners would be nominal as compared to the public at large; and

g) The multiplicity of contradictory judicial opinions on section 24 (2) of the 2013 Act has made the present set of circumstances *sui generis*. The constant flux in the legal position of law has posed significant challenges for the State and its authorities.

41. Having held that the concept of public interest need not be viewed narrowly only on the yardstick of loss to public exchequer and that these are the cases where public at large has acquired interest in the public infrastructures already complete or in process of completion, we are satisfied that if the doctrine of merger is applied mechanically in respect of Groups A and B.1 cases, it will lead to irreversible consequences. We are satisfied that the element of disparity between Groups A and B.1 cases *vis-à-vis* cases falling in Group C is liable to be eliminated and this can only be done by invoking our extraordinary power under Article 142 of the Constitution of India so that we are able to do complete justice between the expropriated landowners, the State and its developing agencies and most importantly the public in general who has acquired a vested right in the public infrastructure projects. We will do so through the operative part of this order.

F.4 Allegations of fraud committed by landowners

42. As stated aforesaid, Group E cases deal with allegations regarding fraud by landowners by suppressing subsequent sale transactions, ownership title disputes, etc.

43. The appellants contended that the landowners and affected parties deliberately concealed crucial facts from the High Court, including details about previous legal disputes and subsequent sale transactions. Such concealment constitutes fraud, and as a result, the landowners and affected parties should not be permitted to benefit from their own deceptive actions.

44. It is settled law that after the Notification under section 4(1) of the 1894 Act is published, any encumbrance created by the owner does not bind the State. In such a scenario, a *bona fide* purchaser of land for value does not acquire any right, title or interest in the land, and he is only entitled to receive compensation if not objected to by the landowner/transferor. Therefore, transfer of land in respect of which acquisition proceedings had been initiated, after issuance of Notification under section 4(1) of the 1894 Act, is *void* and a subsequent purchaser cannot challenge the validity of the notification or the irregularity in taking possession of the land.

45. We may also refer to the Delhi Lands (Restrictions on Transfers) Act, 1972 ("1972 Act", hereafter) which imposes certain restrictions on transfer of lands which have been acquired. Section 3 prohibits the transfer of any land acquired by the Central Government under the 1894 Act. Section 4 mandates obtaining prior permission from the competent authority for transferring any land intended for acquisition, following a declaration by the Central Government under section 6 of the 1894 Act. Section 5 requires the transferor of a land mentioned in a Notification under section 4(1) to submit a written application to the competent authority. The structure of the 1972 Act clearly indicates that any subsequent sale of the specified land without prior permission from the competent authority is not allowed, and if such sale is done through concealment, it amounts to fraud.

46. The law with respect to *"who"* can invoke section 24(2) of the 2013 Act has been well settled after the decision of this Court in ***Shiv Kumar*** (supra) wherein it was held that subsequent purchasers do

not have the locus to contest the acquisition and/or claim lapse of the acquisition proceedings. This decision has expressly overruled the previous decision of this Court in ***Manav Dharam Trust*** (supra) by recognizing the statutory intention behind the 2013 Act, which sought to benefit owners of lands who purchased the lands before the Notification under section 4(1) of the 1894 Act but not for the benefit of those who have purchased the lands after vesting of lands with the State. The relevant paragraphs of the decision are extracted hereunder:

> "21. Thus, under the provisions of Section 24 of the 2013 Act, challenge to acquisition proceeding of the taking over of possession under the 1894 Act cannot be made, based on a void transaction nor declaration can be sought under Section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the 2013 Act is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the 1894 Act. The 2013 Act does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the 2013 Act. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.
>
> 26. […] No declaration can be sought by a purchaser under Section 24 that acquisition has lapsed, effect of which would be to get back the land. They cannot seek declaration that acquisition made under the 1894 Act has lapsed by the challenge to the proceedings of taking possession under the 1894 Act. Such right was not available after the purchase in 2000 and no such right has been provided to the purchasers under the 2013 Act also. Granting a right to question acquisition would be against the public policy and the law which prohibits such transactions; it cannot be given effect to under the guise of subsequent legislation containing similar provisions.

> Subsequent legislation does not confer any new right to a person based on such void transaction; instead, it includes a provision prohibiting such transactions without permission of the Collector as provided in Section 11(4).
>
> 28. We hold that Division Bench in *Manav Dharam Trust* does not lay down the law correctly. Given the several binding precedents which are available and the provisions of the 2013 Act, we cannot follow the decision in *Manav Dharam Trust* […]."

47. Counsel representing the landowners have contested the correctness of the decision in ***Shiv Kumar*** (supra) and urged this Court to refer it to a larger Bench for reconsideration. This was a contention raised in desperation overlooking that ***Shiv Kumar*** (supra) has been approved by the Constitution Bench in ***Manoharlal*** ***[5-Judge, lapse]*** (supra). We are, thus, not impressed by the aforesaid contention and reiterate that ***Shiv Kumar*** (supra) represents the correct exposition of law.

48. Coming to the specifics of each case *qua* subsequent purchasers or disputes regarding the title of the subject lands, we have already clarified the scope of our inquiry in ***Tejpal*** (supra). At the expense of reiterating, as far as the concealment of material facts regarding subsequent sale transactions, earlier round of litigations etc. are concerned, it is noted that the landowners and affected parties are under no obligation to either confirm or deny the allegations levelled against them. Nor have we directed the appellants to furnish original records or documents to substantiate their claim of concealment and suppression of material facts. Engaging in a factual inquiry at such an advanced stage of the legal process, especially without providing adequate opportunities to all parties, may not be fair. The cases listed in Group E involve complex questions of fact and we being the Court of the last resort, ought not to be involved in such elaborate fact-finding exercise. We, therefore, deem it appropriate to remit these cases to the High Court for proper adjudication on points of law as well as facts.

G. CONCLUSION

49. The following conclusion has been reached regarding each category of cases outlined at the beginning:

a) So far as the cases falling under **GROUP A** and **B.1** are concerned (for which we have already condoned delay and have granted leave through para 1 and 2 of this judgment), we hold that, owing to the exceptional and unprecedented situation having arisen for the reasons already discussed elaborately, we do not deem it necessary to draw any distinction among the cases classified under Group A and B.1 *vis-à-vis* cases falling in Group C. Consequently, taking an overall view of the matter and upon due consideration of the principles of uniformity, consistency, and public interest involved, we exercise the jurisdiction conferred upon this Court by Article 142 of the Constitution and issue the following directions in each of the cases that have been dealt with by this judgment and classified under Groups A and B.1:

i. The time limit for initiation of fresh acquisition proceedings in terms of the provisions contained in section 24(2) of the 2013 Act is extended by a year starting from 01st August, 2024 whereupon compensation to the affected landowners may be paid in accordance with law, failing which consequences, also as per law, shall follow;

ii. The parties shall maintain *status quo* regarding possession, change of land use and creation of third-party rights till fresh acquisition proceedings, as directed above, are completed;

iii. Since the landowners are not primarily dependent upon the subject lands as their source of sustenance and most of these lands were/are under use for other than agricultural purposes, we deem it appropriate to invoke our powers under Article 142 of the Constitution and dispense with the compliance of Chapters II and III of the 2013 Act whereunder it is essential to prepare a Social Impact Assessment Study Report and/or to develop alternative multi-crop irrigated agricultural land. We do so to ensure that the timeline of one year extended at (a) above to complete the acquisition process can be adhered to by the appellants and the GNCTD, which would also likely be beneficial to the expropriated landowners;

iv. Similarly, compliance with sections 13, 14, 16 to 20 of the 2013 Act can be dispensed with as the subject-lands are predominantly urban/semi-urban in nature and had earlier been acquired for public purposes of paramount importance. In order to simplify the compliance of direction at (a) above, it is further directed that every Notification issued under section 4(1) of the 1894 Act in this batch of cases, shall be treated as a Preliminary Notification within the meaning of section 11 of the 2013 Act, and shall be deemed to have been published as on 01st January, 2014

v. The Collector shall provide hearing of objections as per section 15 of the 2013 Act without insisting for any Social Impact Assessment Report and shall, thereafter, proceed to take necessary steps as per the procedure contemplated under section 21 onwards of Chapter-IV of 2013 Act, save and except where compliance of any provision has been expressly or impliedly dispensed with;

vi. The landowners may submit their objections within a period of four weeks from the date of pronouncement of this order. Such objections shall not question the legality of the acquisition process and shall be limited only to clauses (a) and (b) of section 15(1) of the 2013 Act;

vii. The Collector shall publish a public notice on his website and in one English and one vernacular newspapers, within two weeks of expiry of the period of four weeks granted under direction (f) above;

viii. The Collector shall, thereafter, pass an award as early as possible but not exceeding six months, regardless of the maximum period of twelve months contemplated under section 25 of the 2013 Act. The market value of the land shall be assessed as on 01st January, 2014 and the compensation shall be awarded along with all other monetary benefits in accordance with the provisions of the 2013 Act except the claim like rehabilitation etc.;

ix. The Collector shall consider all the parameters prescribed under section 28 of the 2013 Act for determining the compensation for the acquired land. Similarly, the

Collector shall determine the market value of the building or assets attached with the land in accordance with section 29 and shall further award solatium in accordance with section 30 of the 2013 Act;

x. In the peculiar facts and circumstances of this case, since it is difficult to reverse the clock back, the compliance of Chapter (V) pertaining to "Rehabilitation and Resettlement Award" is hereby dispensed with; and

xi. The expropriated landowners shall be entitled to seek reference for enhancement of compensation in accordance with Chapter-VIII of the 2013 Act.

b) The SLPs under **GROUP B.2** have been rendered infructuous as the appeals carried by the appellant-authorities have already been allowed by this Court and the impugned judgment and order of the High Court have been set aside after applying the law laid down in ***Manoharlal*** ***[5-Judge, lapse]*** (supra). No question of filing a subsequent SLP against the same judgment and order by the appellants, therefore, arises. These SLPs are accordingly dismissed at their threshold.

c) In one case under **GROUP C.1** (**GNCTD VS. RAMPHAL SINGH** [Diary No.- 19697/2022]), it is an admitted position of the appellant/GNCTD that neither possession has been taken nor compensation granted. With the twin conditions under section 24(2) of the 2013 Act having been met, applying the principles laid down in ***Manoharlal*** ***[5-Judge, lapse]*** (supra) is, therefore, unwarranted in this context. Thus, keeping in mind the principles of public interest that we have carved out earlier, it is imperative to invoke our jurisdiction under Article 142 of the Constitution and subject this case to the eleven directions previously issued for Groups A and B.1.

d) With respect to the SLPs (now civil appeals, leave having been granted by us) which fall in **GROUP C.2** and **C.3**, the same are directed against one or the other judgment of the High Court where acquisition has been declared to have lapsed under section 24 (2) of the 2013 Act. While doing so, the High Court has followed the decision of this Court in ***Pune Municipal Corporation*** *(supra)* case or such other decisions,

all of which have since been overruled by the Constitution Bench in ***Manoharlal*** ***[5-Judge, lapse]*** (supra). Since the twin conditions under section 24(2) of the 2013 Act have not been met in these Civil Appeals, the land acquisition proceedings would not lapse following the test laid down in ***Manoharlal*** ***[5-Judge, lapse]*** (supra). These Civil Appeals are accordingly allowed, the impugned judgments of the High Court in each case are set aside and the acquisition of the landowners' lands under the 1894 Act is accordingly upheld. This will, however, not preclude the landowners from recovery of the compensation amount, if already not paid or to the extent it is not paid, along with interest and other statutory benefits under the 1894 Act. Similarly, they shall be at liberty to seek reference under section 18 of the 1894 Act in accordance with law. The GNCTD and its authorities are directed to take physical possession of the lands falling under Group C.2 and C.3 forthwith, if not already taken and continue uninterruptedly to complete the public infrastructure projects. We may clarify that this will not prevent cases within this Group, if any, from being remanded to the High Court for the specific purpose of conducting a factual inquiry regarding fraud, as we intend to do in the subsequent sub-paragraph.

e) For the reasons given in Section F.4 *(Allegations of fraud committed by landowners)*, the cases listed in **GROUP E** are hereby remitted to the High Court for adjudication of the facts as well as the law as a fact-finding inquiry is necessary to ascertain the rightful claimant for receiving the compensation. We hereby set aside the orders of the High Court that were under challenge in the Civil Appeals/M.A.s and revive the relevant writ petitions which shall stand restored on the file of the High Court for this limited purpose on remand being ordered. We issue the following directions:

i. The Chief Justice of the High Court is requested to constitute a dedicated bench to decide these writ petitions in the manner indicated hereafter. The nominated bench will accord an opportunity to the landowners/subsequent purchasers, the GNCTD, and the DDA to submit additional documents on affidavits whereupon such bench shall embark on an exercise to decide who between the

landowner(s) and the subsequent purchaser(s) is the rightful claimant to receive compensation. The nominated bench will have the authority to obtain independent fact-finding enquiry reports, if deemed necessary. The inquiry could include determination as to whether after the Notification under section 4(1) of the 1894 Act, any transfer could have been effected and even if effected, whether such transfer is permitted by any law. Once compensation is determined, the relevant authority in the land acquisition department shall deposit the same with the reference court. The reference court shall then invest the deposited amount in a short-term interest-bearing fixed deposit account with a nationalized bank, ensuring its periodical renewal until the relevant writ petition is disposed of by the nominated bench. Release of the invested amount together with accrued interest to the rightful claimant will be contingent upon the decision of the High Court.

ii. The question as to whether the cases in that group will be eventually covered by the directions issued by us in exercise of power under Article 142 of the Constitution of India or whether such case will be covered in terms of the direction contained in sub-paras above, will depend upon and will be decided by the High Court in accordance with law based upon facts and circumstances of each case.

50. The above directions however shall not apply to the following miscellaneous matters **(GROUP D)** which have been incorrectly tagged in the present batch. While four of the cases in **Group D.1** have been filed by the landowners seeking relief different from the relief claimed in the appeals filed by the appellants, in one case the DDA is before us by way of an M.A. These cases shall be listed separately in the week commencing 22nd July, 2024. The details of the cases are as follows:

a) DELHI ADMINISTRATION AND ORS. VS. M/S AUTO GRIT (PETROL PUMP) AND ORS. [C.A. No. 542/2016]: The relief sought in this Civil Appeal is particularly regarding the release of the land under section 48 of the 1894 Act.

b) **RAJENDER SINGH CHAUHAN VS. TARUN KAPOOR AND ORS. [CONMT.PET. (C) NO. 189/2019 IN C.A. NO. 2690/2017]:** In this Contempt Petition, the contempt petitioner-landowner, dissatisfied with the DDA's lack of action in initiating new acquisition proceedings pursuant to the dismissal of the Civil Appeal *vide* judgment and order dated 13th February, 2017, has filed a contempt petition.

c) **DDA VS. RAJINDER SINGH CHAUHAN AND ORS. [M.A. No. 806/2020]:** This M.A. is connected to the case that led to the contempt petition mentioned earlier in point (ii). In this M.A., the DDA is seeking a modification of the judgment and orders dated 13th February, 2017 and 31st July, 2019, whereby the Civil Appeal and the Review Petition preferred by the DDA were dismissed, respectively. Although this M.A. could have been decided based on the directions we have issued for Group D, since it is connected to the aforementioned contempt petition and no notice either on delay or on merits has been issued in this M.A. so far, we deem it appropriate to separate it and have it heard independently along with the aforesaid contempt petition.

d) **GNCTD VS. SUSHIL KUMAR GUPTA [M.A. No. 1888/2023]:** This M.A. has been filed by the landowner seeking recall of the judgment and order dated 10th February, 2023 passed by this Court whereby the Civil Appeal preferred by the GNCTD against the judgment and order of the High Court was allowed in view of ***Manoharlal [5-Judge, lapse]*** (supra).

e) **LAC VS. VIVEK & ORS. [M.A. ...DIARY NO. 32991/2023]:** This M.A. has been filed by the landowner seeking recall of the judgment and order dated 9th February, 2023 passed by a Bench of three Hon'ble Judges of this Court whereby the Civil Appeal preferred by the LAC was partly allowed and the judgment and order of the High Court was set aside and the same was remanded back to the High Court for a fresh determination. It is imperative to note that no notice has been issued, either on delay or on merits.

51. **Group D.2** involves the following cases where no notice has been issued so far by this Court either on delay or on merits. It

is, therefore, necessary in the interest of justice to de-tag these cases for separate listing in the week commencing 22nd July, 2024:

a) **DDA VS. GITA SABHARWAL** [DIARY NO. 21746/2022];

b) **DDA VS. NARENDAR KUMAR** [DIARY NO. 674/2023, MA];

c) **DDA VS. BAL KISHAN** [DIARY NO. 5711/2023, MA];

d) **DDA VS. ISHAAQ** [DIARY NO. 1713/2023, MA];

e) **DDA VS. ABHISHEK JAIN** [DIARY NO. 40951/2022, MA];

f) **DDA VS. M/S FLASH PROPERTIES PVT LTD** [DIARY NO. 42177/2022, MA];

g) **DDA VS. SHAKEEL AHMED** [DIARY NO. 3577/2023, MA];

h) **DDA VS. SURESH KUMAR NANGIA** [DIARY NO. 39901/2022, MA];

i) **DDA VS. PHIRE RAM AND ORS.** [MA 278/2023];

j) **DDA VS. MADAN MOHAN SINGH** [DIARY NO. 39898/2022, MA]; and

k) **DDA VS. RAJINDER SINGH DHANKAR** [DIARY NO. 1215/2023, MA].

52. The aforementioned civil appeals and miscellaneous applications are disposed of on the above terms. Pending applications, if any, shall stand disposed of. No order as to costs.

53. Before parting, we deem it appropriate to provide a cautionary note that the limited fact-finding conducted by this Court may not be entirely accurate due to the complex nature of cases involving subsequent sale transactions, earlier rounds of litigation, land titles, and status of compensation and/or possession. We accordingly grant liberty to the parties to approach the High Court if any disputes arise in future or if further clarification is required, which will decide these cases based on the principles outlined above, taking into account the facts and, if necessary, the merits of the case.

54. It is also needless to clarify that the High Court shall proceed to decide the cases remitted to it as expeditiously as possible, but subject to its convenience, in accordance with law.

ANNEXURE 1
CATEGORY OF CASES IN THE PRESENT BATCH

GROUP	SUB-GROUPS	DESCRIPTION	CASE TITLE AND NUMBER	TOTAL NUMBER OF CASES
GROUP A (M.A.s)	Not Applicable	M.A.s filed by the appellants-authorities primarily pleading change in law and seeking recall of the judgments and orders of this Court dismissing the Civil Appeals and/or Review Petitions in the first round.	1. DDA VS. PHIRE RAM [MA 277/2023] 2. DDA VS. JAI PRAKASH GUPTA [MA 346/2023]	**2**
GROUP B (Civil Appeal in first round)	**Group B.1**	Civil Appeal dismissed in the first round; SLP pending in the second round (present batch)	1. GNCTD & ANR VS. M/S BSK REALTORS LLP & ANR. [DIARY NO. 17623/2021] 2. LAC VS. MADAN MOHAN SINGH & ORS. [DIARY NO. 32072/2022] 3. LBD VS. DEEKSHA SURI & ORS. [DIARY NO. 18130/2021] 4. GNCTD & ANR VS. LATINDER SINGH & ORS. [DIARY NO. 19132/2021] 5. GNCTD & ANR VS. ANJU SHARMA & ORS. [DIARY NO.10132/2022] 6. GNCTD VS. ANIL MONGA & ORS. [DIARY NO. 15707/2022] 7. LBD VS. JYOTSNA SURI & ORS. [DIARY NO. 15710/2022] 8. GNCTD VS. KUSHAM JAIN & ANR. [SLP(C) NO. 19012/2022] 9. GNCTD VS. RS RETAIL STORES Pvt Ltd & ORS. [DIARY NO. 25834/2022] 10. DDA VS. CHANDRALEKHA SOLOMON & ORS. [SLP(C) 30127/2015] 11. GNCTD VS. MATRIX INVESTMENT PVT. LTD. & ANR. [SLP(C) NO.11394/2016] 12. LBD VS. VIKRAM MADHOK & ORS [DIARY NO. 22127/2021] 13. GNCTD VS. BODE RAM & ORS. [DIARY NO. 28216/2021] 14. GNCTD VS. BAKSHI RAM AND SONS (HUF) & ORS. [DIARY NO. 3566/2022] 15. GNCTD VS. M/S SANTOSH INFRATECH PRIVATE LTD. & ORS. [DIARY NO. 8414/2022] 16. GNCTD VS. EMMSONS INTERNATIONAL LTD. & ORS. [DIARY NO. 8556/2022]	**40**

			17. GNCTD VS. SUDARSHAN KAPOOR & ORS. [DIARY NO. 10221/2022] 18. GNCTD VS. M/S BGNS INFRATECH PVT LTD. COMPANY & ORS. [DIARY NO. 10222/2022] 19. GNCTD VS. BHIM SINGH & ORS. [DIARY NO. 10474/2022] 20. GNCTD VS. ISHWAR SINGH & ORS. [DIARY NO. 10475/2022] 21. GNCTD VS. ISHAAQ & ORS. [DIARY NO. 15577/2022] 22. LBD VS. SIRI BHAGWAN & ORS. [DIARY NO. 15940/2022] 23. GNCTD VS. HIMMAT SINGH & ORS [DIARY NO. 16176/2022] 24. GNCTD VS. ALKA LUTHRA & ORS. [DIARY NO. 27994/2022] 25. LBD VS. M/S PRASHID ESTATE PVT LTD & ORS. [SLP (C) NO. 28847/2015] 26. GNCTD VS. SH. ALIMUDDIN & ANR. [SLP (C) 26525/2015] 27. GNCTD VS. LALIT JAIN & ORS. [SLP (C) 17207/2017] 28. DDA VS. SURENDER SINGH & ANR. [SLP (C) 592-593/2020] 29. GNCTD VS. GEETA GULATI AND ORS. [DIARY NO. 22388/2021] 30. LBD & ANR. VS. ISHWAR SINGH AND ORS. [DIARY NO. 22391/2021] 31. LBD & ANR. VS. PRAVEEN KUMAR JAIN & ANR. [DIARY NO. 23612/2021] 32. LBD & ANR. VS. BRAHAM SINGH [DIARY NO. 24447/2021] 33. GNCTD VS. AMAN SINGH & ORS. [DIARY NO. 28971/2021] 34. LAC VS. M/S FLASH PROPERTIES PVT LTD [DIARY NO. 2404/2022] 35. GNCTD VS. GULBIR SINGH VERMA & ORS. [DIARY NO. 4937/2022] 36. DDA VS. HARBANS KAUR & ORS. [DIARY NO. 10090/2022] 37. LBD VS. SUKHBIR SINGH [DIARY NO. 15722/2022] 38. GNCTD VS. KRISHNA RAJAURIA [DIARY NO. 18873/2022] 39. DDA VS. TEJPAL & ORS. [DIARY NO. 20255/2022] 40. DDA VS. TANVIR BEGUM & ORS. [DIARY NO. 21620/2022]	

	Group B.2	Civil Appeal allowed in the first round; SLP pending in the second round (present batch)	1. GNCTD VS. BHIM SAIN GOEL & ORS. [DIARY NO. 18142/2022] 2. LBD AND ORS VS. SATISH KUMAR [DIARY NO. 19142/2022] 3. LBD AND ANR VS. BHAGWAT SINGH & ORS [DIARY NO. 19687/2022] 4. DDA VS. OMBIR SINGH & ORS. [DIARY NO. 20104/2022] 5. DDA VS. MEHAR CHAND SHARMA & ORS. [DIARY NO. 20203/2022]	**5**
GROUP C (SLP in first round)	**Group C.1**	SLP dismissed *in limine* in the first round; SLP pending in the second round (present batch) • *Land acquisition proceedings would lapse following the test laid down in* ***Manoharlal*** ***[5-Judge, lapse]*** *(supra) as the twin conditions under section 24(2) of the 2013 Act are met [non-payment of compensation to the landowners together with failure of the State to take physical possession of the acquired lands].*	1. GNCTD VS. RAMPHAL SINGH & ORS. [DIARY NO. 19697/2022	**1**
	Group C.2	SLP dismissed *in limine* in the first round; SLP pending in the second round (present batch) • *Land acquisition proceedings would not lapse following the test laid down in* ***Manoharlal*** ***[5-Judge, lapse]*** *(supra) as the twin conditions under section 24(2) of the 2013 Act are not met.*	1. GNCTD & ANR. VS. ANJU LATA & ANR. [DIARY NO. 19691/2022]	**1**

	Group C.3	SLP from either the first round or both rounds is pending in the present batch • *Land acquisition proceedings would not lapse following the test laid down in **Manoharlal** **[5-Judge, lapse]** (supra) as the twin conditions under section 24(2) of the 2013 Act are not met.*	1. DDA VS. GYAN CHAND & ORS. [DIARY NO. 32629/2022] 2. DDA VICE CHAIRMAN VS. SHANTI INDIA PVT LTD & ORS. [SLP(C) NO. 7215/2017] 3. LAC VS. SEWARAM & ORS. [DIARY NO. 9628/2021] 4. GNCTD VS. GITA SABHARWAL & ANR. [DIARY NO. 29469/2021] 5. VS. GYAN CHAND & ORS. [DIARY NO. 3812/2022] 6. DDA VS. SIMLA DEVI & ORS. [DIARY NO. 20229/2022] 7. DDA VS. YOG RAJ & ORS. [DIARY NO. 20555/2022] 8. DDA VS. SEWA RAM & ORS. [DIARY NO. 33077/2022] 9. GNCTD & ANR. VS. ISHAQ (DEAD) & ORS. [DIARY NO. 6981/2021] 10. DDA VS. GOPAL SINGH & ORS. [DIARY NO. 18366/2022] 11. GNCTD & ANR. VS. MADHU & ANR. [DIARY NO. 19685/2022] 12. LBD & ANR. VS. NARENDER SINGH & ORS. [DIARY NO. 19689/2022] 13. GNCTD VS. SURESH KUMAR & ORS. [DIARY NO. 19693/2022] 14. GNCTD VS. GHANSHYAM DASS & ORS. [DIARY NO. 19694/2022] 15. GNCTD VS. JYOTI DEVI & ORS. [DIARY NO. 19724/2022] 16. DDA VS. PARSHOTAM JOSHI & ORS. [DIARY NO. 20260/2022]	**16**
GROUP D (Miscella neous matters)	**Group D.1**	• Cases filed by landowners; • Cases seeking a different relief	1. DELHI ADMINISTRATION & ORS. VS. M/S AUTO GRIT (PETROL PUMP) & ORS. [CA 542/2016] 2. RAJENDER SINGH CHAUHAN VS. TARUN KAPOOR & ORS. [CONMT.PET. (C) NO.189/2019 IN C.A. NO. 2690/2017] 3. DDA VS. RAJINDER SINGH CHAUHAN & ORS. [MA 806/2020] 4. GNCTD VS. SUSHIL KUMAR GUPTA [MA 1888/2023] 5. LAC VS. VIVEK & ORS. [DIARY NO. 32991/2023, MA]	**5**

	Group D.2	Cases where no notice has been issued either on delay or on merits	1. DDA VS. GITA SABHARWAL [DIARY NO. 21746/2022] 2. DDA VS. NARENDAR KUMAR [DIARY NO. 674/2023, MA] 3. DDA VS. BAL KISHAN [DIARY NO. 5711/2023, MA] 4. DDA VS. ISHAAQ [DIARY NO. 1713/2023, MA] 5. DDA VS. ABHISHEK JAIN [DIARY NO. 40951/2022, MA] 6. DDA VS. M/S FLASH PROPERTIES PVT LTD [DIARY NO. 42177/2022, MA] 7. DDA VS. SHAKEEL AHMED [DIARY NO. 3577/2023, MA] 8. DDA VS. SURESH KUMAR NANGIA [DIARY NO. 39901/2022, MA] 9. DDA VS. PHIRE RAM & ORS. [MA 278/2023] 10. DDA VS. MADAN MOHAN SINGH [DIARY NO. 39898/2022, MA] 11. DDA VS. RAJINDER SINGH DHANKAR [DIARY NO. 1215/2023, MA]	**11**
TOTAL				**81**
GROUP E (Suppression of facts *qua* subsequent purchaser/ title etc.)	Not Applicable	Cases where the landowners are alleged to have committed fraud by suppressing facts regarding them being subsequent purchasers and/or the land being vested in Gaon Sabha	1. GNCTD & ANR VS. M/S BSK REALTORS LLP & ANR. [DIARY NO. 17623/2021] 2. LAC VS. MADAN MOHAN SINGH & ORS. [DIARY NO. 32072/2022] 3. LBD VS. DEEKSHA SURI & ORS. [DIARY NO. 18130/2021] 4. GNCTD & ANR. VS. ANJU SHARMA & ORS. [DIARY NO.10132/2022] 5. GNCTD VS. ANIL MONGA & ORS. [DIARY NO. 15707/2022] 6. LBD VS. JYOTSNA SURI & ORS. [DIARY NO. 15710/2022] 7. GNCTD VS. RS RETAIL STORES Pvt Ltd & ORS. [DIARY NO. 25834/2022] 8. DDA VS. JAI PRAKASH GUPTA [MA 346/2023] 9. GNCTD VS. MATRIX INVESTMENT PVT. LTD. & ANR. [SLP(C) NO.11394/2016] 10. LBD VS. VIKRAM MADHOK & ORS. [DIARY NO. 22127/2021] 11. GNCTD VS. BODE RAM & ORS. [DIARY NO. 28216/2021] 12. GNCTD VS. BAKSHI RAM AND SONS (HUF) & ORS. [DIARY NO. 3566/2022]	**32**

			13. GNCTD VS. M/S SANTOSH INFRATECH PVT LTD. & ORS. [DIARY NO. 8414/2022] 14. GNCTD VS. EMMSONS INTERNATIONAL LTD. & ORS. [DIARY NO. 8556/2022] 15. GNCTD VS. SUDARSHAN KAPOOR & ORS. [DIARY NO. 10221/2022] 16. GNCTD VS. M/S BGNS INFRATECH PVT LTD. COMPANY & ORS. [DIARY NO. 10222/2022] 17. GNCTD VS. ISHAAQ & ORS. [DIARY NO. 15577/2022] 18. LBD VS. SIRI BHAGWAN & ORS. [DIARY NO. 15940/2022] 19. GNCTD VS. ALKA LUTHRA & ORS. [DIARY NO. 27994/2022] 20. GNCTD VS SH. ALIMUDDIN & ANR. [SLP (C) 26525/2015] 21. GNCTD VS. LALIT JAIN & ORS. [SLP (C) 17207/2017] 22. LAC VS. M/S FLASH PROPERTIES PVT LTD [DIARY NO. 2404/2022] 23. LBD VS. SUKHBIR SINGH [DIARY NO. 15722/2022] 24. DDA VS. GOPAL SINGH & ORS. [DIARY NO. 18366/2022] 25. GNCTD AND ANR VS. MADHU & ANR. [DIARY NO. 19685/2022] 26. LBD AND ANR VS. NARENDER SINGH & ORS. [DIARY NO. 19689/2022] 27. GNCTD AND ANR VS. ANJU LATA & ANR. [DIARY NO. 19691/2022] 28. GNCTD VS. SURESH KUMAR & ORS. [DIARY NO. 19693/2022] 29. GNCTD VS. GHANSHYAM DASS & ORS. [DIARY NO. 19694/2022] 30. GNCTD VS. JYOTI DEVI & ORS. [DIARY NO. 19724/2022] 31. DDA VS. TEJPAL & ORS. [DIARY NO. 20255/2022] 32. DDA VS. PARSHOTAM JOSHI & ORS. [DIARY NO. 20260/2022]	

Note: Cases categorized under Group E, owing to their distinct facts and circumstances, may overlap with Groups A to C (excluding Group B.2, which we have dismissed as rendered infructuous). As a result, any directions issued under Group E are intended exclusively for that category alone, and such cases shall be automatically excluded from the purview of Groups A to C. For added clarity, it is stated that all cases falling under Group E shall be remanded back to the High Court, regardless of their classification within the aforementioned categories.

Result of the case: Civil Appeals and Miscellaneous applications disposed of.

†*Headnotes prepared by:* Ankit Gyan

[2024] 5 S.C.R. 1211 : 2024 INSC 456

Delhi Development Authority
v.
Tejpal & Ors.

Civil Appeal No. 6798 of 2024

17 May 2024

[Surya Kant,* Dipankar Datta and Ujjal Bhuyan, JJ.]

Issue for Consideration

Whether the appellants made out sufficient cause for condonation of delay on the grounds of subsequent change of law brought in by Indore Development Authority v. Shailendra [2018] 2 SCR 1 and Indore Development Authority v. Manoharlal [2020] 3 SCR 1, public interest and justice, COVID-19 pandemic, suppression of material facts by the landowners, leeway to be granted to government entities etc.

Headnotes†

Land Acquisition – Land Acquisition Act, 1894 – Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 – s.24(2) – Deemed lapse of land acquisition proceedings initiated under the 1894 Act, on non-payment of compensation or non-taking of possession – Interpretation – Change of law – Condonation of delay sought on the basis of such subsequent change of law – Limitation Act, 1963 – s.24(2) was interpreted in Pune Municipal Corporation v. Harak Chand Mistrimal Solanki [2014] 1 SCR 783 and Sree Balaji Nagar Residential Association v. State of Tamil Nadu [2014] 7 SCR 799 – Following Pune Municipal Corporation and Sree Balaji, the High Court allowed the landowners' claim and declared the acquisition proceedings as lapsed on account of non-payment of compensation or non-taking of possession – However, eventually five-judge bench in Indore Development Authority v. Manoharlal [2020] 3 SCR 1 overruled Pune Municipal Corporation and Sree Balaji and Indore Development Authority v. Shailendra [2018] 2 SCR 1 – Present cases filed by the appellants before and after the decision in Shailendra as well as after the decision

* Author

in Manoharlal in view of re-interpretation of s.24(2) of the 2013 Act therein, against various orders of the High Court whereby acquisition proceedings were declared to have lapsed in terms of s.24(2) – Delay in filing – Condonation of delay sought on the basis of subsequent change of law in view of the decisions in Shailendra and Manoharlal – Impermissibility:

Held: In most of the present cases, the prescribed period of limitation had already expired long before the judgments in Shailendra and Manoharlal were delivered – Appellants let the limitation period lapse because they saw no case on merits for appeal – However, when the law was subsequently re-interpreted in Shailendra and Manoharlal, they approached this Court with the present matters – Instead of showing a sufficient cause arising within the period of limitation, the appellants are using an event after the expiry of such period to justify the delay – A party cannot be allowed to take advantage of its deliberate inaction during the limitation period – If subsequent change of law is allowed as a valid ground for condonation of delay, it would open a Pandora's Box where all the cases that were subsequently overruled, or the cases that had relied on such cases, would approach this Court and would seek a relief based on the new interpretation of law – When a case is overruled, it is only its binding nature as a precedent that is taken away and the lis between the parties is still deemed to have been settled by the overruled case – When Manoharlal overruled Pune Municipal Corporation and Sree Balaji and other cases relying on them, it only overruled their precedential value, and did not reopen the lis between the parties – Therefore, the mere fact that the impugned orders in the present case were overruled by Manoharlal would not be a sufficient ground to argue that the cases should be reopened – Delay cannot be condoned based on subsequent change of law brought in by Shailendra and Manoharlal. [Paras 22, 25-27, 29]

Land Acquisition – Public interest – Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 – s.24(2) – Condonation of delay in filing appeals sought by the appellants-government entities on grounds of public interest – Public infrastructure projects such as hospitals, schools, expansion of metro, etc. built on a large number of acquired lands – Elements of public interest:

Held: While balancing the interest of the public exchequer against that of individuals, there are many other interests at stake, and it might not be possible to undo the acquisitions without causing significant cascading harms and losses to public infrastructure – Effect of non-condonation of delay would go beyond mere financial loss to the exchequer, and instead extend to the public at large – There would be unscrambling the egg if compensation paid would have to be clawed back or possession taken would have to be reversed – In many cases, development projects might also have to be undone – Rights have been vested to the public at large, given the public infrastructure that has come up on a large number of these acquired lands especially, in cases where the possession was taken – When balancing public with private interest, the quantum and adequacy of compensation do not compel much – Hence, the comparative impact on the respondent-landowners would be minimal – Multiplicity of contradictory judicial opinions on s.24(2) of the 2013 Act made the present set of circumstances *sui generis* – The constant flux in the legal position of law created significant challenges for the appellants while approaching this Court – Impact of not condoning the delay, discussed – Larger interest of justice mandates condonation of the delay. [Paras 50-56]

Land Acquisition – Land Acquisition Act, 1894 – Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 – Limitation Act, 1963 – s.17 – Condonation of delay sought on allegations of concealment by respondents-landowners – High Court allowing the landowners' claim declared the acquisition proceedings as lapsed – Condonation of delay in filing present appeals sought by the appellants-authorities *inter alia* on ground of suppression of material facts by the landowners before High Court in certain cases as regards previous unsuccessful litigations, acquisitions being already complete, landowners being only subsequent purchasers who acquired the lands after they were notified for the acquisition – Scope of inquiry:

Held: Neither the landowners were called upon to refute or admit the allegations of concealment of facts attributed to some of them nor, the appellants were asked to produce original records and documents to substantiate their allegation of concealment and suppression of material facts – Entering into an arena of factual controversy at such an advanced stage of litigation, and

that too without giving adequate opportunities to the parties can be a potential threat to the cause of justice – No definitive opinion expressed on allegations of concealment – However, appellants have discharged *prima facie* burden for the limited purpose of making out a case for condonation of delay in the cases concerned – A detailed fact-finding inquiry is necessary to ascertain the rightful title-holder and the claimant of receiving the compensation – Hence, there exist sufficient grounds for the condonation of delay – Orders of the High Court set aside in such cases – Relevant writ petitions stand restored on the file of the High Court – Directions issued. [Paras 20, 21, 70]

Limitation Act, 1963 – Objective – s.5 – "sufficient cause"; "within such period" – Law as regards condonation of delay – Discussed.

Limitation Act, 1963 – "sufficient cause" – Condonation of delay – Subsequent overruling of a judgement cannot be a sufficient cause for condonation of delay – Exception:

Held: Cases pending before this Court will be an exception – If the *lis* is still pending and has not reached finality, those cases would be decided on the basis of five-judge bench decision in Indore Development Authority v. Manoharlal **[2020] 3 SCR 1** as a decision on the interpretation of law is applied retrospectively unless the court specifically rules as to its prospective applicability. [Paras 29, 30]

Judgments/Orders – Judgments interpreting law – Applicability:

Held: Judgment interpreting law is applied retrospectively unless specifically made prospective. [Para 30]

Land Acquisition – Limitation – Delay on part of government entities – Condonation of – Government entities, if to be allowed leeway for:

Held: The delay cannot be condoned mechanically only because the appellant is a government entity – Government entities must show *bona fide* and demonstrate diligence in pursuing the matter – The proposition that government entities ought to be afforded greater latitude on issues of delay on account of administrative exigencies, is no longer a precedent to be followed routinely – If delay were to be condoned merely on the basis of a broad general assertion of bureaucratic indifference, without requiring

demonstration of bona fide or an act of mala fide on the part of specific individuals, it would create an artificial distinction between the private parties and the government entities *vis-à-vis* the law of limitation which would not be in conformity with the spirit of equality before law as guaranteed under the Constitution – Allowing such latitude would further distort incentives for the government and encourage more laxity by the bureaucracy in its general functioning, thereby undermining quality governance. [Paras 35, 39]

Land Acquisition – Limitation – COVID-19 pandemic – Cases filed after the expiration of the period of limitation – Appellants sought condonation of delay *inter alia* on account of COVID-19 pandemic – Order dtd.23.03.2020 passed in In Re: Cognizance for Extension of Limitation whereby period of limitation was extended for proceedings before all courts/tribunals in the country from 15.03.2020 till further orders, and various orders passed by this Court from time to time – Benefit thereof, if can be availed by appellants:

Held: No – Orders passed In Re: Cognizance for Extension of Limitation were intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law – Appellants can avail the benefit of the aforesaid order only in a case where the period of limitation expired between 15.03.2020 and 28.02.2022 – Thus, if the delay occurred on account of the COVID-19 pandemic as laid down in In Re: Cognizance for Extension of Limitation, such delay can be condoned. [Paras 45, 64]

Constitution of India – Article 142 – Exercise of powers under – Land Acquisition – Cases where appellants did not take possession of the acquired land and also did not pay compensation and thus, cannot seek protection under Indore Development Authority v. Manoharlal [2020] 3 SCR 1 – Non-conclusion of acquisition proceedings – Exercise of powers u/Article 142:

Held: Substantial harm would ensue towards the public at large if the acquisition proceedings are not concluded promptly – To prevent such an outcome and after considering the unique facts and circumstances of such batch of cases, powers exercised u/Article 142 in the interests of doing complete justice – Directions issued. [Para 72, 73]

Case Law Cited

State of Manipur v. Koting Lamkang [2019] 13 SCR 565 : **(2019) 10 SCC 408;** *Sheo Raj Singh v. Union of India* [2023] 13 SCR 743 : **(2023) SCC OnLine SC 1278 – distinguished.**

GNCTD (through Secretary, Land and Building Dept.) v. KL Rathi Steels Ltd. **MA No. 414/2023;** *Pune Municipal Corporation v. Harak Chand Mistrimal Solanki* [2014] 1 SCR 783 : **(2014) 3 SCC 183;** *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* [2014] 7 SCR 799 : **(2015) 3 SCC 353;** *Yogesh Neema v. State of Madhya Pradesh* **(2016) 6 SCC 387;** *Indore Development Authority v. Shailendra* **(2018) 1 SCC 733;** *Indore Development Authority v. Shailendra* [2018] 2 SCR 1 : **(2018) 3 SCC 412;** *State of Haryana v. GD Goenka Tourism Corporation Ltd.* **(2018) 3 SCC 585;** *Indore Development Authority v. Shyam Verma* **(2020) 15 SCC 342;** *State of Haryana v. Maharana Pratap Charitable Trust (Regd.)* **(2018) SCC Online SC 3600;** *Indore Development Authority v. Manoharlal* [2020] 3 SCR 1 : **(2020) 8 SCC 129;** *Commissioner of Customs v. Candid Enterprises* **(2002) 9 SCC 764;** *CIT v. Saurashtra Kutch Stock Exchange Ltd.* [2008] 13 SCR 421 : **(2008) 14 SCC 171;** *Collector (LA), Anantnag v. Katiji* [1987] 2 SCR 387 : **(1987) 2 SCC 107;** *G. Ramegowda v. Spl. Land Acquisition Officer* [1988] 3 SCR 198 : **(1988) 2 SCC 142;** *Imrat Lal v. LAC* **(2014) 14 SCC 133;** *Neelima Srivastava v. State of UP* [2021] 8 SCR 167 : **(2021) SCC Online SC 610;** *Natural Resources Allocation, In re, Special Reference 1 of 2012* [2012] 9 SCR 311 : **(2012) 10 SCC 1;** *Postmaster General v. Living Media India Ltd* [2012] 1 SCR 1045 : **(2012) 3 SCC 563;** *Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd.* [2020] 9 SCR 472 : **(2021) 2 SCC 317;** *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project* [2008] 15 SCR 135 : **(2008) 17 SCC 448;** *Kumudini Ramdas Shah v. K.M. Mody* **AIR (1985) Bombay 320;** *Basawaraj v. Land Acquisition Officer* [2013] 8 SCR 227 : **(2013) 14 SCC 81;** *Perumon Bhagvathy Devaswom v. Bhargavi Amma* [2008] 11 SCR 1 : **(2008) 8 SCC 321;** *Raheem Shah v. Govind Singh* [2023] 10 SCR 913 : **(2023) SCC OnLine SC 910;** *Sarpanch, Lonand Gram Panchayat v. Ramgiri Gasavi & Anr.* [1967] 3 SCR 774 : **(1967) SCC OnLine SC 105;** *Ramlal v. Rewa Coalfields Ltd.* [1962] 2 SCR 762 : **(1961) SCC OnLine SC 3;** *Ummer v. Pottengal Subida* [2018] 3 SCR 596 : **(2018) 15 SCC 127;** *Meera Sahni v. Lt. Governor of Delhi* [2008] 10 SCR 1012 : **(2008) 9 SCC 177;** *Ajit Singh Thakur v. State of Gujarat* [1981]

[2 SCR 509] **: (1981) 1 SCC 495;** *Tilokchand & Motichand v. H.B. Munshi* [1969] 2 SCR 824 **: (1969) 1 SCC 110;** *Neelima Srivastava v. State of Uttar Pradesh* [2021] 8 SCR 167 **: (2021) SCC Online SC 610;** *R. Unnikrishnan v. V.K. Mahanudevan* [2014] 1 SCR 350 **: (2014) 4 SCC 434;** *Shyam Madan Mohan Ruia v. Messer Holdings Ltd.* [2019] 15 SCR 396 **: (2020) 5 SCC 252;** *Foreshore Coop. Housing Society Ltd. v. Praveen D. Desai.* [2015] 5 SCR 1075 **: (2015) 6 SCC 412;** *Nusli Neville Wadia v. Ivory Properties* [2019] 15 SCR 795 **: (2020) 6 SCC 557;** *Commissioner of Wealth Tax v. Amateur Riders Club* **(1994) Supp. 2 SCC 603;** *State of Madhya Pradesh v. Bherulal* [2020] 8 SCR 912 **: (2020) 10 SCC 654;** *In Re: Cognizance for Extension of Limitation* **(2020) 19 SCC 10;** *State of Jharkhand v. Lalu Prasad Yadav* [2017] 3 SCR 630 **: (2017) 8 SCC 1;** *High Court of Judicature of Patna v. Madan Mohan Prasad* [2011] 13 SCR 972 **: (2011) 9 SCC 65;** *GNCTD v. BSK Realtors* **SLP(C) Diary No. 17623/2021 – referred to.**

List of Acts

Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013; Limitation Act, 1963; Constitution of India; Supreme Court Rules, 2013.

List of Keywords

Land acquisition; Subsequent change of law; Contradictory judicial opinions; Law re-interpreted; Re-interpretation of law; Subsequent overruling of a judgement; Limitation; Condonation of delay; Sufficient cause for condonation of delay; Compensation deposited in the treasury; Possession not taken; Compensation not paid; Non-payment of compensation; Non-taking of possession; Acquisition proceedings declared to have lapsed; Period of limitation already expired; Delay not justified; Condonation of delay on ground of public interest; Sui generis; Deemed lapse of land acquisition proceedings; Public infrastructure projects such as hospitals, schools, metro; Public infrastructure projects built on acquired lands; Interest of the public exchequer; Financial loss to the public exchequer; Balancing public with private interest; Government entities; Equality before law; Concealment; Suppression of material facts by landowners; Detailed fact-finding inquiry; COVID-19 pandemic; condonation of delay on account of COVID-19 pandemic; Condonation of delay without issuing notice; Judgments interpreting law; Retrospectively; Prospectively; *Bona fide*; Diligence.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition(C) No. 26697 of 2019

From the Judgment and Order dated 14.11.2017 of the High Court of Delhi at New Delhi in WPC No.4427 of 2016

With

SLP(C) No.31870 of 2018, SLP(C)No. 32417 of 2018, SLP(C) No.22996 of 2015, C.A. No.1012 of 2017, SLP(C) No.3061-3062 of 2018, SLP(C) No. 3063-3064 of 2018, SLP (C) No. 3065-3066 of 2018, SLP(C) No. 3067-3068 of 2018, SLP(C) No. 3069-3070 of 2018, SLP(C) No. 3043-3044 of 2018, SLP(C) No. 3047-3048 of 2018, SLP(C) No. 3052-3053 of 2018, SLP(C) No. 3054-3055 of 2018, SLP(C) No. 3056-3057 of 2018, SLP(C) No. 3058-3059 of 2018, SLP(C) No. 740 of 2018, SLP(C) No. 2877 of 2018, SLP(C) No. 16349 of 2018, SLP(C) No. 12600 of 2019, SLP(C) No. 2259 of 2020, Diary No. 28682 of 2021, M.A. No.45 of 2023, In C.A. No.8649 of 2016, SLP (C) No.3071-3072 of 2018, SLP (C) No.738 of 2018, SLP (C) No.2876 of 2018, SLP (CIVIL) No. 2878 of 2018, SLP (C) No.5818 of 2018, Diary No. 8523 of 2018, SLP (C) No.16350 of 2018, SLP (C) No.16351 of 2018, SLP (C) No.16352 of 2018, SLP (C) No.16353 of 2018, SLP (C) No.16016 of 2021, SLP (C) No.28439 of 2018, SLP (C) No. 30446 of 2018, Diary No.28683 of 2021, SLP (C) No.30102 of 2018, SLP (C) No.30103 of 2018, SLP (C) No.31862 of 2018, SLP (C) No.31868 of 2018, SLP (C) No.31869 of 2018, SLP (C) No.32414 of 2018, SLP (C) No.32415 of 2018, SLP (C) No.32416 of 2018, SLP (C) No.394 of 2019, SLP (C) No.9059 of 2019, SLP (C) No.7948 of 2019, SLP (C) No.7950 of 2019, SLP (C) No.7949 of 2019, SLP (C) No.9061 of 2019, MA No. 1268 of 2019 In R.P. (C) 406 of 2017 In CA No. 8674 of 2016, Diary No.21692 of 2019, SLP (C) No.21759 of 2019, SLP (C) No.20908 of 2019, SLP (C) No.20798 of 2019, SLP (C) No.22808 of 2019, SLP (C) No.22847 of 2019, SLP (C) No.22859 of 2019, SLP (C) No.22849 of 2019, SLP (C) No.22860 of 2019, SLP (C) No.22851 of 2019, SLP (C) No.22862 of 2019, SLP (C) No.22863 of 2019, SLP (C) No.22864 of 2019, SLP (C) No.22865 of 2019, SLP (C) No.22853 of 2019, SLP (C) No.22854 of 2019, SLP (C) No.22855 of 2019, SLP (C) No.29190 of 2019, SLP (C) No.29191 of 2019, SLP (C) No.29192 of 2019, SLP (C) No.24781 of 2019, MA No. 1267 of

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446 of 2023 In CA No.6262 of 2017, M.A. Diary No. 522 of 2023 In CA No. 8895 of 2016, M.A. Diary No. 541 of 2023 In Diary No. 5020 of 2020, M.A. Diary No. 11554 of 2023 In C.A. No. 10747 of 2016, M.A. Diary No. 4743 of 2023 In RP Diary No. 2715 of 2021 In SLP(C) No.13650 of 2016, Diary No. 5385 of 2023, SLP(C) No. 3259 of 2019,SLP(C) No.22434 of 2019, Diary No. 20223 of 2021, Diary No. 2 of 2022, Diary No. 2588 of 2022, M.A. Diary No. 39883 of 2022 In CA No. 6259 of 2017, M.A. Diary No. 42742 of 2022 In RP Diary No. 17062 of 2019 In CA No.6187 of 2017, M.A. Diary No. 42745 of 2022 In CA No.6187 of 2017, M.A. Diary No. 411 of 2023 In CA No.6187 of 2017, M.A. Diary No. 1015 of 2023 In RP Diary No. 25698 of 2020 In CA No. 8711 of 2016, M.A. Diary No. 1460 of 2023 In RP Diary No. 21372 of 2019 In CA No.6269 of 2017, M.A. Diary No. 1464 of 2023 In RP Diary No. 24205 of 2019 In CA No.6247 of 2017, M.A. Diary No. 1466 of 2023 In Diary No. 38548 of 2019, M.A. Diary No. 4091 of 2023 In Diary No.4904 of 2020, M.A. Diary No. 4510 of 2023 In SLP(C) No. 13650 of 2016, M.A. Diary No. 4990 of 2023 In Diary No.32548 of 2021, M.A. Diary No. 6523 of 2023 In Diary No.27181 of 2021, M.A. Diary No. 6524 of 2023 In Diary No.4221 of 2022, M.A. Diary No. 10561 of 2023 In Diary No. 14138 of 2022, Diary No. 24674 of 2022, Diary No. 724 of 2023, MA No.1626 of 2023 In Diary No.9024 of 2019, M.A. Diary No. 1137 of 2023 In C.A. No. 8689 of 2016, Diary No. 3958 of 2023, Diary No. 8250 of 2023, Diary No. 11257 of 2023, MA No.1643 of 2023 In R.P.(C) No.556 of 2017 In C.A. No.8477 of 2016, Diary No. 11591 of 2023, Diary No. 12025 of 2023, Diary No. 12338 of 2023, M.A. Diary No. 12639 of 2023, M.A. Diary No. 12978 of 2023, M.A. Diary No. 13159 of 2023, Diary No. 13549 of 2023, Diary No. 14584 of 2023, M.A. Diary No. 14601 of 2023, Diary No. 14703 of 2023, M.A. Diary No. 14854 of 2023, Diary No. 15173 of 2023, Diary No. 15177 of 2023, Diary No. 15266 of 2023, Diary No. 8581 of 2022, Diary No. 10729 of 2023, Diary No. 11587 of 2023, Diary No. 11597 of 2023, Diary No. 13594 of 2023, Diary No. 13738 of 2023, Diary No. 13991 of 2023, Diary No. 14018 of 2023, Diary No. 14075 of 2023, Diary No. 15542 of 2023, Diary No. 15544 of 2023, Diary No. 15550 of 2023, Diary No. 15557 of 2023, Diary No. 15806 of 2023, Diary No. 15812 of 2023, Diary No. 15815 of 2023, Diary No. 15819 of 2023, Diary No. 16246 of 2023, Diary No. 16723 of 2023, Diary No. 16975 of 2023, Diary No. 17063 of 2023, Diary No. 17124 of 2023, Diary No. 17208 of 2023, Diary No. 17829 of

2023, Diary No. 22888 of 2022, Diary No. 27992 of 2022, Diary No. 28055 of 2022, Diary No. 28446 of 2022, Diary No. 32409 of 2022, M.A. Diary No. 11767 of 2023 In Diary No. 27340 of 2019, Diary No. 14692 of 2023, Diary No. 14751 of 2023, Diary No. 14789 of 2023, Diary No. 14797 of 2023, Diary No. 14860 of 2023, Diary No. 15284 of 2023, Diary No. 15286 of 2023, Diary No. 15531 of 2023, Diary No. 15535 of 2023, Diary No. 15558 of 2023, Diary No. 15805 of 2023, Diary No. 17832 of 2023, Diary No. 18111 of 2023, Diary No. 18183 of 2023, Diary No. 18684 of 2023, Diary No. 19217 of 2023, Diary No. 19983 of 2023, Diary No. 21126 of 2023, Diary No. 21535 of 2023, SLP(C) No. 3041-3042 of 2018, SLP(C) No. 2272 of 2019, SLP(C) No. 6568 of 2020, Diary No. 29182 of 2021, Diary No. 30749 of 2021, Diary No. 23688 of 2022, Diary No. 25278 of 2022, Diary No. 32408 of 2022, Diary No. 37246 of 2022, M.A. Diary No. 2556 of 2023, M.A. Diary No. 2941 of 2023, Diary No. 4587 of 2023, MA No.1642 of 2023 In C.A. No. 8477 of 2016, Diary No. 12373 of 2023, Diary No. 12955 of 2023, Diary No. 13544 of 2023, Diary No. 14180 of 2023, Diary No. 17211 of 2023, Diary No. 18682 of 2023, Diary No. 19084 of 2023, SLP(C) No. 8775 of 2016, Diary No. 20119 of 2023, Diary No. 21669 of 2023, Diary No. 21997 of 2023, Diary No. 22457 of 2023, Diary No. 22486 of 2023, Diary No. 22524 of 2023, CIVIL APPEAL No. 8565 of 2016, Diary No. 29314 of 2022, Diary No. 30121 of 2022, Diary No. 38953 of 2022, Diary No. 39904 of 2022, Diary No. 102 of 2023, M.A. No. 1761 of 2023 In CIVIL APPEAL No. 8911 of 2016, M.A. Diary No. 1465 of 2023 In Diary No. 30311 of 2021, M.A. Diary No. 4083 of 2023 In CA 8917 of 2016, M.A. Diary No. 4086 of 2023 In Diary No. 16897 of 2019, M.A. Diary No. 4242 of 2023 In Diary No. 32658 of 2021, Diary No. 8141 of 2023, M.A. Diary No. 10980 of 2023 In CA NO 9287 of 2022, M.A. Diary No.11562 of 2023 In CA NO 8637 of 2016, M.A. Diary No. 12740 of 2023 In Diary No. NO 9299 of 2019, M.A. Diary No.13420 of 2023 In CA NO 6227 of 2017, M.A. Diary No. 13541 of 2023 In CA NO 8525 of 2016, M.A. No. 1722 of 2023 In CA No. 8537 of 2016, Diary No. 14869 of 2023, Diary No. 17744 of 2023, Diary No. 21344 of 2023, CIVIL APPEAL NO 5539 of 2017, R.P.(C)No.1882 of 2017, In CIVIL APPEAL No. 8705 of 2016, R.P.(C)No.1637 of 2017, In CIVIL APPEAL No. 11581 of 2016, R.P.(C)No.1113 of 2018, In CIVIL APPEAL No. 9899 of 2016, R.P.(C)No.2438 of 2017, In CIVIL APPEAL No. 8924 of 2016, R.P. Diary No. 6303 of 2018 In CA NO 6183 of 2017, R.P. Diary No.

18945 of 2018 In CA NO 6235 of 2017, SLP(C) No. 20202 of 2018, SLP(C) No. 21275 of 2018, SLP(C) No. 29144 of 2018, Diary No. 29714 of 2018, R.P. Diary No. 35922 of 2018 In CA 6263 of 2017, SLP(C) No. 30454 of 2018, R.P. Diary No. 26490 of 2019 In CA 9031 of 2016, SLP(C) No. 2463 of 2020, M.A Diary No. 37093 of 2022 In CA NO 8654 of 2016, M.A D. NO 40963 of 2022 In Diary No. NO 5204 of 2020, M.A Diary No. 515 of 2023 In CA NO 8711 of 2016, M.A Diary No. 527 of 2023 In CA NO 8617 of 2016, M.A. No. 1625 of 2023 In CIVIL APPEAL No. 8584 of 2016, M.A Diary No. 4967 of 2023 In Diary No. 7759 of 2022, M.A Diary No. 12592 of 2023 In Diary No. 10856 of 2022, M.A Diary No. 12635 of 2023 In CA No.8154 of 2016, M.A Diary No. 13155 of 2023 In CA No. 8663 of 2016, M.A Diary No. 13323 of 2023 In RP No. 387 of 2017, M.A Diary No. 13153 of 2023, M.A Diary No. 700 of 2020, M.A Diary No. 14845 of 2023 In CA No. 8560 of 2016, M.A Diary No. 22699 of 2023 In CA No. 12249 of 2016, M.A Diary No. 24734 of 2023 In Diary No. 26345 of 2020, SLP(C) No. 36423 of 2016, SLP(C) No. 3825 of 2017, SLP(C) No. 20210 of 2018, SLP(C) No. 28442 of 2018, SLP(C) No. 31861 of 2018, SLP(C) No. 4399 of 2019, Diary No. 1456 of 2019, SLP(C) No. 5812 of 2019, SLP(C) No. 5347 of 2019, SLP(C) No. 15081 of 2019, SLP(C) No. 4077 of 2020, Diary No. 2407 of 2022, M.A Diary No. 12238 of 2022 In RP(C) 400 of 2017, SLP(C) No. 17053 of 2022, M.A Diary No. 668 of 2023 In SLP(C) NO 30141 of 2015, M.A Diary No. 1001 of 2023 In Diary No. 23340 of 2018, M.A Diary No. 1136 of 2023 In Diary No. 30020 of 2019, M.A Diary No. 1291 of 2023 In Diary No. NO 29016 of 2021, M.A Diary No. 2121 of 2023 In RP NO 2163 of 2018, M.A Diary No. 3578 of 2023 In Diary No. NO 32559 of 2021, M.A Diary No. 4477 of 2023 In Diary No. NO 24053 of 2019, M.A Diary No. 14353 of 2023 In CA NO 4580 of 2016, M.A Diary No. 23142 of 2023 In Diary No. NO 15269 of 2021, SLP(C) No. 584 of 2017, M.A Diary No. 17789 of 2017 In SLP(C) No. 14715 of 2016, SLP(C) No. 20205 of 2018, SLP(C) No. 20459 of 2018, SLP(C) No. 29157 of 2018, SLP(C) No. 32412 of 2018, SLP(C) No. 14576 of 2019, SLP(C) No. 15071 of 2019, SLP(C) No. 4073 of 2020, M.A. No. 626 of 2020 In Diary No. 8542 of 2019, Diary No. 9841 of 2022, Diary No. 10218 of 2022, Diary No. 23770 of 2022, M.A Diary No. 41774 of 2022 In CA No. 8562 of 2016, M.A Diary No. 41777 of 2022 In Diary No. 22936 of 2021, M.A Diary No. 42064 of 2022 In CA No. 8685 of 2016, M.A Diary No. 42071 of 2022 In Diary No.1090 of 2020, M.A Diary No.

42406 of 2022 In Diary No. 14203 of 2019, M.A Diary No. 42459 of 2022 In CA No. 8651 of 2016, M.A Diary No. 402 of 2023 In Diary No. 27346 of 2019, M.A. No. 1647 of 2023 In CIVIL APPEAL No. 8566 of 2016, M.A Diary No. 3484 of 2023 In CA No. 8530 of 2016, M.A Diary No. 4367 of 2023 In Diary No. 2379 of 2021, M.A Diary No. 11686 of 2023 In Diary No. 9844 of 2022, M.A Diary No. 11706 of 2023 In Diary No. 38549 of 2019, M.A Diary No. 14289 of 2023 In CA No. 8493 of 2016, SLP(C) No. 28277 of 2016, SLP(C) No. 20203 of 2018, SLP(C) No. 30451 of 2018, SLP(C) No. 29611 of 2018, SLP(C) No. 29825 of 2018, SLP(C) No. 4398 of 2019, SLP(C) No. 7945 of 2019, SLP(C) No. 10386 of 2019, Diary No. 19172 of 2019, M.A. No. 2327 of 2019 In R.P.(C)No. 401 of 2017 In CIVIL APPEAL No. 8541 of 2016, Diary No. 41950 of 2019, Diary No. 7191 of 2018, SLP(C) No. 4110 of 2020, SLP(C) No. 4114 of 2020, SLP(C) No. 4895 of 2020, Diary No. 1558 of 2020, Diary No. 22256 of 2021, Diary No. 22630 of 2021, Diary No. 24734 of 2021, Diary No. 28767 of 2021, Diary No. 18034 of 2022, Diary No. 24353 of 2022, SLP(C) No. 8797 of 2016, SLP(C) No. 8761 of 2016, SLP(C) No. 8768 of 2016, SLP(C) No. 5910 of 2016, SLP(C) No. 8776 of 2016, SLP(C) No. 8766 of 2016, CIVIL APPEAL No. 5538 of 2017, SLP(C) No. 4873 of 2018, SLP(C) No. 16251 of 2018, SLP(C) No. 28219 of 2018, SLP(C) No. 8323 of 2019, M.A.No. 1416 of 2019 In R.P.(C)No.551 of 2017 In C.A. No. 508 of 2016, M.A. No. 611 of 2020 In Diary No. 8552 of 2019, Diary No. 6926 of 2020, Diary No. 13525 of 2022, Diary No. 31393 of 2021, Diary No. 31839 of 2021, Diary No. 1359 of 2022, Diary No. 2441 of 2022, Diary No. 15864 of 2023, SLP(C) No. 21557 of 2018, SLP(C) No. 30445 of 2018, SLP(C) No. 14565 of 2019, Diary No. 24244 of 2020, Diary No. 24247 of 2020, Diary No. 9458 of 2021, Diary No. 21978 of 2022, Diary No. 27649 of 2022, Diary No. 39067 of 2022, Diary No. 937 of 2023, Diary No. 1204 of 2023, Diary No. 9194 of 2023, Diary No. 11258 of 2023, Diary No. 12596 of 2023, Diary No. 14064 of 2023, Diary No. 30619 of 2023, Diary No. 31083 of 2023, Diary No. 31971 of 2023, Diary No. 31977 of 2023, Diary No. 31982 of 2023, M.A. No. 525 of 2020 In Diary No.8541 of 2019, Diary No. 19652 of 2022, Diary No. 28063 of 2022, Diary No. 29641 of 2022, Diary No. 29697 of 2022, Diary No. 31979 of 2022, Diary No. 35924 of 2022, Diary No. 38890 of 2022, Diary No. 39310 of 2022, Diary No. 41084 of 2022, Diary No. 41445 of 2022, Diary No. 41703 of 2022, Diary No. 42045 of 2022, Diary No. 77 of 2023, M.A. No. 1931

of 2023 In SLP(C)No.6367 of 2016, Diary No. 4841 of 2023, Diary No. 6339 of 2023, Diary No. 12327 of 2023, Diary No. 12328 of 2023, Diary No. 12331 of 2023, Diary No. 13357 of 2023, Diary No. 20490 of 2023, SLP(C) No. 3743 of 2019, Diary No. 8804 of 2020, Diary No. 25769 of 2020, Diary No. 41531 of 2022, Diary No. 42660 of 2022, Diary No. 3079 of 2023, Diary No. 3747 of 2023, Diary No. 15734 of 2023, Diary No. 21224 of 2023, Diary No. 21946 of 2023, Diary No. 30089 of 2023, Diary No. 31074 of 2023, Diary No. 31966 of 2023, Diary No. 31968 of 2023, Diary No. 31969 of 2023, Diary No. 31974 of 2023, Diary No. 32234 of 2023, Diary No. 32665 of 2023, Diary No. 32916 of 2023, Diary No. 33172 of 2023, SLP(C) No. 33345 of 2015, Diary No. 39526 of 2017, R.P.(C)No.1 of 2018 In CIVIL APPEAL No. 2980 of 2017, Diary No. 7178 of 2018, Diary No. 7195 of 2018, SLP(C) No. 228 of 2019, Diary No. 10266 of 2019, Diary No. 15896 of 2019, Diary No. 21134 of 2020, Diary No. 22116 of 2020, Diary No. 762 of 2022, Diary No. 15572 of 2022, Diary No. 13481 of 2023, Diary No. 15001 of 2023, Diary No. 15004 of 2023, Diary No. 15543 of 2023, Diary No. 15738 of 2023, Diary No. 19215 of 2023, Diary No. 27410 of 2023, Diary No. 33206 of 2023, Diary No. 7167 of 2018, Diary No. 7174 of 2018, Diary No. 7184 of 2018, Diary No. 8479 of 2018, SLP(C) No. 2034 of 2019, SLP(C) No. 12894 of 2019, Diary No. 8454 of 2021, Diary No. 21831 of 2021, Diary No. 21920 of 2021, Diary No. 29643 of 2021, Diary No. 9201 of 2022, Diary No. 10476 of 2022, Diary No. 10477 of 2022, Diary No. 14597 of 2022, Diary No. 15623 of 2022, Diary No. 29310 of 2022, Diary No. 29650 of 2022, Diary No. 37815 of 2022, SLP(C) No. 8791 of 2016, SLP(C) No. 8773 of 2016, SLP(C) No. 28212 of 2018, SLP(C) No. 29614 of 2018, SLP(C) No. 1382 of 2019, SLP(C) No. 395 of 2019, SLP(C) No. 12155 of 2019, SLP(C) No. 12601 of 2019, SLP(C) No. 22131 of 2019, SLP(C) No. 22412 of 2019, Diary No. 41709 of 2019, Diary No. 4034 of 2020, Diary No. 24631 of 2020, Diary No. 15170 of 2021, Diary No. 30585 of 2021, Diary No. 1377 of 2022, Diary No. 12518 of 2022, Diary No. 21072 of 2022, Diary No. 29678 of 2022, Diary No. 3283 of 2023, M.A. No. 381 of 2023 In Diary No. 14790 of 2022, SLP(C) No. 15346 of 2015, SLP(C) No. 4299 of 2017, SLP(C) No. 4155 of 2017, SLP(C) No. 19817 of 2018, Diary No. 28634 of 2018, SLP(C) No. 30101 of 2018, SLP(C) No. 14569 of 2019, Diary No. 21380 of 2019, SLP(C) No. 5308 of 2020, Diary No. 4029 of 2020, SLP(C) No. 14851 of 2020, Diary No. 14829 of 2021, Diary No. 26604

of 2021, Diary No. 29548 of 2021, Diary No. 29803 of 2021, Diary No. 27923 of 2022, Diary No. 27975 of 2022, Diary No. 27989 of 2022, Diary No. 42036 of 2022, SLP(C) No. 8758 of 2016, SLP(C) No. 4298 of 2017, SLP(C) No. 22691 of 2018, SLP(C) No. 20458 of 2018, Diary No. 26635 of 2018, Diary No. 21381 of 2019, Diary No. 21382 of 2019, Diary No. 27464 of 2019, Diary No. 7493 of 2020, Diary No. 8470 of 2020, Diary No. 28956 of 2020, Diary No. 28987 of 2020, Diary No. 28988 of 2020, Diary No. 28993 of 2020, Diary No. 29070 of 2020, Diary No. 1894 of 2021, Diary No. 29032 of 2021, Diary No. 29097 of 2021, SLP(C) No. 13046 of 2022, Diary No. 5024 of 2022, Diary No. 7087 of 2022, Diary No. 9433 of 2022, Diary No. 13505 of 2022, Diary No. 20620 of 2022, Diary No. 38278 of 2022, SLP(C) No. 23373 of 2018, SLP(C) No. 23369 of 2018, SLP(C) No. 8320 of 2019, SLP(C) No. 14573 of 2019, SLP(C) No. 5509 of 2020, SLP(C) No. 26698 of 2019, SLP(C) No. 27211 of 2019, SLP(C) No. 10674 of 2020, SLP(C) No. 937 of 2020, SLP(C) No. 947 of 2020, Diary No. 17418 of 2021, Diary No. 17613 of 2021, Diary No. 18136 of 2021, Diary No. 19415 of 2021, Diary No. 29111 of 2021, Diary No. 12519 of 2022, SLP(C) No. 14207 of 2022, Diary No. 28059 of 2022, Diary No. 4601 of 2023, Diary No. 7087 of 2023, Diary No. 35484 of 2023, SLP(C) No. 10169 of 2016, SLP(C) No. 3060 of 2018, SLP(C) No. 27689 of 2018, SLP(C) No. 25394 of 2018, Diary No. 21739 of 2019, Diary No. 21741 of 2019, Diary No. 22098 of 2019, SLP(C) No. 2264 of 2020, SLP(C) No. 4923 of 2020, Diary No. 21888 of 2020, SLP(C) No. 11135 of 2023, Diary No. 15399 of 2021, Diary No. 29098 of 2021, Diary No. 30583 of 2021, Diary No. 381 of 2022, Diary No. 1564 of 2022, SLP(C) No. 18861 of 2023, Diary No. 20979 of 2022, Diary No. 4860 of 2023, Diary No. 5564 of 2023, Diary No. 7061 of 2023, Diary No. 7292 of 2023, Diary No. 7350 of 2023, SLP(C) No. 8769 of 2016, SLP(C) No. 8765 of 2016, SLP(C) No. 22259 of 2018, SLP(C) No. 24080 of 2018, SLP(C) No. 22688 of 2018, SLP(C) No. 11164 of 2019, SLP(C) No. 22340 of 2019, SLP(C) No. 18 of 2020, SLP(C) No. 21758 of 2019, SLP(C) No. 14776 of 2020, SLP(C) No. 12692 of 2020, SLP(C) No. 14777 of 2020, SLP(C) No. 6519 of 2020, Diary No. 22560 of 2020, Diary No. 53 of 2021, Diary No. 26807 of 2021, Diary No. 28547 of 2021, Diary No. 29668 of 2021, Diary No. 30377 of 2021, SLP(C) No. 14200 of 2022, Diary No. 20986 of 2022, Diary No. 28053 of 2022, Diary No. 28449 of 2022, Diary No. 3365 of 2023, Diary No. 7291 of 2023, Diary No. 10704 of 2023, M.A. Diary

No. 12526 of 2023 In C.A. No. 8703 of 2016, Diary No. 8526 of 2018, SLP(C) No. 20204 of 2018, SLP(C) No. 29831 of 2018, SLP(C) No. 4400 of 2019, SLP(C) No. 22033 of 2019, SLP(C) No. 702 of 2020, SLP(C) No. 3420 of 2020, SLP(C) No. 3989 of 2020, Diary No. 45825 of 2019, SLP(C) No. 3991 of 2020, Diary No. 46004 of 2019, SLP(C) No. 14870 of 2020, Diary No. 57 of 2020, Diary No.28141 of 2021, Diary No. 3172 of 2022, Diary No. 4265 of 2023, Diary No. 5017 of 2023, Diary No. 13554 of 2023, Diary No. 14069 of 2023, Diary No. 15816 of 2023, Diary No. 35480 of 2023, Diary No. 35488 of 2023, Diary No.7188 of 2018, Diary No. 34804 of 2023, Diary No. 13552 of 2023, Diary No.38406 of 2023, Diary No. 40386 of 2023, Diary No. 28110 of 2021, SLP(C) No.16233 of 2018, SLP(C) No.10946 of 2019, SLP(C) No.3407 of 2020, Diary No.13368 of 2023, Diary No.14006 of 2023, SLP(C) No.7909 of 2023, Diary No.6123 of 2023, SLP(C) No.10384 of 2019, SLP(C) No.10948 of 2019, Diary No.4531 of 2023, SLP(C) No.1928 of 2020, SLP(C) No.28645 of 2019, Diary No.46016 of 2019, SLP(C) No.6029 of 2020, Diary No.41008 of 2023, Diary No.41349 of 2023, Diary No.17929 of 2022, Diary No.14745 of 2023, Diary No.39704 of 2023, Diary No.3760 of 2022, Diary No.37530 of 2023, Diary No.38004 of 2023, Diary No.38009 of 2023, Diary No.38633 of 2023, Diary No.40192 of 2023, Diary No.21006 of 2022, Diary No.39771 of 2023, Diary No.36156 of 2023, Diary No.38635 of 2023, Diary No.38874 of 2023, Diary No.39775 of 2023, Diary No.41675 of 2023, SLP(C) No. 815 of 2020, SLP(C) No. 13889 of 2022, SLP(C) No. 13933 of 2022, SLP(C) No. 13774 of 2022, M.A. Diary No. 5141 of 2023 In R.P.(C) No. 385 of 2017, M.A. Diary No. 5463 of 2023 In Diary No. 10069 of 2021, M.A. Diary No. 6510 of 2023 In Diary No. 29149 of 2021, M.A. Diary No. 6515 of 2023 In Diary No. 20488 of 2019, M.A. Diary No. 9591 of 2023 In C.A. No. 8515 of 2016, M.A. Diary No. 10339 of 2023 In Diary No. 20913 of 2021, M.A. Diary No. 10553 of 2023 In C.A. No. 8519 of 2016, M.A. Diary No. 12548 of 2023 In Diary No. 5670 of 2022, M.A. Diary No. 12549 of 2023 In C.A. No. 9600 of 2016, M.A. Diary No. 13254 of 2023 In Diary No. 20588 of 2019, M.A. Diary No. 21716 of 2023 In Diary No. 14110 of 2021, M.A. Diary No. 21786 of 2023 In C.A. No. 8648 of 2016, M.A. Diary No. 27415 of 2023 In C.A. No. 1616 of 2023, M.A. Diary No. 31028 of 2023 In C.A. No. 8555 of 2016, M.A. Diary No. 33298 of 2023 In C.A. No. 8697 of 2016, M.A. Diary No. 34776 of 2023 In Diary No. 41760 of 2018, M.A. Diary No. 34835 of 2023

In C.A. No. 8624 of 2016, Diary No.35093 of 2023, M.A. Diary No. 37258 of 2023 In C.A. No. 8632 of 2016, M.A. Diary No. 38181 of 2023, Diary No.27769 of 2022 AND M.A. No.1919 of 2023 In C.A. No.397 of 2023

Appearances for Parties

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Janani, Ms. Sharika Rai, Jasbir Singh Malik, Ms. Chandni Sharma, Ms. Divya Mishra, Varun Punia, Mohit D. Ram, Naresh Kumar, Pankaj Bhagat, Gaurav Jain, Ms. Abha Jain, Narendra Kumar Jain, Jaivir Singh, Aniteja Sharma, Ms. Jaikriti S. Jadeja, Mrs. B. Sunita Rao, Ms. Harsh Lata, B. S. Nagar, Prakash Gautam, Rohtas Nagar, Shobhit Jain, Rahul Sharma, Vinam Gupta, Amrish Kumar, Sidhant Kohli, S.K Tyagi, Jitendra Hooda, Shafik Ahmed, Sunny, Ajay Sharma, Sachin Wadhwa, T S Sabarish, Mrs. Preeti Rani, S.K. Rout, Omkar Prasad, Ganesh Singh, Shivang Singh, Prithvi Pal, D S Kauntae, Dr. N. Pradeep Sharma, Priyonkoo Anjan Gogoi, Amit Acharya, Ms. Mridula Ray Bharadwaj, Ms. Asha Jain Madan, Mukesh Jain, Sanjay Jha, Shibashish Misra, Vikas Mehta, Ms. Priyambada Mishra, Adith Nair, Ms. Rashi Rampal, Shekhar Prit Jha, Ms. Firdouse Qutb Wani, Ashwani Bhardwaj, Ajay Vikram Singh, Mrs. Priyanka Singh, Pankaj Kumar, Omkar, Neeraj Kumar Sharma, Ms. Supriya Juneja, Ms. Deepali, Ms. Palak Bagchi, Amit Gupta, Abhimanyu Sharma, Tarun Gupta, Tejas Patel, Ms. Muskaan Gandhi, Ms. Ritika Saini, Aditya Kumar Tripathi, Pawan Aneja, Sanjay Sharawat, Digvijay Rai, Ashok Kumar, Ms. Shivani Luthra Lohiya, Mukul Kumar, Krishan Kumar, Mrs. Neetu Sharma, Nitin Pal, Shivam Pandey Ms. Rukhmini Bobde, Ashok Panigrahi, Prashant Singh I, Baby Devi Bonia, Prashant Rawat, B K Satija, Santosh Kumar, Ms. Aakanksha Kaul, Pratyush Shrivastava, Nachiketa Joshi, Kanu Agarwal, Akshay Amritanshu, Sakshi Kakkar, Saransh Kumar, Rajan Kumar Chourasia, Ms. Shruti Agarwal, Adit Khorana, Abhishek Singh, Shashank Bajpai, Annirudh Sharma Ii, Raghav Sharma, Sachin Sharma, Shiv Mangal Sharma, Digvijay Dam, Veer Vikrant Singh, Ayush Anand, Bhuvan Kapoor, Ms. Shivika Mehra, G S Makkar, Shubhendu Anand, Prashant Singh II, Rajeev Ranjan, Tacho Eru, A K Kaul, Navanjay Mahapatra, Raman Yadav, Chitransh Sharma, Rajesh K. Singh, Arvind Kumar Sharma, Aman Varma, Parijat Kishore, Mishra Saurabh, Nishit Agrawal, Sanjeev Sagar, Shekhar Raj Sharma, Ms. Akshaya Jebakumar, Jinendra Jain, Rahul Shyam Bhandari, Chirag M. Shroff, Gaurav Dhingra, Miss Meera Kaura, Abhinav Chandan, Abhimanyu Bhandari, Ms. Rooh-e-hina Dua, Harshit Khanduja, Ms. Dhanakshi Gandhi, Ms. Pallavi Pratap, M. A. Chinnasamy, M.K. Maroria, Ms. Ruchi Kohli, Ms. Swarupama Chaturvedi, Ms. Sonali Jain, Shreekant Neelappa Terdal, Gurmeet Singh Makker, Ms. Kaveeta Wadia, S. Nagarajan, Yasharth Kant, Pardeep Gupta, Parinav Gupta, Mrs. Mansi Gupta, Dr. Mrs. Vipin Gupta, Mrs. Mamta Sharma, Alok

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Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

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* Ed. Note: Pagination as per the original Judgment.

For the reasons assigned in Part E of this Judgement, we grant leave in all these Special Leave Petitions, except those mentioned in 'List-B', 'List-D.2' and 'List-E.1' ***(infra)***.

2. These appeals have been preferred by the Delhi Development Authority (DDA), Government of National Capital of Delhi (GNCTD), Land Acquisition Collector (LAC), Delhi State Industrial and Infrastructure Development Corporation (DSIIDC), East Delhi Municipal Corporation, and Delhi Metro Rail Corporation Ltd. (DMRC) (collectively, the "appellants"), against various identical orders of the High Court of Delhi, whereby acquisition proceedings had been declared to have lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter, the "2013 Act"). Multiple Review Petitions and Miscellaneous Applications have also been moved by the DDA seeking recall and review of certain orders of this Court dismissing their SLPs, whereby some of the land acquisition proceedings were declared to have lapsed.

3. While the factual matrix giving rise to the present controversy has been elaborated in a judgement of the even date passed by us in the matter of ***GNCTD (through Secretary, Land and Building Dept.) v. KL Rathi Steels Ltd.***,[1] a very brief overview of the relevant facts has been set out below.

A. Facts

3.1. The GNCTD initiated the land acquisition process under the Land Acquisition Act, 1894 (hereinafter, "1894 Act") for the planned development of Delhi. The beneficiaries of such acquisition process were various state entities such as DDA, DSIIDC, and DMRC, who needed the lands for different projects like residential schemes, industrial areas, flyovers, the Delhi Metro, etc. Accordingly, over a long span of 1957-2006, various notifications under Sections 4 and 6 of the 1894 Act were issued for acquiring these lands and awards were passed under Section 11 of the 1894 Act affixing compensation.

3.2. In some cases, the compensation amount was deposited in the treasury since the landowners did not come forward to

1 MA No. 414/2023.

receive the same. Similarly, possession could not be taken in some cases as the affected landowners had challenged the acquisition proceedings and had obtained an order of stay in their favour.

3.3. In the meanwhile, the 2013 Act was enacted by the Parliament, thereby repealing the 1894 Act. This new legislation brought about various reforms to the land acquisition process. Importantly, Section 24 of the 2013 Act provided that land acquisition proceedings initiated under the earlier regime would be deemed to have lapsed in certain cases, including when compensation had not been paid or possession had not been taken. The provision reads as follows:

> *"(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—*
>
> *(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
>
> *(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*
>
> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,* ***where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed*** *and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.*
>
> *Provided that where an award has been made and compensation in respect of a majority of land*

> *holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act*"
>
> [emphasis supplied]

3.4. One of the first cases interpreting Section 24(2) of the 2013 Act was ***Pune Municipal Corporation v. Harak Chand Mistrimal Solanki,***[2] in which a three-judge bench of this Court held that offering payment to the landowner and depositing it with the Reference Court in case of certain contingencies under Section 31(2) of the 1894 Act, would fulfil the requirement of the compensation being "paid".[3] Accordingly, depositing compensation with the Government Treasury was held to not constitute payment of compensation for purposes of Section 24(2) of the 2013 Act and such land acquisition proceedings were held to have lapsed.

3.5. In a subsequent judgment of ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu,***[4] a two-judge bench of this Court further elucidated the concept of taking possession by holding that the period during which an order of stay is in operation is not excluded by Section 24(2) of the 2013 Act. Consequently, this Court held that an operation of stay would not ameliorate a failure to take possession and that such acquisition proceedings would be deemed to have lapsed.

3.6. Relying on these two decisions, the present respondent-landowners approached the High Court from 2014 to 2017 seeking declaration(s) that the acquisition proceedings initiated by GNCTD had lapsed because of non-payment of compensation or non-taking of possession. Following the dictum in ***Pune Municipal Corporation (supra)*** and ***Sree Balaji Nagar Residential Association (supra)***, the High Court allowed the landowners' claim and declared the acquisition proceedings as

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2 [2014] 1 SCR 783 : (2014) 3 SCC 183, para 17.

3 The contingencies being, when landowners do not give consent to receive compensation, there is no person competent to alienate the land, or there is dispute regarding title to receive the compensation.

4 [2014] 7 SCR 799 : (2015) 3 SCC 353, para 11.

lapsed. The appellants preferred SLPs against some of these orders, many of which were in turn dismissed by this Court either *in limine* or after granting leave.

3.7. However, a two-judge bench of this Court in ***Yogesh Neema v. State of Madhya Pradesh***[5] doubted the correctness of ***Sree Balaji Nagar Residential Association (supra)***. Relying upon the maxim "*actus curiae neminem gravabit*" (i.e., the act of court should not prejudice the parties), the bench referred for reconsideration the question of law regarding the effect of an order of stay on possession under Section 24(2) of the 2013 Act to a larger bench.

3.8. Similarly, another two-judge bench of this Court in ***Indore Development Authority v. Shailendra***[6] doubted the correctness of ***Pune Municipal Corporation (supra)*** and referred the question of law regarding the manner of payment under Section 24(2) of the 2013 Act for reconsideration.

3.9. Both these issues were considered by a three-judge bench of this Court in ***Indore Development Authority v. Shailendra.***[7] The larger bench held, *inter alia*, that the term "paid" in Section 24(2) of the 2013 Act is to be read as "tender" of payment, i.e., an offer to pay. In case the compensation was tendered and the same was refused, it was to be interpreted as "paid". Further, on account of various rules made under Section 55 of the 1894 Act, it was held that the term "deposit" in the proviso to Section 24(2) of the 2013 Act must be read to include a deposit of compensation with the Government Treasury, and not just with the Reference Court. The three-judge bench then held that ***Pune Municipal Corporation (supra)*** was *per incuriam* as it failed to consider the statutory rules made under Section 55 of the 1894 Act and as it also did not take notice of appropriate precedents for interpreting the term "paid". ***Sree Balaji Nagar Residential Association (supra)*** was also overruled in so far as it allowed landowners to unduly benefit from orders of stay.

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5 (2016) 6 SCC 387, para 6-7.

6 (2018) 1 SCC 733, para 23.

7 [2018] 2 SCR 1 : (2018) 3 SCC 412, para 216-217.

3.10. It is in the aftermath of ***Shailendra*** ***(supra)*** that the appellants filed most of the present appeals, Review Petitions and Miscellaneous Applications seeking a favourable determination of their rights.

3.11. Meanwhile, in ***State of Haryana v. GD Goenka Tourism Corporation Ltd.***,[8] it was argued that since ***Pune Municipal Corporation*** ***(supra)*** and ***Shailendra*** ***(supra)*** were decided by a bench of equal strength, the matter should be referred to a larger bench. This Court deferred the hearing to a later date and held that pending a final decision on referring the matter to a larger Bench, the High Courts shall not deal with any case relating to the interpretation of Section 24 of the 2013 Act. Subsequently, two different benches of this Court issued even date orders on 22.02.2018 in ***Indore Development Authority v. Shyam Verma***[9] and ***State of Haryana v. Maharana Pratap Charitable Trust (Regd.),***[10] referring the matter to a larger bench.

3.12. Eventually, a five-judge bench decided these questions of law in ***Indore Development Authority v. Manoharlal***[11] and held, *inter alia*, that the term "or" in Section 24(2) of the 2013 Act shall be read as "and", such that for land acquisition proceedings to lapse under this Section, neither the compensation must have been paid nor the possession must have been taken. With respect to payment of compensation, it was held that the term "paid" means tendering of payment and the term "deposit" in Section 24 of the 2013 Act includes deposit both with the government treasury and the Reference Court. Hence, land acquisition proceedings cannot be deemed to have lapsed if compensation was tendered to the landowner and later deposited in the Treasury. With respect to possession, the Constitution Bench held that the period of stay granted in favour of landowners ought to be excluded. Consequently, ***Pune Municipal Corporation*** ***(supra)*** and ***Sree Balaji***

8 (2018) 3 SCC 585, para 9.

9 (2020) 15 SCC 342, para 3.

10 (2018) SCC Online SC 3600, para 1.

11 [2020] 3 SCR 1 : (2020) 8 SCC 129, para 366.

Nagar Residential Association ***(supra)*** were overruled. This Court also overruled ***Shailendra*** ***(supra)***, since the question of reading the conditions under Section 24(2) conjunctively (i.e., reading "or" as 'and') was not considered by that case. Subsequently, in light of the decision in ***Manoharlal*** ***(supra)***, the judgment in ***Pune Municipal Corporation*** ***(supra)*** was recalled.

3.13. After the dust stood settled finally in ***Manoharlal*** ***(supra)***, the appellants filed another batch of appeals against such orders of the High Court of Delhi which had relied on ***Pune Municipal Corporation*** ***(supra)*** and ***Sree Balaji Nagar Residential Association*** ***(supra)*** to declare the acquisition proceedings as having lapsed. Similarly, Review Petitions and Miscellaneous Applications were filed against the orders of this Court dismissing the SLPs filed previously.

3.14. To simplify, the present batch of matters before us can broadly be classified into the following three categories:

(a) *First*, cases filed before ***Shailendra*** ***(supra)***. Most of the SLPs in this category were dismissed by this Court after granting leave, on the strength of ***Pune Municipal Corporation*** ***(supra)*** and ***Sree Balaji Nagar Residential Association*** ***(supra)***, but a few were deferred to a later date and are still pending;

(b) *Second*, cases filed after ***Shailendra*** ***(supra)***, on the ground that ***Sree Balaji Nagar Residential Association*** ***(supra)*** has been overruled and ***Pune Municipal Corporation*** ***(supra)*** has been held to be *per incuriam*; and

(c) *Third*, cases filed after ***Manoharlal*** ***(supra)*** which overruled both ***Pune Municipal Corporation*** ***(supra)*** and ***Sree Balaji Nagar Residential Association*** ***(supra)***, with a plea that the High Court decisions deserve to be revisited given the principles enunciated in ***Manoharlal*** ***(supra)***.

3.15. We note that a factor common to most of the matters mentioned in paragraph 3.14 above is that they were filed after the expiration of the period of limitation. The quantum of delay differs in each case, and while it is less in the cases filed in

the first category, it is significantly long in the second and third categories. Hence, at this stage, it is important to first examine at length the prayer for condonation of delay and the maintainability of these petitions, before delving into the merits of each case.

B. Contentions of parties

4. The appellants were represented by Ld. Attorney General for India, Ms. Aishwarya Bhati, Ld. Additional Solicitor General, and Senior Advocates, including Ms. Rachna Srivastava, Mr. Sanjay Poddar, Mr. Sanjib Sen, and Mr. Kailash Vasdev. From the side of Respondents, we were assisted by an array of Senior Advocates, including Mr. Dhruv Mehta, Mr. Gopal Sankaranarayanan, Mr. Jayant Bhushan, Mr. Jayant Mehta, Ms. Vibha Datta Makhija, and Mr. Vikas Singh, and Ms. Bansuri Swaraj, Advocate.

5. The appellants argued that they had sufficient cause for not filing the appeals and applications within the prescribed time. Substantiating this, they made the following submissions:

   (a) The respondent-landowners had suppressed certain material facts from the High Court. Once the appellants discovered these fraudulent claims, they filed the present appeals. In ***Commissioner of Customs v. Candid Enterprises***,[12] this Court held that fraud vitiates the delay that occurred before its discovery. The discovery of the facts suppressed by the respondents before the High Court, gives rise to a fresh cause of action and, hence the period preceding the revelation of such fraud deserves to be excluded while calculating the limitation period.

   (b) The appellants were disabled from filing appeals within the prescribed limitation period because the governing law during such period as laid down in ***Pune Municipal Corporation (supra)*** and ***Sree Balaji Nagar Residential Association (supra)***, would have caused the dismissal of their petitions. Since the question of law was finally decided in their favour in ***Shailendra (supra)*** and ***Manoharlal (supra)***, their cause of action stood revived to enable them to approach this Court. Further, a case is applied retrospectively unless the judgment

12 (2002) 9 SCC 764, para 6.

expressly recites otherwise, as held in ***CIT v. Saurashtra Kutch Stock Exchange Ltd.***[13] Since ***Manoharlal*** ***(supra)*** did not restrict its applicability prospectively, all the cases decided before thereto deserve to be re-decided based on the principles enunciated in it.

(c) The Court should take a liberal approach regarding condonation of delay and allow leeway to the government authorities, who, on account of their impersonal character, multiple chains of approval, processing of a large number of files, and lack of resources, unintentionally cross the prescribed limitation timeline and suffer bureaucratic delay.

(d) The delay caused by the COVID-19 pandemic deserves to be condoned as the restrictions on movement during the lockdown, defuncted the appellants who did not have a well-equipped technological infrastructure in place to meet such unexpected and newer challenges. The appellants in this regard placed reliance on various decisions of this Court including ***Collector (LA), Anantnag v. Katiji,***[14] ***G. Ramegowda v. Spl. Land Acquisition Officer***,[15] ***State of Manipur v. Koting Lamkang***,[16] and ***Sheo Raj Singh v. Union of India***.[17]

(e) The appellants could not file the appeals on time because the Court was frowning upon the filing of multiple fresh SLPs despite the law having been settled in ***Pune Municipal Corporation*** ***(supra),*** and was imposing costs while dismissing such SLPs.

(f) In various cases such as ***Imrat Lal v. LAC***,[18] this Court has held that delay can be condoned in the interest of justice. In the present case also, the Court should condone the delay in public interest and subserve the cause of justice as the acquisition proceedings were undertaken for projects of eminent public importance like the expansion of the metro, construction of flyovers, hospitals, etc.

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13 [2008] 13 SCR 421 : (2008) 14 SCC 171, para 35.

14 [1987] 2 SCR 387 : (1987) 2 SCC 107, para 3.

15 [1988] 3 SCR 198 : (1988) 2 SCC 142, para 17.

16 [2019] 13 SCR 565 : (2019) 10 SCC 408, para 8.

17 [2023] 13 SCR 743 : 2023 SCC OnLine SC 1278, para 11.

18 (2014) 14 SCC 133, para 11.

6. *Per contra*, the respondent-land owners vociferously argued that the appellants have failed to showcase sufficient cause in filing the appeals and applications with enormous delay and that:

   (a) It is false to claim that the landowners had suppressed material facts during the proceedings in the High Court. Alternatively, even if some of the landowners did suppress the facts, these were only a handful of instances that could not be used for condoning delay in all the appeals and applications.

   (b) Delay cannot be condoned based on subsequent change of law. If it were to be allowed as a legitimate ground for condonation of delay, no proceedings would ever reach finality because cases could be re-opened whenever a question of law were to be interpreted differently. Further, ***Shailendra* (supra)** and ***Manoharlal* (supra)** could not be applied retrospectively, since overruling of cases relying on ***Pune Municipal Corporation* (supra)** and ***Sree Balaji Nagar Residential Association* (supra)** took away only their precedential effect and did not re-open the *lis* between the parties in those cases. The respondents have in this regard relied upon various decisions of this Court including ***Neelima Srivastava v. State of UP***[19] and ***Natural Resources Allocation, In re, Special Reference 1 of 2012***.[20]

   (c) There should be parity between private parties and government entities with respect to the yardstick to be applied for condonation of delay and no leeway should be granted to the latter (relied on, *inter alia*, ***Postmaster General v. Living Media India Ltd***)[21].

   (d) This Court has made it clear in ***Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd.***,[22] that the relaxation on account of COVID-19 can be granted only in those cases where the limitation period expired during COVID-19. Such relaxation would not be available in the present case as the period of limitation for filing the appeals had expired much before the pandemic.

19 [2021] 8 SCR 167 : 2021 SCC Online SC 610, para 29.

20 [2012] 9 SCR 311 : (2012) 10 SCC 1, para 48.

21 [2012] 1 SCR 1045 : (2012) 3 SCC 563, para 28.

22 [2020] 9 SCR 472 : (2021) 2 SCC 317, para 17.

(e) Delay cannot be condoned on the grounds of the Court frowning upon the filing of fresh SLPs as no sufficient material to substantiate such a plea has been placed on record.

(f) The grounds of public interest or cause of justice cannot be invoked to condone the delay, for even if the law of limitation produces a harsh outcome, it ought to be followed. The respondents have buttressed this plea by citing ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project***,[23] in which this Court held that delay cannot be condoned solely on the ground of public interest and to do justice because third-party rights may have been created during the prolonged delay and it would be unfair for such parties if the delay is condoned and the settled position is reversed.

C. Law on Condonation of Delay

7. Since the issue in this batch of appeals concerns the condonation of delay, it would be worthwhile to briefly allude to the law of limitation. The Limitation Act, 1963 ("Limitation Act") is a statute of repose founded on considerations of public policy and expediency. The dominant objective underlying the law of limitation is that the title to property, and matters of rights in general, cannot be kept in a state of constant uncertainty, doubt or suspense. Public interest requires that finality should be put to litigation. The Limitation Act, thus, prescribes the specific points of time from which the period of limitation begins to run for the institution of actions. On expiry of such period, no action can be initiated save and except where the court condones the delay for a sufficient cause. A party who is insensible to the value of civil remedies, and who does not assert his claim with promptitude is denied the ability to enforce even an otherwise rightful claim. This position is reflected in the Latin maxim, *vigilantibus et non dormientibus jura subveniunt*, i.e., the law aids the vigilant and not those who sleep on their rights.

8. The Bombay High Court in ***Kumudini Ramdas Shah v. K.M. Mody***[24] aptly exposited the philosophical pillars supporting the concept of limitation: (i) the sword of prosecution ought not to be hanging over an individual for an indeterminate period; (ii) those who have been

23 [2008] 15 SCR 135 : (2008) 17 SCC 448, para 30.

24 *Kumudini Ramdas Shah v. K.M. Mody & Ors.*, AIR 1985 Bombay 320, para 4.

lethargic in safeguarding their interests should not expect the law to come to their rescue; and (iii) a defendant ought not to suffer for lost evidence owing to the passage of time.

9. Section 3 of the Limitation Act reflects this philosophy. Every suit or appeal made after the period of limitation ought to be dismissed, notwithstanding whether such ground had been raised by the opposite side. However, this does not imply that the Limitation Act destroys the right itself. Instead, it only extinguishes the ability to enforce the right, without either creating or destroying the underlying cause of action or entitlement itself.

10. As is clear from a plain reading of Section 5 of the Limitation Act, there are exceptions to this general rule. The statute allows for admitting an action provided "sufficient cause" is shown. This vests courts with the discretion to extend the period of limitation if the applicant can show that he had sufficient cause for not preferring an appeal or application within the prescribed period. Section 5 requires analysis of two ingredients: *first,* an examination of whether "sufficient cause" has been made out; and *second,* whether such cause has been shown for not filing the appeal/application "within the prescribed period".

11. As regards the first ingredient, the Limitation Act itself does not provide more guidance on what its constituent elements ought to be. Instead, Section 5 leaves the task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and individual circumstances of each case.

12. While there is no arithmetical formula, through decades of judicial application, certain yardsticks for judging the sufficiency of cause for condonation of delay have evolved. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant.[25] Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor.[26]

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25 *Basawaraj v. Land Acquisition Officer* (2013) 14 SCC 81, para 9-11.

26 *Perumon Bhagvathy Devaswom v. Bhargavi Amma* (2008) 8 SCC 321, para 13.

13. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritized over technicalities,[27] as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary – despite it appearing liberal or magnanimous. The expression 'sufficient cause' should be given liberal construction so as to advance substantial justice.[28]

14. In addition to "sufficient cause", Section 5 also requires that such cause must be shown within the prescribed period. To satisfy the latter condition, the applicant must show sufficient cause for not filing the appeal/application on the last day of the prescribed period and explain the delay made thereafter.[29] Causes arising after the culmination of the limitation period, despite being sufficient in substance, would not suffice for condonation given this second prong of Section 5 of the Limitation Act. However, the applicant shall not be required to prove each day's delay till the date of filing such appeal/application.[30]

15. With these broad yardsticks in mind, we shall now separately analyze each ground pleaded by the appellants on the anvil of sufficiency.

D. Whether delay should be condoned in the present cases?

D.1. Suppression of facts by the landowners

16. The appellants argued that the respondent-landowners had suppressed material facts from the High Court, including previous unsuccessful litigations. Acquisitions were in fact already complete in many of these cases, a fact that was deliberately not disclosed. Other respondent-landowners also concealed from the court how they were only subsequent purchasers who had acquired the lands after they had been notified for the acquisition. Similarly, in some cases, the landowners suppressed the fact that the acquired lands had already vested in their respective Gaon Sabhas.

17. In addition to highlighting the factum of suppression, the appellants have also demonstrated materiality. They urged that had these facts

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27 *Raheem Shah v. Govind Singh*, 2023 SCC OnLine SC 910, para 6.

28 *Sarpanch, Lonand Gram Panchayat v. Ramgiri Gasavi & Anr.*, 1967 SCC OnLine SC 105, para 4.

29 *Ramlal v. Rewa Coalfields Ltd.*, 1961 SCC OnLine SC 3, para 8.

30 *Ummer v. Pottengal Subida* (2018) 15 SCC 127, para 14.

been disclosed before the High Court, the respondents would have been estopped from seeking the declaration that the acquisition proceedings had lapsed. The appellants have in this regard placed reliance on ***Meera Sahni v. Lt. Governor of Delhi***[31] and Section 3 of Delhi Lands (Restrictions on Transfer) Act, 1972, to fortify their contention that no *bona fide* sale transaction could take place in respect of the lands which were already the subject matter of acquisition process. These concealments, they submitted, amount to playing fraud on both the court and the public exchequer. Accordingly, the time spent in the discovery of such suppressions should be deducted from the overall quantum of delay.

18. In this regard, the appellants have cited Section 17 of the Limitation Act, which provides that:

> "…***the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it****, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production*."
>
> [emphasis supplied]

19. There can indeed be no quarrel that Section 17 of the Limitation Act is premised on the well-known principle that fraud vitiates the delay and provides a cause of action once discovered.[32] The appellants' contention, however, has to be evaluated keeping in view the stand taken on behalf of the respondent-landowners who have refuted the omnibus allegation of suppression of facts against all of them. We have already noticed in paragraph 6(a) above that according to the respondent-landowners there are only a few cases where the allegation of suppression of material facts merits consideration.

20. We may also hasten to clarify the scope of our enquiry. The respondent-landowners have not been called upon to refute or admit the allegations of concealment of facts attributed to some of them. Similarly, we have not asked the appellants to produce original records and documents to substantiate their allegation of concealment and

31 [2008] 10 SCR 1012 : (2008) 9 SCC 177, para 21.

32 *Commissioner of Customs v. Candid Enterprises* (2002) 9 SCC 764, para 6.

suppression of material facts. We are conscious that entering into an arena of factual controversy at such an advanced stage of litigation, and that too without giving adequate opportunities to the parties can be a potential threat to the cause of justice. Simultaneously, we are satisfied that the appellants' contention in this regard cannot be brushed aside lightly.

21. Without expressing any final definitive opinion on such allegations of concealment, we are of the considered view that the appellants have discharged a *prima facie* burden for the limited purpose of making out a case for condonation of delay in the cases mentioned in the appended 'List-A', which shall be read as a part of this judgment. We believe that a fact-finding exercise is necessary in these cases, and hence, there exist sufficient grounds for the condonation of delay. The nature of relief to be eventually granted after condoning the delay, will be separately dealt with in Part E of this order.

D.2. Change of law

22. Another ground taken by appellants for seeking condonation of delay is the subsequent change of law brought in by ***Shailendra*** ***(supra)*** and ***Manoharlal*** ***(supra)***. However, we are unable to agree with this contention because of four primary reasons.

23. *Firstly*, this ground seeks to use events temporally subsequent to the expiry of the limitation period to justify the delay. To revisit Section 5 of the Limitation Act, the text of the statute provides that an appeal or application may be admitted after the prescribed period if the "*appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period*." Hence, the appellants are required to explain that they were diligent during the prescribed period of limitation and could not file the appeal because of a "sufficient cause" arising within the prescribed period.

24. This understanding is squarely covered by the case of ***Ajit Singh Thakur v. State of Gujarat***,[33] which had an analogous factual situation. The appellants in the cited case were accused of killing one Manilal and injuring Bhulabhai and others and were acquitted by the trial court. Against this, Bhulabhai filed a revision petition

33 [1981] 2 SCR 509 : (1981) 1 SCC 495, para 6.

before the High Court, which passed certain observations stating that it is a fit case for the State to file an appeal. Consequently, the State filed an appeal and sought condonation of delay. While the High Court allowed it, this Court held that the condonation of delay was improper. The Court held:

> "*6. At the outset, it is urged by learned counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully.* ***It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired.*** *A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation.* ***The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed — and that was long after limitation had expired — that the case was fit for appeal by the State Government. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the***

> ***appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation.*** *In the present case, there was no such cause, and the High Court erred in condoning the delay.*"
>
> [emphasis supplied]

25. Similarly, in most of these cases, the prescribed period of limitation had already expired long before the judgments in ***Shailendra (supra)*** and ***Manoharlal (supra)*** were delivered. The appellants let the limitation period lapse, perhaps because they saw no case on merits for appeal. When the law was subsequently re-interpreted in the afore-cited two cases, the appellants approached this Court with the present appeals, petitions, and applications. Instead of showing a sufficient cause arising within the period of limitation, they are using an event after the expiry of such period to justify the delay. This does not square with our understanding of the law, and cannot be allowed.

26. This leads us to the *second* reason for disagreeing with the ground, which is that a party cannot be allowed to take advantage of its deliberate inaction during the limitation period. Allowing to the contrary would distort incentives for parties and create dystopian consequences for our judicial process. To put this in right perspective, two scenarios can be juxtaposed: *one*, where the appellants had been vigilant and had preferred an appeal within the limitation period, but would have failed to succeed as the governing law during that time was as stated by ***Pune Municipal Corporation (supra)*** and ***Sree Balaji Nagar Residential Association (supra)***; and *second*, where the appellants deliberately allowed the limitation period to expire and have now approached this Court using the subsequent change of law as a ground for allowing the appeals. Now, if the appellants are allowed to file the appeals in the second scenario, it will lead to an anomalous situation where the appellants that were vigilant were not able to get the remedy but the ones that were sleeping over their rights would obtain relief. This would run counter to the purpose of the Limitation Act, which, instead of giving finality to the proceedings, would be permitting the parties to use the delay to their advantage.

27. *Thirdly*, if subsequent change of law is allowed as a valid ground for condonation of delay, it would open a Pandora's Box where all the cases that were subsequently overruled, or the cases that had

relied on the judgements that were subsequently overruled, would approach this Court and would seek a relief based on the new interpretation of law. There would be no finality to the proceedings and every time this Court would reach a different conclusion from its previous case, all such cases and the cases relying on it would be reopened.

28. We find adequate support to our afore-stated reason in ***Tilokchand & Motichand v. H.B. Munshi***,[34] in which a 5-Judge Bench of this Court had the occasion to consider the question of condonation of delay on the basis of subsequent change of law. While giving the majority opinion, Hidayatullah, CJ. held:

> *"[…] Everybody is presumed to know the law. It was his duty to have brought the matter before this Court for consideration.* ***In any event, having set the machinery of law in motion he cannot abandon it to resume it after a number of years, because another person more adventurous than he in his turn got the statute declared unconstitutional, and got a favourable decision. If I were to hold otherwise, then the decision of the High Court in any case once adjudicated upon and acquiesced in, may be questioned in a fresh litigation revived only with the argument that the correct position was not known to the petitioner at the time when he abandoned his own litigation****. […]"*
>
> [emphasis supplied]

29. Finally, the *fourth* reason why subsequent overruling of a judgement cannot be a sufficient cause is because when a case is overruled, it is only its binding nature as a precedent that is taken away and the *lis* between the parties is still deemed to have been settled by the overruled case.[35] It is a settled principle of law that even an erroneous decision operates as res judicata between the parties.[36] Hence, when ***Manoharlal*** ***(supra)*** overruled ***Pune Municipal Corporation*** ***(supra)*** and ***Sree Balaji Nagar Residential Association*** ***(supra)***,

34 [1969] 2 SCR 824 : (1969) 1 SCC 110, para 12.

35 *Neelima Srivastava v. State of Uttar Pradesh*, 2021 SCC Online SC 610, para 30.

36 *R. Unnikrishnan v. V.K. Mahanudevan* (2014) 4 SCC 434, para 19-23.

as well as all other cases relying on them, it only overruled their precedential value, and did not reopen the *lis* between the parties. The mere fact that the impugned orders in the present case were overruled by ***Manoharlal* (supra)** would not, therefore, be a sufficient ground to argue that the cases should be reopened.

30. In this respect, it would be pertinent to highlight an exception—cases that are still pending before this Court. If the *lis* is still pending and has not reached finality, those cases would be decided on the basis of ***Manoharlal* (supra)**. This is because a decision on the interpretation of law is applied retrospectively unless the court specifically rules as to its prospective applicability.

31. There can, however, be no doubt that a *lis* will have to be decided as per the new interpretation if during its pendency, the law has been construed in a different manner by a subsequent judgement. We say so for the reason that such new construction shall be deemed to be the correct understanding of the statute from its very inception. We find support in this regard from ***Shyam Madan Mohan Ruia v. Messer Holdings Ltd.***,[37] in which the High Court had dismissed the suit based on the decision of this Court in ***Foreshore Coop. Housing Society Ltd. v. Praveen D. Desai***.[38] During the pendency of appeal, ***Foreshore Coop. Housing Society Ltd.* (supra)** was overruled in the case of ***Nusli Neville Wadia v. Ivory Properties***.[39] This Court while deciding the issue in ***Shyam Mohan Ruia (supra)***, held that since the precedent forming the very basis of the High Court's decision stood overruled, the dispute before it must be decided as per the later decision.

32. To sum up, we hold that subsequent change of law will not be attracted unless a case is pending before the competent court awaiting its final adjudication. To say it differently, if a case has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law.

D.3. Leeway to be granted to government entities

33. The appellants have vehemently contended that the government entities ought to be allowed leeway for condonation of delay. For

37 [2019] 15 SCR 396 : (2020) 5 SCC 252, para 18.

38 [2015] 5 SCR 1075 : (2015) 6 SCC 412

39 [2019] 15 SCR 795 : (2020) 6 SCC 557

this, the appellants placed reliance on ***Collector (LA) (supra)*** and ***G. Ramegowda (supra)*** which held that courts ought to be generous while considering delay on the part of government entities given factors unique to them like the impersonal nature of their functioning, inherited bureaucratic methodology, and procedural red-tapeism.

34. However, with time, the position of law held in these cases has been diluted. In ***Commissioner of Wealth Tax v. Amateur Riders Club***,[40] this Court noted that while latitude can be granted to the government, it has to show its *bona fide* and diligence in filing the appeals. In case of bureaucratic indifference, delay cannot be condoned.

35. Subsequently, in the case of ***Postmaster General (supra)***, this Court noted that the delay cannot be condoned mechanically only because the appellant is a government entity. The Court explicitly negated the earlier rationale of impersonal machinery and inherited bureaucratic methodology given modern improvements in technology. Lastly, the Court held that government entities must show *bona fide* and demonstrate diligence in pursuing the matter.

36. This Court has again in ***State of Madhya Pradesh v. Bherulal***,[41] reiterated the reasoning of the ***Postmaster General (supra)*** and held that the ***Collector (LA) (supra)*** could not be relied upon any longer as it was laid down in a different bureaucratic and technological period. The proposition that government entities ought to be afforded greater latitude on issues of delay on account of administrative exigencies, is no longer a precedent to be followed routinely.

37. Although the appellants have cited two more decisions of this Court in support of their prayer for condonation of delay, we find both of them distinguishable on facts. In ***Koting Lamkang (supra)*** a three-judge bench of this Court, in the peculiar circumstances where certain individual officers had acted with *mala fide*, chose not to extend the burden of individual recklessness to the State's institutional interest; as may be seen from the following extract:

40 (1994) Supp. (2) SCC 603, para 3.

41 [2020] 8 SCR 912 : (2020) 10 SCC 654, para 3.

> "*8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning* ***where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected***."
>
> [emphasis supplied]

38. Similarly, in ***Sheo Raj Singh* (supra)**, the marked distinction was the scope of interference by this Court while exercising judicial review of an order of condoning delay passed by a High Court. This Court distinguished between the two situations, namely: (i) its constraints while sitting in appeal over a discretionary order; and (ii) itself considering an application for condonation of delay. Such a distinction is discernable from the following passage in ***Sheo Raj Singh* (supra)**:

> "*30. Be that as it may, it is important to bear in mind that* ***we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question***…"
>
> [emphasis supplied]

39. It seems to us that acceding to the appellants' request on the aforesaid account would also have undesirable consequences. If delay were to be condoned merely on the basis of a broad general assertion of bureaucratic indifference, without requiring demonstration of *bona fide* or an act of *mala fide* on the part of specific individuals, it would create an artificial distinction between the private parties and the government entities vis-à-vis the law of limitation. This would not be in conformity with the spirit of equality before law as guaranteed under our Constitution. Allowing such latitude would further distort incentives for the government and encourage more laxity by the bureaucracy in its general functioning, thereby undermining quality governance.

D.4. COVID-19 Pandemic

40. The fourth ground taken by the appellants is that the delay ought to be condoned on account of the COVID-19 pandemic. At this juncture, it would be apposite to discuss the series of orders passed by this Court regarding the operation of limitation vis-à-vis the COVID-19 pandemic.

41. Vide order dt. 23.03.2020 ***In Re: Cognizance for Extension of Limitation,***[42] this Court passed an omnibus order extending the period of limitation for proceedings before all courts/tribunals in the country from 15.03.2020 till further orders. Subsequently, vide an order dt. 08.03.2021, this Court noted the lifting of the nation-wide pandemic lockdown and a return to normalcy. Accordingly, the Court brought an end to the extension and held that:

> "*I. In computing the period of limitation for any suit, appeal, application or proceeding, the* ***period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021****.*
>
> *II. In* ***cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021.*** *In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.*
>
> *III. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and* ***any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the***

42 (2020) 19 SCC 10, para 2.

court or tribunal can condone delay) *and termination of proceeding* […]".

[emphasis supplied]

42. However, when COVID-19 cases across the country rose again, a miscellaneous application was filed and vide an order dt. 27.04.2021,[43] this Court restored the order dated 23.03.2020 and held that the period of limitation is to be extended till further orders. This came to an end on 23.09.2021 when directions to exclude the period between 15.03.2020 and 02.10.2021 from limitation were issued.[44]

43. On account of the third wave of Pandemic, the aforementioned order dated 23.09.2021 was finally modified on 10.01.2022, with a total period of approximately 716 days between 15.03.2020-28.02.2022 being excluded from the operation of limitation.[45]

44. The respondents submit that the orders of this Court passed by this Court from time to time as referred to above, would not come to the aid of the appellants since these orders saved only those actions and proceedings which were within the period of limitation as on 15.03.2020. They contended that the aforementioned orders ought not to be construed in a manner to resuscitate actions and proceedings that were time-barred before the onset of COVID-19 pandemic. If the limitation period had already expired before the pandemic, such cases could not take shelter behind the general relief granted by this Court in ***In Re: Cognizance for Extension of Limitation (supra)***. The respondents buttressed their arguments by relying upon ***Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd***.[46]

45. ***Sagufa Ahmed*** ***(supra)*** construed that the orders passed ***In Re: Cognizance for Extension of Limitation (supra)*** were intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. We respectfully agree with the view taken in ***Sagufa Ahmed*** ***(supra)***. Consequently, the benefit of ***In Re: Cognizance for Extension of Limitation (supra)***

43 2021 SCC Online SC 373, para 6-7.

44 2021 SCC Online SC 947, para 8.

45 (2022) 3 SCC 117, para 5.

46 [2020] 9 SCR 472 : (2021) 2 SCC 317, para 17.

can be availed by the appellants only in a case where the period of limitation expired between 15.03.2020 and 28.02.2022.

D.5. Supreme Court frowning upon the filing of fresh SLPs

46. In addition to the above grounds, the appellants claim that they were unable to file the appeals before ***Shailendra*** ***(supra)*** came as this Court was discouraging them from filing fresh SLPs by dismissing such petitions *in limine* and imposing heavy costs.

47. We are not inclined to accept the above stated plea as a good ground to condone the delay. Even if the appellants' contention is believed to be true that some of the SLPs were dismissed on the strength of the then governing law as laid down in ***Pune Municipal Corporation*** ***(supra)***), this could not be an impediment for filing SLPs on time. Had it been so, this Court would not have had the opportunity to reconsider ***Pune Municipal Corporation*** ***(supra)*** and ***Sree Balaji Nagar Residential Association*** ***(supra)***. That apart, some of the cases which are part of this batch were filed before ***Shailendra*** ***(supra)***, which belies the appellants' stance. Instead, it is likely that the appellants took a careful, considered and conscious call of not agitating their claims as they perceived their chances of success to be bleak.

D.6. Public interest and justice

48. As a final contention, the appellants have sought this Court's indulgence asserting 'public interest' and the 'larger cause of justice'. Against this, respondents have argued that the delay cannot be condoned merely based on broad assertions of equity.

49. We agree in principle with the respondents to the extent that deliberate, reckless or negligent delays ought not to be condoned, even if counterweighed by public interest since it may unfairly affect third-party rights that may have vested during the period of lapse. This simplistic framing would, however, not be apt for the present fact situation which is far more complex.

50. Although at first glance it might appear that this Court is merely tasked with balancing the interests of the public exchequer against that of individual respondents, however, a deeper examination would reveal that there are many other interests at stake and it might not be possible to undo the acquisitions without causing significant cascading harms and losses to public infrastructure.

51. Most of the acquisitions here have reached finalization as possession had been taken over or compensation stood paid. Additionally, development projects have also begun on many of such lands. In numerous cases, the land has been deployed for essential public projects such as hospitals, schools, expansion of the metro, etc. Hence, the effect of non-condonation of delay would go beyond mere financial loss to the exchequer, and instead extend to the public at large.

52. Moreover, there would also be a significant unscrambling the egg problem, where compensation paid would have to be clawed back or possession taken would have to be reversed. Problematically, in many cases, the development projects might also have to be undone. In some instances—such as reversing the possession of one small plot lying on an under-construction metro corridor—it would be practically impossible.

53. As discussed in paragraphs 11 to 13 of this judgement, in addition to the *bona fides* of the condonation-seekers and the broader impact of condoning the delay, it is equally important to look at the effect of condonation on the opposite side, particularly in cases where rights have vested. As the facts speak for themselves, invaluable rights have been vested to the public at large, given the public infrastructure that has come up on a large number of these acquired lands—especially in those cases where the possession had been taken.

54. Furthermore, even if we were to settle the *lis* by not condoning delay, it is unlikely that the respondent-landowners would be able to keep their lands as the appellants are empowered under law to initiate acquisition proceedings afresh. Although there might be a difference in the quantum of compensation owed to the respondent-landowners, it would come at the expense of delaying the construction of critical public infrastructure in our national capital. When balancing public with private interest, the quantum and adequacy of compensation do not compel us much. Hence, we believe that the comparative impact on the respondent-landowners would be minimal.

55. We also cannot be oblivious to the fact that the multiplicity of contradictory judicial opinions on Section 24(2) of the 2013 Act within a relatively short span of time have made the present set of circumstances *sui generis*. The constant flux in the legal position of law undoubtedly created significant challenges for the appellants while

approaching this Court, none of which we can ignore outrightly. In addition, we would also reiterate at this juncture that we have found no *mala fide* on part of the appellants or their officers.

56. The impact of not condoning the delay would thus be three-fold, which taken altogether make a compelling case for condonation of delay: *one*, there will be significant harm to the public at large by way of delayed infrastructure, in addition to financial loss to the public exchequer; *second*, the comparative benefit to landowners would not be substantial given that no indefeasible rights have been vested with them as the *lis* has not yet acquired quietus in most cases; and *third*, the matter would still not attain finality as the State is likely to invoke its power of eminent domain and reinitiate acquisition proceedings given the criticality of the infrastructure being built. We do not feel that these consequences further the ends of limitation law. As discussed earlier in paragraph 13, the law of limitation is intended to curb the evil of deliberate or negligent laxity in legal proceedings, which is not the case here. Hence, the larger interest of justice mandates us to condone the delay in the present batch of cases. The consequential relief, after condonation of delay, is however dealt with in Part E **(*infra*)** below.

57. This approach is also seconded by the case of ***State of Jharkhand v. Lalu Prasad Yadav***,[47] in which this Court noted that while the Central Bureau of Investigation failed to follow its own manual and filed SLPs with delay, such delay should be condoned in light of the facts of the case and to advance the cause of justice.

58. We note that the respondents have cited ***Pundlik Jalam Patil (supra)*** to argue that public interest cannot be a sole ground to seek condonation of delay. A closer examination of the aforementioned case, however, would show that the Court in that case denied condonation of delay as the government had been found to be negligent and given that it had been established that the landowners depended on the acquired lands for their livelihood. As discussed above, that is not the case here, especially in the case of landowners in NCT of Delhi, which is almost entirely urban and whose residents generally do not depend on the agricultural income as the source of their livelihood.

47 [2017] 3 SCR 630 : (2017) 8 SCC 1, para 67-69.

D.7. Delay already condoned in some cases

59. While seeking condonation of delay in filing of the present appeals, the appellants have also urged that this Court had already condoned the delay in some of the SLPs and granted leave in such petitions. Against these, the respondents have argued that such condonation was done by *ex-parte* orders.

60. The proviso to Rule 9(1) of Order XXI of the Supreme Court Rules, 2013 reads:

> "*Provided that where a petition for special leave has been filed beyond the period of limitation prescribed therefor and is accompanied by an application for condonation of delay,* ***the Court shall not condone the delay without notice to the respondent***"
>
> [emphasis supplied]

61. As per the aforementioned rule, condonation of delay ought not to be done by the Court *ex-parte*. However, an identical version of this rule in the previous Supreme Court Rules of 1966 was interpreted in ***High Court of Judicature of Patna v. Madan Mohan Prasad***,[48] in which, this Court held that while it is prudent to give notice before condonation of delay, not giving of notice is not fatal to the case. The claimant will be allowed to point out at the stage of hearing that this Court was not justified in condoning the delay and that the leave, if granted, should be revoked or notice issued should be dismissed.

62. The condonation of delay in some of these cases without issuing any notice, is now an inconsequential issue, for we have already extensively dealt with the grounds for condonation of delay. The respondent-landowners too have been heard at length over the course of the proceedings, which we believe satisfies the standard laid down in ***Madan Mohan Prasad*** ***(supra).***

63. Nevertheless, we are also conscious of the fact that no notice was issued in some of the cases, and the parties thereto have not been accorded an opportunity of hearing. All such cases, which we include in the annexed 'List-B', are therefore ordered to be de-tagged and be listed separately on 22.07.2024.

48 [2011] 13 SCR 972 : (2011) 9 SCC 65, para 38.

E. *Conclusion and Directions*

64. The analysis in the foregoing paragraphs prompts us to hold that while some of the arguments put forth by the government authorities for condonation of delay, like subsequent change of law, special leeway for government entities, or the Court allegedly frowning upon filing of fresh SLPs; cannot be accepted, however, the appellants have made out sufficient cause for condonation of delay on the ground of public interest. In addition, the cases where allegations of suppression of material facts have been made also cannot be rejected at the threshold. Similarly, if a case falls within the parameters laid down in ***In Re: Cognizance for Extension of Limitation (supra)***, namely, that the delay occurred on account of the COVID-19 pandemic, such delay can also be condoned. Consequently, the delay is condoned in all these matters, except those mentioned in 'List-B', 'List-C.2', 'List-D.2' and 'List-E.1' ***(infra).***

65. Having condoned the delay and upon grant of leave and after perusing the material on record, we find that the cases which form part of the appended 'List-E.2' are squarely covered in favor of the appellants in terms of ***Manoharlal (supra)***. While it may not be feasible to give detailed analysis of each of these cases, suffice it would be to show the same illustratively. For instance, in SLP (C) Diary No. 19172/2019, titled "DDA v. Vijay Mohan", while the possession was admittedly not taken, compensation was paid on 09.08.2005. Accordingly, the test laid down in ***Manoharlal (supra)*** has been met and the acquisition proceedings cannot be deemed to have lapsed under the 2013 Act.

66. All such civil appeals are accordingly allowed, the impugned judgment of the High Court in each case is set aside, and the acquisition of the respondents' lands under 1894 Act is consequently upheld. This will, however, not preclude the respondents from recovery of the compensation amount, if not already paid or to the extent it is not paid, along with interest and other statutory benefits under 1894 Act. Similarly, they shall be at liberty to seek reference under Section 18 of the 1894 Act in accordance with law. The Government of NCT of Delhi and its authorities are directed to take physical possession of the lands falling under this category (i.e., 'List-E.2'), if not already taken and continue uninterruptedly to complete the public infrastructure projects.

67. Similarly, we find on perusal of the record that the cases which we have included in the appended 'List-C.1' are covered by the ratio of ***KL Rathi (supra)*** and are disposed of accordingly. As regards to the cases which form part of 'List-C.2', it appears that the Review Petitions and Miscellaneous Applications are based on grounds other than change of law. Such Review Petitions and Miscellaneous Applications are required to be examined on a case-to-case basis. Accordingly, these cases are also de-tagged and ordered to be listed separately on 22.07.2024.

68. Likewise, we have identified the cases enlisted as D.1, which fall within the four corners of our analysis in ***GNCTD v. BSK Realtors***.[49] All these cases are, therefore, disposed of by invoking our powers under Article 142 of the Constitution in terms of the directions issued in ***BSK Realtors (supra).*** On the same analogy, there are cases included in 'List-D.2', where the impugned judgements have been already set aside in the previous rounds of litigation. All these matters have thus been rendered infructuous. Ordered accordingly.

69. It has also been brought to our notice that in some of the cases (see 'List-E.1') notice was issued only on delay and not on merits. Since delay has now been condoned, we direct that let notice be issued in these petitions on merits, returnable on 22.07.2024.

70. At this stage, we may hasten to add that the cases mentioned in the appended 'List-A' contain allegations of fraud against the landowners. As discussed in paragraph 21, given that a detailed fact-finding inquiry is necessary to ascertain the rightful title-holder and the claimant of receiving the compensation, we hereby set aside the orders of the High Court that are under challenge in these civil appeals or in the civil appeals out of which the subject Review Petitions or Miscellaneous Applications have arisen. We revive the relevant writ petitions, which shall stand restored on the file of the High Court. After deciding the question of suppression of facts, the High Court shall proceed to dispose of the cases on merits, in terms of our dictum in these batch of cases.

71. In this regard, the Hon'ble Chief Justice of the High Court of Delhi is requested to constitute a dedicated bench to decide these writ

49 SLP(C) Diary No. 17623/2021.

petitions in the manner indicated hereafter. The nominated bench will accord an opportunity to the landowners/subsequent purchasers and the appellants herein to submit additional documents on affidavits whereupon such bench shall embark on an exercise to decide who between the landowner(s) and the subsequent purchaser(s) is the rightful claimant to receive compensation. The nominated bench will have the authority to obtain independent fact-finding enquiry reports, if deemed necessary. The inquiry could include determination as to whether after the notification under Section 4(1) of the 1894 Act, any transfer could have been effected and if so, whether such transfer is permitted by law. Once compensation is determined, the relevant authority in the land acquisition department shall deposit the same with the Reference Court. The Reference Court shall then invest the deposited amount in a short-term interest-bearing fixed deposit account with a nationalized bank, ensuring its periodical renewal until the relevant writ petition is disposed of by the nominated bench. Release of the invested amount together with the accrued interest to the rightful claimant will be contingent upon the decision of the High Court.

72. Lastly, we find that there are some cases which are included in 'List-E.3' where the appellants not only failed to take possession of the acquired land but also did not pay any compensation. Consequently, the appellants cannot seek protection under ***Manoharlal*** ***(supra).*** At the same time, we are of the considered view that it would not subserve any public interest at large, given the unique situation at hand, if the government were to be required to fulfill all the conditions for a fresh acquisition under the 2013 Act. As analyzed before under the Head: ***Public interest and justice*** of this judgment, substantial harm would ensue towards the public at large if the acquisition proceedings are not concluded promptly.

73. To prevent such an outcome and after considering the unique facts and circumstances of this batch of cases, we deem it fit to exercise our powers under Article 142 of the Constitution in the interests of doing complete justice. We accordingly issue the following directions for all the cases mentioned in 'List-E.3':

    (a) The time limit for initiation of fresh acquisition proceedings in terms of the provisions contained in section 24(2) of the 2013 Act is extended by a year starting from 01st August, 2024

whereupon compensation to the affected landowners may be paid in accordance with law, failing which consequences, also as per law, shall follow;

(b) The parties shall maintain *status quo* regarding possession, change of land use, and creation of third-party rights till fresh acquisition proceedings, as directed above, are completed;

(c) Since the respondent land-owners are not primarily dependent upon the subject lands as their source of sustenance and most of these lands were/are under use for other than agricultural purposes, we deem it appropriate to invoke our powers under Article 142 of the Constitution and dispense with the compliance of Chapters II and III of the 2013 Act, whereunder it is essential to prepare a Social Impact Assessment Study Report and/or to develop alternative multi-crop irrigated agricultural land. We do so to ensure that the timeline of one year extended at (a) above to complete the acquisition process can be adhered to by the appellants and the GNCTD, which would also likely be beneficial for the expropriated land owners;

(d) Similarly, compliance with Sections 13, 14, and 16 to 20 of 2013 Act can be dispensed with as the subject-lands are predominantly urban/semi-urban in nature and had earlier been acquired for public purposes of paramount importance. In order to simplify the compliance of direction at (a) above, it is further directed that every Notification issued under Section 4(1) of the 1894 Act in this batch of cases shall be treated as a Preliminary Notification within the meaning of Section 11 of the 2013 Act, and shall be deemed to have been published as on 01.01.2014;

(e) The Collector shall provide hearing of objections as per Section 15 of the 2013 Act without insisting for any Social Impact Assessment Report and shall, thereafter, proceed to take necessary steps as per the procedure contemplated under Section 21 onwards of Chapter-IV of the 2013 Act, save and except where compliance of any provision has been expressly or impliedly dispensed with;

(f) The land-owners may submit their objections within a period of four weeks from the date of pronouncement of this Order.

Such objections shall not question the legality of the acquisition process and shall be limited only to clauses (a) and (b) of Section 15(1) of the 2013 Act;

(g) The Collector shall publish a public notice on his website and also in one English and one vernacular newspaper, within two weeks of expiry of the period granted under direction (f) above, so as to accord personal hearing to all the persons interested in the land under acquisition in terms of Section 21(1) of the 2013 Act. Such hearing shall also be restricted only to the nature of objections as per direction (f) above and/or the determination of compensation for the acquired land;

(h) The Collector shall, thereafter, pass an award as early as possible but not exceeding six months, regardless of the maximum period of twelve months contemplated under Section 25 of the 2013 Act. The market value of the land shall be assessed as on 01.01.2014 and the compensation shall be awarded along with all other monetary benefits in accordance with the provisions of the 2013 Act except the claim like rehabilitation etc.;

(i) The Collector shall consider all the parameters prescribed under Section 28 of the 2013 Act for determining the compensation for the acquired land. Similarly, the Collector shall determine the market value of the building or assets attached with the land in accordance with Section 29 of the 2013 Act, and shall further award solatium in accordance with Section 30 of the 2013 Act;

(j) In the peculiar facts and circumstances of this case, since it is difficult to reverse the clock back, the compliance of Chapter (V) pertaining to "Rehabilitation and Resettlement Award" is hereby dispensed with; and

(k) The expropriated land-owners shall be entitled to seek reference for enhancement of compensation in accordance with Chapter-VIII of the 2013 Act.

74. Finally, apart from the aforementioned segregation of cases, the present batch of matters also includes SLP(C) No. 14308/2020 (Ashok Pratap Singh v. GNCTD) that has been filed by the landowner seeking altogether different relief. Accordingly, this case is ordered to be de-tagged and listed separately on 22.07.2024.

75. Before parting, we deem it appropriate to provide a cautionary note that the limited fact-finding conducted by this Court may not be entirely accurate due to the complex nature of cases involving subsequent sale transactions, earlier rounds of litigation, land titles, and status of compensation and/or possession. We accordingly grant liberty to the parties to approach the High Court if any factual disputes arise in future or if further clarification is required, and the High Court shall decide such cases based on the principles outlined above, taking into account the facts and, if necessary, the merits of the case.

76. It is also needless to clarify that the High Court shall proceed to decide the cases remitted to it as expeditiously as possible, but subject to its convenience, in accordance with law.

77. All the matters stand disposed of in aforementioned terms.

Appendix

List	Sub-lists (if any)	Description	Result
List A **(Suppression of facts)**	-	Cases where the respondent-landowners are alleged to have suppressed facts regarding them being subsequent purchasers and/or the land having vested in Gaon Sabha.	Remanded back to the High Court
List B **(Notice neither on delay nor on merits)**	-	Notice not issued either on delay or on merits, and as such no opportunity was given to the landowners to contend the issue of delay.	De-tagged and listed separately on 22 July 2024.
List C **(Review Petitions/MAs)**	List C.1	Review Petitions and Miscellaneous Applications primarily pleading change of law.	To be dismissed using Article 142 and acquisition to be re-initiated under 2013 Act (as per ***KL Rathi (supra)***).
	List C.2	Review Petitions and Miscellaneous Applications filed before ***Shailendra (supra)*** and/or not primarily pleading change of law.	De-tagged and listed separately on 22 July 2024 (as per ***KL Rathi (supra)***)

List D **(Leave granted in previous SLP)**	List D.1	Previous SLP dismissed after granting leave.	To be dismissed using Article 142 and acquisition to be re-initiated under 2013 Act (as per ***BSK Realtors (supra)***).
	List D.2	Previous SLP allowed after granting leave.	To be dismissed for having become infructuous (as per ***BSK Realtors (supra)***)
List E **(Leave not granted in previous SLP)**	List E.1	No previous SLP or leave not granted in previous SLP, notice issued on delay, but no notice issued on merits in the present SLP.	De-tagged and listed separately on 22 July 2024, for determining whether ***Manoharlal (supra)*** is satisfied or not.
	List E.2	No previous SLP or leave not granted in previous SLP, notice on merits issued in the present SLP, and ***Manoharlal (supra)*** test applicable.	The acquisition under 1894 Act upheld.
	List E.3	No previous SLP or leave not granted in previous SLP, notice issued on merits in the present SLP, ***Manoharlal (supra)*** test not applicable.	To be dismissed using Article 142 and acquisition to be re-initiated under 2013 Act.

List A: Suppression of facts

S. No.	Case Title
1.	DELHI DEVELOPMENT AUTHORITY vs. TEJPAL [SLP(C) 026697/2019]
2.	GOVERNMENT OF NCT OF DELHI vs. SARLA GUPTA (DEAD) THROUGH LRS. [D. No. 12659/2022]
3.	DELHI DEVELOPMENT AUTHORITY vs. BISHAN SINGH [D. No. 411/2023]
4.	DELHI DEVELOPMENT AUTHORITY vs. VIKRANT [D. No. 2517/2021]
5.	DELHI DEVELOPMENT AUTHORITY vs. NEERAJ JAIN [R.P]-[D. No. 18945/2018]
6.	DELHI DEVELOPMENT AUTHORITY vs. MAN SINGH [SLP No. 15081/2019]

7.	DELHI DEVELOPMENT AUTHORITY vs. JAI SINGH [D.No. 3365/2023]
8.	DELHI DEVELOPMENT AUTHORITY vs. M/S NATURE TECH BUILDERS LTD. [D. No. 7862/2021]
9.	LAND ACQUISITION COLLECTOR EAST vs. MAHESH CHAND [D. No. 37815/2022]
10.	DELHI DEVELOPMENT AUTHORITY vs. RAM PRASAD [SLP(C) 17053/2022]
11.	DELHI DEVELOPMENT AUTHORITY vs. UMA MEHRA [D. No. 2441/2022]
12.	GOVERNMENT OF NCT OF DELHI vs. DHANI RAM (DEAD) [D. No. 20223/2021]
13.	DELHI DEVELOPMENT AUTHORITY vs. VEENU KOCHER [MA No. 1268/2019]
14.	DELHI DEVELOPMENT AUTHORITY vs. M/S IMPRESS ESTATES PVT. LTD. [D. No. 77/2023]
15.	DELHI DEVELOPMENT AUTHORITY vs. ROOPRAM [D. No. 10266/2019]
16.	LAND AND BUILDING DEPARTMENT vs. VIKRAM SETH [D. No. 11258/2023]
17.	GOVT. OF NCT OF DELHI THROUGH SECRETARY LAND AND BUILDING DEPARTMENT vs. VIMAL JAIN [D. No. 8523/2018]
18.	DELHI DEVELOPMENT AUTHORITY vs. JAYBIR [SLP(C) No. 2877/ 2018
19.	DELHI DEVELOPMENT AUTHORITY vs. BRAHM SINGH [D. No. 21739/2019]
20.	DELHI DEVELOPMENT AUTHORITY vs. KUSHAL KUMAR GOGA [D. No. 12924/2022]
21.	DELHI DEVELOPMENT AUTHORITY vs. DHANI RAM [D. No. 21888/2020]
22.	LAND AND BUILDING DEPARTMENT vs. M/S MALSH ENTERPRISES PVT. LTD. [D. No. 10476/2022]
23.	DELHI DEVELOPMENT AUTHORITY vs. RANBIR SINGH DAGAR [D. No. 762/2022]
24.	DELHI DEVELOPMENT AUTHORITY vs. AJAB SINGH [SLP(C) No. 22853/2019]
25.	GOVERNMENT OF NCT OF DELHI vs. SURESH KUMAR [D. No. 1894/2021]
26.	DELHI DEVELOPMENT AUTHORITY vs. ARJUN CHOPRA [SLP(C) No. 4400/2019]

27.	DELHI DEVELOPMENT AUTHORITY vs. TARA KAUR SARANG [D. No. 1359/2022]
28.	LAND AND BUILDING DEPARTMENT vs. SUNITA DASS [D. No. 22560/2020]
29.	GOVT. OF NCT OF DELHI vs. PREM SINGH [D. No. 2588/2022]
30.	DELHI DEVELOPMENT AUTHORITY vs. KAMLESH [SLP(C) No. 5509/2020]
31.	GOVT. OF NCT DELHI vs. FAUZIA SIDDIQUI [D. No. 1564/2022]
32.	GOVT. OF NCT OF DELHI vs. MUNISH KUMAR [SLP (C) No.13046/2022]
33.	DELHI DEVELOPMENT AUTHORITY vs. KIRAN KUMAR ANAND [SLP(C) No. 4398/2019]
34.	DELHI DEVELOPMENT AUTHORITY vs. ANOOP NARANG [SLP(C) No.8758 /2016]
35.	DELHI DEVELOPMENT AUTHORITY vs. KANIKA GANDOTRA [SLP(C) No. 9059/2019]
36.	DELHI DEVELOPMENT AUTHORITY vs. AMAN [SLP(C) No. 30451/2018]
37.	DELHI DEVELOPMENT AUTHORITY vs. JAGVATI DEVI [SLP(C) No. 030454/2018]
38.	DELHI DEVELOPMENT AUTHORITY vs. ASHOK GARG [SLP(C) No. 22131/2019]
39.	DELHI DEVELOPMENT AUTHORITY vs. PIMA LAL [SLP(C) No. 030445/2018]
40.	DELHI DEVELOPMENT AUTHORITY vs. SMT. AMAN [SLP(C) No. 20203/2018]
41.	DELHI DEVELOPMENT AUTHORITY vs. SH. PREM CHAND [SLP(C) No.20202/2018]
42.	GOVERNMENT OF NCT OF DELHI vs. RAJ SINGH [24244/2020]
43.	GOVERNMENT OF NCT OF DELHI vs. ANILJIT SINGH [D. No. 9458/2021]
44.	LAND AND BUILDING DEPARTMENT vs. LAKHMEERI [D. No. 29094/2021]
45.	DELHI DEVELOPMENT AUTHORITY vs. RAM PHAL [SLP No. 30446/2018]
46.	DELHI DEVELOPMENT AUTHORITY vs. MANZOOR-UL-HAQ [DIARY NO 13505/2022 R.P.(C) No]

47.	DELHI DEVELOPMENT AUTHORITY vs. BALRAJ [SLP(C) No. 029825/2018]
48.	DELHI DEVELOPMENT AUTHORITY vs. UDAY SINGH [MA No. 46/2023]
49.	DELHI DEVELOPMENT AUTHORITY vs. PRAVEEN KUMAR [SLP(C) No. 22849/2019]
50.	DELHI DEVELOPMENT AUTHORITY vs. RAMA SHANKAR KHEMAKA [SLP(C) No. 394/2019]
51.	DELHI DEVELOPMENT AUTHORITY vs. RAMESH SINGH [SLP(C) No. 22860/2019]
52.	DELHI DEVELOPMENT AUTHORITY vs. ATTAR SINGH [SLP(C) No. 22862/2019]
53.	DELHI DEVELOPMENT AUTHORITY VS. SURESH KUMAR [SLP(C) No. 22863/2019]
54.	DELHI DEVELOPMENT AUTHORITY vs. KUNDAN RAM @ KUNDAN SINGH (DEAD) [SLP(C) No. 22865/2019]
55.	DELHI DEVELOPMENT AUTHORITY vs. HARSH AHUJA [SLP(C) No. 014565/ 2019]
56.	DELHI DEVELOPMENT AUTHORITY vs. SHIVSHANKAR SHIVHARE [SLP(C) No. 22855/2019]
57.	DELHI DEVELOPMENT AUTHORITY vs. J.N. CHAMBER [SLP(C) No. 26088/2018]
58.	GOVT. OF NCT OF DELHI vs. CHARAN DAS [D. No. 28985/2020]
59.	LAND AND BUILDING DEPARTMENT THROUGH ITS SECRETARY GOVERNMENT OF NCT OF DELHI vs. M/S NATURE TECH BUILDERS LTD [D. No. 29643/2021]
60.	DELHI DEVELOPMENT AUTHORITY vs. GYAN SINGH [C.A. No. 005539 / 2017]
61.	DELHI DEVELOPMENT AUTHORITY vs. BHUSHAN NANGIA [D. No. SLP(C) No. 003825/2017]
62.	NCT OF DELHI vs. VINAY KUMAR GUPTA [D. No. 27992/2022]
63.	GOVERNMENT OF NCT OF DELHI vs. GAJRAJ [D. NO. 28683/2021]
64.	GOVERNMENT OF NCT OF DELHI vs. SARITA JAIN [D. No. 17877/2021]
65.	DELHI DEVELOPMENT AUTHORITY vs. ISHRAT ALI [SLP(C) No. 021273/2018]
66.	GOVT. OF NCT OF DELHI vs. MUKESH [D.No.27935/2022]

67.	GOVT. OF NCT OF DELHI THRU SECRETARY LAND AND BUILDING DEPARTMENT vs. LAJJAWATI [SLP(C) No. 14573/2019]
68.	DELHI DEVELOPMENT AUTHORITY vs. SURESH [SLP(C) 740/2018]
69.	DELHI DEVELOPMENT AUTHORITY vs. KHAYALWATI [SLP(C) 000738/2018]
70.	LAND AND BUILDING DEPARTMENT vs. M/S. TAROUNI CONSTRUCTION AND FINANCE P LTD. [D.No.14064/2023]
71.	GOVERNMENT OF NCT OF DELHI vs. JASWANT [D.No.27989/2022]
72.	DELHI DEVELOPMENT AUTHORITY vs. SONA DEVI [SLP(C) No. 29157/2018]
73.	GOVT. OF NCT OF DELHI vs. PYARI RAUTHAN [D. No. 14069/2023]
74.	DELHI DEVELOPMENT AUTHORITY vs. CHAMAN SINGH [SLP(C) No. 28438/2018]
75.	DELHI DEVELOPMENT AUTHORITY vs. SURENDER KUMAR VATS [SLP(C) No. 24781/2019]
76.	DELHI DEVELOPMENT AUTHORITY vs. PARAM MITRA MANAV NIRMAN SANSTHAN [D.No.15001/2023]
77.	DELHI DEVELOPMENT AUTHORITY vs. BHAN DEVI [SLP(C) No. 008768/2016]
78.	LAND AND BUILDING DEPARTMENT vs. ALOK KUMAR [D.No.15623/2022]
79.	DELHI DEVELOPMENT AUTHORITY vs. GAURAV SAHNI [MA No. 2327/2019]
80.	DELHI DEVELOPMENT AUTHORITY vs. DHARMA PAL AGGARWAL [R.P.(C) No. 001113/2018]
81.	DELHI DEVELOPMENT AUTHORITY vs. SHIV LAL [SLP(C) No. 36423/2016]
82.	DELHI DEVELOPMENT AUTHORITY vs. JATINDER PAL SINGH [SLP(C) No. 30102/ 2018]
83.	DELHI DEVELOPMENT AUTHORITY vs. SONAR PAPER PRODUCT PVT. LTD. [SLP(C) No. 28219/2018]
84.	DELHI DEVELOPMENT AUTHORITY vs. ANIL GIANCHANDANI [MA No. 1722/2023]
85.	DELHI DEVELOPMENT AUTHORITY vs. AMRIT LAL ARORA [SLP (C). No. 4114/2019]

86.	GOVT. OF NCT OF DELHI vs. GANESHI LAL JAIN [D. No. 29314/2022]
87.	DELHI DEVELOPMENT AUTHORITY vs. SUMAN CHHABRA [SLP(C) No. 032932/2018]
88.	DELHI DEVELOPMENT AUTHORITY vs. JITENDER [SLP(C) No. 028440/2018]
89.	DELHI DEVELOPMENT AUTHORITY vs. RAJIV SUD [SLP(C) No. 029614/2018]
90.	DELHI DEVELOPMENT AUTHORITY vs. SINGH RAJ [SLP(C) No. 027689/2018]
91.	DELHI DEVELOPMENT AUTHORITY vs. ANKIT BANSAL [D.No. 6303/2018]
92.	DELHI DEVELOPMENT AUTHORITY vs. RAM KISHAN [SLP(C) No. 022259/2018]
93.	DELHI DEVELOPMENT AUTHORITY vs. SARLA GUPTA (DEAD) THROUGH LRS. [SLP(C) No. 21557/2018]
94.	DELHI DEVELOPMENT AUTHORITY vs. MOHD. ZUBAIR [SLP(C) No. 014576/2019]
95.	DELHI DEVELOPMENT AUTHORITY vs. ABHA DUTTA [SLP(C) No. 16251/2018]
96.	GOVT. OF NCT OF DELHI vs. NASEEM AHMED [D. No. 7191/2018]
97.	DELHI DEVELOPMENT AUTHORITY vs. SUNIT BANSAL [D. No. 35922/2018]
98.	LAND AND BUILDING DEPARTMENT vs. N.S. VASISHT [D. No. 7292/2023]
99.	GOVERNMENT OF NCT OF DELHI vs. KALU RAM [D. No. 26604/2021]
100.	GOVERNMENT OF NCT OF DELHI THROUGH SECRETARY LAND AND BUILDING DEPARTMENT vs. HARSH AHUJA [SLP(C) No. 023369/2018]
101.	GOVT. OF NCT OF DELHI vs. AJIT KUMAR @ AJIT KUMAR CHAUDHARY [26687/2021]
102.	LAND AND BUILDING DEPARTMENT vs. MUKTESH LEKHI [D. No. 9433/2022]
103.	DELHI DEVELOPMENT AUTHORITY vs. PHOOLWATI [D. No. 23683/2020]
104.	GOVERNMENT OF NCT OF DELHI vs. AJAB SINGH [SLP(C) No. 12692/2020]
105.	DELHI DEVELOPMENT AUTHORITY vs. VEER WATI [SLP(C) No. 4895/2020]

106.	DELHI DEVELOPMENT AUTHORITY vs. MANISH GUPTA [D. No. 1558/2020]
107.	THE LAND ACQUISITION COLLECTOR vs. VEER WATI [D. No. 4860/2023]
108.	GOVERNMENT OF NCT OF DELHI vs. ASHA RAM TYAGI [D. No. 5017/2023]
109.	GOVT. OF NCT OF DELHI vs. SIRAJUDDIN [D. No. 7061/2023]
110.	DELHI DEVELOPMENT AUTHORITY vs. VINOD KUMAR [D. No. 30377/2021]
111.	DELHI DEVELOPMENT AUTHORITY vs. JAIPAL SINGH [SLP(C) No. 032412/ 2018]
112.	DELHI DEVELOPMENT AUTHORITY vs. HARINDER KAUSHIK [SLP (C) 7945/2019]
113.	DELHI DEVELOPMENT AUTHORITY vs. BALJEET SINGH [SLP(C) No. 7950/2019]
114.	DELHI DEVELOPMENT AUTHORITY vs. SUNIL KUMAR [SLP(C) No. 11170/2019]
115.	DELHI DEVELOPMENT AUTHORITY VS. SHRI AJAY KUMAR [SLP (C) No. 395/2019]
116.	DELHI DEVELOPMENT AUTHORITY vs. GURNAM ARORA [MA 001647/2023]
117.	DELHI DEVELOPMENT AUTHORITY vs. ARUNA SINGH [MA 1931/2023]
118.	GOVT. OF NCT OF DELHI vs. GAURAV [D. No. 29070/2020]
119.	DELHI DEVELOPMENT AUTHORITY vs. SURESH KUMAR [D. No. 41950/2019]
120.	DELHI DEVELOPMENT AUTHORITY vs. RAJ KUMAR ARORA [D. No. 3079/2023]
121.	DELHI DEVELOPMENT AUTHORITY vs. VIKRAM SINGH [SLP(C) No. 030103 - / 2018]
122.	DELHI DEVELOPMENT AUTHORITY vs. SHIV KUMAR THROUGH GURNAM SINGH KOCHHAR [SLP (C) No. 3259/2019]
123.	DELHI DEVELOPMENT AUTHORITY vs. SUNANDA DEVI SARAF [SLP(C)No.022691/ 2018]
124.	DELHI DEVELOPMENT AUTHORITY vs. RAMPAL [SLP(C) No. 005818/2018]
125.	DELHI DEVELOPMENT AUTHORITY vs. BHAGWATI DEVI (DEAD) [SLP(C) No. 031870 -/2018]
126.	DELHI DEVELOPMENT AUTHORITY vs. YOGESH KUMAR [SLP(C) No. 024080/2018]

List B: Notice neither on delay nor on merits

S. No.	Case Title
1.	GOVT. OF NCT OF DELHI vs. ARCHANA KHANNA [D. No. 20119/2023]
2.	GOVERNMENT OF NCT OF DELHI vs. SURENDRA SINGH PENTAL [D. No. 14018/2023]
3.	DELHI DEVELOPMENT AUTHORITY vs. BISHAN SINGH [D. No. 402/2023]
4.	DELHI DEVELOPMENT AUTHORITY vs. CHAMAN SINGH [D. No. 515/2023]
5.	GOVERNMENT OF NCT OF DELHI vs. HARINDER KAUSHIK [D. No. 14075/2023]
6.	GOVT. OF NCT OF DELHI vs. VIKRAM SARIN [D. No. 15572/2022]
7.	GOVT OF NCT OF DELHI vs. ZILE SINGH [D. No. 32665/2023]
8.	GOVT. OF NCT OF DELHI vs. MUNSHI RAM [D. No. 3747/2023]
9.	DELHI DEVELOPMENT AUTHORITY vs. JAGBIR [D. No. 4083/2023]
10.	GOVT. OF NCT OF DELHI vs. SUMAN CHHABRA [D. No. 37530/2023]
11.	GOVERNMENT OF NCT OF DELHI vs. VIJAY TRISHAL [D. No. 102/2023]
12.	GOVERNMENT OF NCT OF DELHI vs. ARJUN CHOPRA [D. No. 15557/2023]
13.	LAND AND BUILDING DEPARTMENT vs. RAJA RAM [D. No. 11587/2023]
14.	GOVERNMENT OF NCT OF DELHI vs. SURINDER KAUR [D. No. 6339/2023]
15.	DELHI DEVELOPMENT AUTHORITY vs. PAWAN MATHUR [D. No. 6515/2023]
16.	DELHI DEVELOPMENT AUTHORITY vs. VEERA SINGH [D. No. 40963/2022]
17.	DELHI DEVELOPMENT AUTHORITY vs. VEENA MAHAJAN [D. No. 5463/2023]
18.	DELHI DEVELOPMENT AUTHORITY vs. EMMSONS INTERNATIONAL LTD. [D. No. 12740/2023]
19.	DELHI DEVELOPMENT AUTHORITY vs. BEENA GUPTA (D) THROUGH LRS. [D. No. 10980/2023]

20.	DELHI DEVELOPMENT AUTHORITY vs. SIDDHARTH KAPOOR [D. No. 1460/2023]
21.	GOVERNMENT OF NCT OF DELHI vs. SONAR PAPER PRODUCTS PVT. LTD [D. No. 18682/2023]
22.	DELHI DEVELOPMENT AUTHORITY vs. CHET RAM [D. No. 11765/2022]
23.	THE GOVT. OF NCT OF DELHI vs. PUSHP LATA JAIN [D. No. 8581/2022]
24.	GOVERNMENT OF NCT OF DELHI vs. RAFIQ AHMED [D. No. 18684/2023]
25.	GOVT. OF NCT OF DELHI vs. PHOOL WATI GUPTA [D. No. 19084/2023]
26.	GOVT. OF NCT OF DELHI vs. SAAD FIROZ [D. No. 12373/2023]
27.	DELHI DEVELOPMENT AUTHORITY vs. OM PRAKASH [D. No. 5141/2023]
28.	DELHI DEVELOPMENT AUTHORITY vs. GYANWATI [D. No. 38181/2023]
29.	DELHI DEVELOPMENT AUTHORITY vs. J.C. GUPTA [D. No. 40294/2022]
30.	LAND AND BUILDING DEPARTMENT vs. KARTARI DEVI [D. No. 19215/2023]
31.	DELHI DEVELOPMENT AUTHORITY vs. NASEEM AHMED [D. No. 11686/2023]
32.	LAND AND BUILDING DEPARTMENT vs. ASHU [D.No. 19217/2023]
33.	DELHI DEVELOPMENT AUTHORITY vs. BALWAN [D. No. 4086/2023]
34.	DELHI DEVELOPMENT AUTHORITY vs. R.S. RETAIL STORES PVT. LTD. [D. No. 11767/2023]
35.	GOVT. OF NCT OF DELHI vs. SANJEEV GOYAL [D. No. 19652/2022]
36.	LAND AND BUILDING DEPARTMENT vs. CHANDER BHAN [D. No. 11591/2023]
37.	GOVT. OF NCT OF DELHI vs. URMIL MAKKAR [D. No. 12327/2023]
38.	LAND AND BUILDING DEPARTMENT vs. DHYAN SINGH [D. No. 19983/2023]
39.	GOVERNMENT OF NCT OF DELHI vs. PAWAN KUMAR GARG [D. No. 12328/2023]

40.	DELHI DEVELOPMENT AUTHORITY vs. BHARAT KUMAR. [D. No. 20490/2023]
41.	LAND AND BUILDING DEPARTMENT vs. CHHATAR PAL SINGH [D. No. 10729/2023]
42.	DELHI DEVELOPMENT AUTHORITY vs. PRITAM SINGH @ PRITAM [D. No. 10553/2023]
43.	DELHI DEVELOPMENT AUTHORITY vs. M/S. GREEN FINANCE PVT. LTD. [D. No. 2121/2023]
44.	LAND AND BUILDING DEPARTMENT vs. SANJAY VERMANI [D. No. 11257/2023]
45.	DELHI DEVELOPMENT AUTHORITY vs. JAGBIR SINGH [D. No. 724/2023]
46.	DELHI DEVELOPMENT AUTHORITY vs. URMIL MAKKAR [D. No. 1001/2023]
47.	GOVT. OF NCT OF DELHI vs. MD. ILYAS [D. No. 38009/2023]
48.	GOVT. OF NCT OF DELHI vs. DEEPAK SETH [D. No. 12025/2023]
49.	DELHI DEVELOPMENT AUTHORITY vs. TARLOK SINGH [D. No. 1137/2023]
50.	DELHI DEVELOPMENT AUTHORITY vs. JAGJIT SINGH [D. No. 4091/2023]
51.	DELHI DEVELOPMENT AUTHORITY vs. GHANSHYAM DAS [D. No. 21126/2023]
52.	DELHI DEVELOPMENT AUTHORITY vs. PRAVEEN KUMAR JAIN [D. No. 1464/2023]
53.	DELHI DEVELOPMENT AUTHORITY vs. DEVRAJ SINGH [D. No. 21134/2020]
54.	GOVERNMENT OF NCT OF DELHI vs. MAHENDRA KUMAR [D. No. 21224/2023]
55.	DELHI DEVELOPMENT AUTHORITY vs. LALA RAM [D. No. 6123/2023]
56.	GOVT. OF NCT OF DELHI vs. MEER SINGH [D.No.12331/2023]
57.	DELHI DEVELOPMENT AUTHORITY vs. DEVINDER SINGH [D. No. 13159/2023]
58.	DELHI DEVELOPMENT AUTHORITY vs. M/S AASAKTI ESTATES PVT. LTD. [D. No. 1465/2023]
59.	GOVERNMENT OF NCT OF DELHI vs. ZILE SINGH [D. No. 12955/2023]
60.	DELHI DEVELOPMENT AUTHORITY vs. PRASHID ESTATE PVT. LTD. [D. No. 1466/2023]

61.	LAND AND BUILDING DEPARTMENT vs. BALJEET SINGH [D. No. 21535/2023]
62.	GOVT. OF NCT DELHI vs. RAJESH KUMAR [D. No. 21669/2023]
63.	DELHI DEVELOPMENT AUTHORITY vs. ASHA RAM TYAGI [D. No. 21716/2023]
64.	GOVERNMENT OF NCT OF DELHI vs. SHIV LAL [D. No. 21946/2023]
65.	DELHI DEVELOPMENT AUTHORITY vs. SATBIR SINGH AND SATYVIR [D. No. 522/2023]
66.	GOVT. OF NCT OF DELHI vs. PARAM MITRA MANAV NIRMAN SANSTHAN [D.No. 5564/2023]
67.	GOVT. OF NCT OF DELHI vs. SHAKUNTALA DEVI [D.No. 11597/2023]
68.	GOVT. OF NCT OF DELHI vs. ARUN ARORA [D. No. 21997/2023]
69.	DELHI DEVELOPMENT AUTHORITY vs. GIRISH CHHABRA [D. No. 13254/2023]
70.	DELHI DEVELOPMENT AUTHORITY vs. SIRAJUDDIN [D. No. 22457/2023]
71.	DELHI DEVELOPMENT AUTHORITY vs. SANTOSH DEVI [D. No. 22486/2023]
72.	DELHI DEVELOPMENT AUTHORITY vs. M/S. GOODVIEW APARTMENTS PVT. LTD [D. No. 22524/2023]
73.	DELHI DEVELOPMENT AUTHORITY vs. ANIL JAIN [D. No. 2556/2023]
74.	GOVERNMENT OF NCT OF DELHI vs. JAGBIR SINGH [D. No. 25278/2022]
75.	DELHI DEVELOPMENT AUTHORITY vs. KESHAV SURI [D. No. 13323/2023]
76.	DELHI DEVELOPMENT AUTHORITY vs. GIRISH KUMAR [MA No. 629/2020]
77.	DELHI DEVELOPMENT AUTHORITY vs. RAM PRAKASH KATHURIA [MA No. 626/2020]
78.	GOVERNMENT OF NCT OF DELHI vs. SAROJ DEVI [MA No. 381/2023]
79.	DELHI DEVELOPMENT AUTHORITY Vs. GULBIR VERMA [D No. 10561 /2023]
80.	GOVT OF NCT OF DELHI vs. MALHE [D. No. 10704/2023]
81.	DELHI DEVELOPMENT AUTHORITY Vs. KESHAV SURI [D. No. 13153/2023]

82.	DELHI DEVELOPMENT AUTHORITY Vs RAJAN SHARMA [D. No. 39310/2022]
83.	DELHI DEVELOPMENT AUTHORITY Vs VIKAS GUPTA [MA No 2622/2019]
84.	DELHI DEVELOPMENT AUTHORITY vs. RAJA RAM [D. No. 22888/2022]
85.	DELHI DEVELOPMENT AUTHORITY Vs. MAAN SINGH [D. No. 23142/2023]
86.	DELHI DEVELOPMENT AUTHORITY vs. BEENA GUPTA [D. No. 23688/2022]
87.	DELHI DEVELOPMENT AUTHORITY vs. SHAKUNTALA DEVI [D. No. 23770/2022]
88.	THE LAND ACQUISITION COLLECTOR (THE GOVT. OF NCT OF DELHI) vs. SATVIR [D.N0. 40192/2023]
89.	GOVERNMENT OF NCT OF DELHI vs. VEERA SINGH [D.No. 28063/2022]
90.	GOVERNMENT OF NCT OF DELHI vs. AJIT SINGH [D.No.24250/2020]
91.	GOVT. OF NCT OF DELHI vs. LALIT KAPUR [D.No. 31982/2023]
92.	GOVT. OF NCT OF DELHI vs. GURNAM SINGH [D.No.13357/2023]
93.	DELHI DEVELOPMENT AUTHORITY vs. JAVED KHAN [D.No.12978/2023]
94.	GOVT. OF NCT OF DELHI vs. MADAN MOHAN SARAFF [D.No.13368/2023]
95.	DELHI ADMINISTRATION vs. GURNAM ARORA [D.No.24367/2020]
96.	GOVERNMENT OF NCT OF DELHI vs. MAHINDER SAHAI [D.No.12338/2023]
97.	DELHI DEVELOPMENT AUTHORITY vs. NAFIS AHMAD SIDDIQUI [D.No.13481/2023]
98.	GOVT. OF NCT OF DELHI vs. JANNAT BEGUM [D. No. 33172/2023]
99.	GOVT. OF NCT DELHI vs. SUKHVEER SINGH DAGAR [D.No. 13525/2022]
100.	DELHI DEVELOPMENT AUTHORITY vs. GYANWATI [D.No.13541/2023]
101.	LAND ACQUISITION COLLECTOR (SOUTH) THROUGH GOVT. OF NCT OF DELHI vs. SUBHASH [D. No. 38406/2023]
102.	GOVT. OF NCT OF DELHI vs. PURNIMA JAIN [D. No. 38633/2023]

103.	GOVERNMENT OF NCT OF DELHI vs. RAMAN DEEP [D. No. 38635/2023]
104.	DELHI DEVELOPMENT AUTHORITY vs. M/S. BGNS INFRATECH PVT. LTD. [D.No.13544/2023]
105.	DELHI DEVELOPMENT AUTHORITY vs. GURSHARAN SINGH CHHABRA [D.No.38953/ 2022 - MA]
106.	GOVT. OF NCT OF DELHI vs. AJIT SINGH MANN [D. No. 15266/2023]
107.	GOVT. OF NCT OF DELHI vs. PRATAP SINGH [D. No. 33206/2023]
108.	DELHI METRO RAIL CORPORATION LTD. vs. KAMAL KANT BANSAL [D.No. 39526/2017]
109.	GOVT OF NCT OF DELHI vs. TARA KAUR SARANG [D. No. 39775/2023]
110.	DELHI DEVELOPMENT AUTHORITY vs. SHIV LAL [D.No.39883/2022]
111.	DDA vs. RAVI KUMAR GUPTA [D.No.40305/2022]
112.	LAND AND BUILDING DEPARTMENT vs. MST. KANIJAN [D.No.13552/2023]
113.	LAND ACQUISITION OFFICER vs. HARISH CHAND [D. No. 15543/2023]
114.	LAND AND BUILDING DEPARTMENT vs. JITENDER KUMAR AGGARWAL [D. No. 15286/2023]
115.	DDA vs. RAVI KUMAR GUPTA [D.No.40310/2022]
116.	GOVT. OF NCT OF DELHI vs. RAM SINGH [D.No. 13594/2023]
117.	GOVERNMENT OF NCT OF DELHI vs. SARLA KATARIA [D.No.13738/2023]
118.	GOVERNMENT OF NCT OF DELHI vs. BATI [D. No. 15531/2023]
119.	DELHI DEVELOPMENT AUTHORITY vs. NARESH SEHRAWAT [D. No.14854/2023]
120.	LAND ACQUISITION COLLECTOR (SOUTH) vs. RAVI KUMAR GUPTA [D. No. 15544/2023]
121.	GOVT. OF NCT DELHI vs. J.P. GUPTA [D.No.30619/2023]
122.	LAND AND BUILDING DEPARTMENT vs. DHARAMPAL [D.No. 28055/2022]
123.	GOVT. OF NCT OF DELHI vs. MANPREET SINGH [D.No. 31966/2023]
124.	GOVT. OF NCT OF DELHI vs. UDAI PAL SINGH [D. No. 32408/2022]

125.	GOVT. OF NCT OF DELHI vs. RIZWAN AHMED [D. No. 37246/2022]
126.	GOVT. OF NCT OF DELHI vs. JAI CHAND [D. No. 35924/2022]
127.	GOVT OF NCT OF DELHI vs. JAI BHAGWAN [D.No.35093/2023]
128.	GOVERNMENT OF NCT OF DELHI vs. FARHANA SARFRAAZ [D.No. 17829/2023]
129.	GOVERNMENT OF NCT OF DELHI vs. KHUSHI KHAN [D. No. 15535/2023]
130.	GOVERNMENT OF NCT OF DELHI vs. SATPAL SINGH [D.No. 17832/2023]
131.	LAND AND BUILDING DEPARTMENT vs. SUNANDA DEVI SARAF [D. No. 15542/2023]
132.	LAND AND BUILDING DEPARTMENT Vs S. HARROOP SINGH SURI [D.No.35480/2023]
133.	LAND AND BUILDING DEPARTMENT vs. OM PRAKASH [D.No.14860/2023]
134.	GOVERNMENT OF NCT OF DELHI vs. SHIV LAL [D. No. 18111/2023]
135.	GOVERNMENT OF NCT OF DELHI vs. PREM SHARMA [D. No.13991/2023]
136.	LAND ACQUISITION COLLECTOR (SOUTH) vs. ARUN PATHAK [D.No.14692/2023]
137.	GOVERNMENT OF NCT OF DELHI vs. SADDIQ [D.No.14703/2023]
138.	DELHI DEVELOPMENT AUTHORITY vs. BAL KISHAN [D.No.14751/2023]
139.	DELHI DEVELOPMENT AUTHORITY vs. MANISH [D.No.14745/2023]
140.	THE GOVT OF NCT OF DELHI vs. HARI PRAKASH [D.No.36156/2023]
141.	DELHI DEVELOPMENT AUTHORITY vs. J.C. GUPTA [D.No.40767/2022 MA]
142.	DELHI DEVELOPMENT AUTHORITY vs. VEERA SINGH [D.No.40773/2022 MA]
143.	GOVT. OF NCT DELHI vs. MEENA S. GUPTA [D.No. 34804/2023]
144.	GOVERNMENT OF NCT OF DELHI vs. JAI PAL [D.No.27415/2023 MA]
145.	GOVT. OF NCT OF DELHI vs. HOOR BANO [D.No.14789/2023]

146.	DELHI DEVELOPMENT AUTHORITY vs. TRILOK [D.No.14869/2023]
147.	DELHI DEVELOPMENT AUTHORITY vs. MAHENDRA KUMAR [D.No.15004/2023]
148.	GOVERNMENT OF NCT OF DELHI vs. UMA SHANKAR SITANI [D. No. 15173/2023]
149.	GOVERNMENT OF NCT OF DELHI vs. HARINDER KAUSHIK [D. No. 15177/2023]
150.	DELHI DEVELOPMENT AUTHORITY vs. RAHUL BHATIA [D.No.14797/2023]
151.	DELHI DEVELOPMENT AUTHORITY vs. JAI PRAKASH TYAGI [MA No. 628/2020]
152.	DELHI DEVELOPMENT AUTHORITY vs. SURJAN SINGH [D.No.31028/2023]
153.	THE LAND AND BUILDING DEPARTMENT vs. POOJA GARG [D. No. 15284/2023]
154.	DELHI DEVELOPMENT AUTHORITY vs. M/S NORTHERN INDIA PLYWOODS PVT. LTD [D. No. 15734/2023]
155.	GOVERNMENT OF NCT OF DELHI vs. SANJAY GAUR [D.No.28446/2022]
156.	LAND AND BUILDING DEPARTMENT vs. SHRAVAN GUPTA [D. No. 15805/2023]
157.	GOVERNMENT OF NCT OF DELHI vs. RAJENDRA SINGH [D.No.31977/2023]
158.	GOVT. OF N.C.T. OF DELHI vs. SANDHYA WINDLASS [D. No. 31979/2022]
159.	GOVT. OF NCT OF DELHI vs. RAVI NANDA [D.No. 35484/2023]
160.	LT. GOVERNOR vs. RITA MARWAH [D. No. 35488/2023]
161.	LAND AND BUILDING DEPARTMENT vs. NARESH SEHRAWAT [D. No. 31968/2023]
162.	GOVT. OF NCT OF DELHI vs. RAJENDER SINGH CHAUHAN [D. No. 41349/2023]
163.	GOVERNMENT OF NCT OF DELHI vs. APOORV JAIN [D. No. 15806/2023]
164.	GOVT. OF NCT OF DELHI vs. BEENA GUPTA [D. No. 31969/2023]
165.	GOVERNMENT OF NCT OF DELHI vs. ABHA DUTTA [D. No. 31974/2023]
166.	LAND AND BUILDING DEPARTMENT vs. INDER RAJ KOHLI [D. No. 15812/2023]

167.	GOVERNMENT OF NCT OF DELHI vs. AMAN [D. No. 15815/2023]
168.	DELHI DEVELOPMENT AUTHORITY vs. M/S. HARMONY PROPERTIES PVT. LTD. [D. No. 14353/2023]
169.	DELHI DEVELOPMENT AUTHORITY vs. DEWAN HARBHAGWAN AND NANDA (HUF) [D. No. 14289/2023]
170.	LAND AND BUILDING DEPARTMENT vs. RAKESH BANSAL [D. No. 15816/2023]
171.	UNION OF INDIA THROUGH LAND ACQUISITION COLLECTOR (WEST), NEW DELHI vs. SH. SAHAB SINGH [D. No. 30089/2023]
172.	GOVERNMENT OF NCT OF DELHI vs. RAJEEV KHANNA [D. No. 15819/2023]
173.	GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI vs. RADHEY SHYAM [D. No. 42660/2022]
174.	DELHI DEVELOPMENT AUTHORITY vs. PRAVEEN KHURANA [D. No. 15864/2023]
175.	DELHI DEVELOPMENT AUTHORITY vs. RAJIV CHOUDHRIE HUF [D. No. 4967/2023]
176.	DELHI DEVELOPMENT AUTHORITY vs. MAHENDER SINGH [D. No. 42745/2022]
177.	GOVT. OF NCT OF DELHI vs. LALITA GOGIA [D. No. 16246/2023]
178.	GOVERNMENT OF NCT OF DELHI vs. JAI SINGH [D. No. 16975/2023]
179.	GOVERNMENT OF NCT OF DELHI vs. SUDERSHAN KUMAR KOHLI [D. No. 17063/2023]
180.	DELHI DEVELOPMENT AUTHORITY vs. ARUN MEHRA [D. No. 14584/2023]
181.	DELHI DEVELOPMENT AUTHORITY vs. ARUN MEHRA [D. No. 14601/2023]
182.	DELHI DEVELOPMENT AUTHORITY vs. EMMSONS INTERNATIONAL LTD. [D. No. 13420/2023]
183.	GOVERNMENT OF NCT OF DELHI vs. ANANT RAM [D. No. 31074/2023]
184.	GOVERNMENT OF NCT OF DELHI vs. MANOJ BAWA [D. No. 31971/2023
185.	DELHI DEVELOPMENT AUTHORITY vs. VINOD KUMAR LUTHRA [D.No. 4990/2023]
186.	DELHI DEVELOPMENT AUTHORITY vs. PUNEET SPALL [D.No. 6510/2023]

187.	DELHI DEVELOPMENT AUTHORITY vs. RAKESH [DIARY NO 6523/2023]
188.	DELHI DEVELOPMENT AUTHORITY vs. RAVI NANDA [D.No. 17124/2023]
189.	LAND ACQUISITION COLLECTOR / SDM vs. SHANTI INDIA (P) LTD. [D.No. 17208/2023]
190.	DELHI DEVELOPMENT AUTHORITY vs. M/S. BAND BOX PRIVATE LTD. [D.No. 33298/2023]
191.	GOVT. OF NCT OF DELHI vs. KANWAL JAIN [D.No. 40386/2023]
192.	PRINCIPAL SECRETARY vs. RANVIR SINGH [SLP(C) No. 016016/2021]
193.	PRINCIPAL SECRETARY LAND AND BUILDING DEPARTMENT, vs. JAGMEL SINGH [D.No. 26635/2018]
194.	DELHI-DEVELOPMENT AUTHORITY vs. BHAGIRATH LAL MITTAL [D.No. 8141/2023]
195.	DELHI DEVELOPMENT AUTHORITY vs. MANJEET SINGH [D.No. 9591/2023]
196.	DELHI DEVELOPMENT AUTHORITY vs. BHAGWAN [D.No. 18034/2022]
197.	DELHI DEVELOPMENT AUTHORITY vs. JAWAHAR LAL CHHABRA [D. No. 6524/2023]
198.	GOVERNMENT OF NCT OF DELHI vs. VED WATI [D.No. 27410/2023]
199.	DELHI DEVELOPMENT AUTHORITY vs. PRITAM [D. No. 15738/2023]
200.	GOVT. OF NCT OF DELHI vs. SAT PRAKASH SHARMA [D. No. 3958/2023]
201.	DELHI DEVELOPMENT AUTHORITY vs. JAGBIR [D.No. 21344/2023]
202.	DELHI DEVELOPMENT AUTHORITY vs. TARLOK SINGH [D.No. 1136/2023]
203.	DELHI DEVELOPMENT AUTHORITY vs. DHANNU [SLP(C) No. 004873 - / 2018]
204.	GOVT. OF NCT OF DELHI vs. CHANCHAL MITTAL [D. No. 4841/2023]
205.	GOVT OF NCT OF DELHI vs. SUDESH MALVIYA [D. No. 32916/2023]

206.	LAND AND BUILDING DEPARTMENT vs. VED PRAKASH GAUR [D. No. 41084/2022]
207.	DELHI ADMINISTRATION (GOVT. OF NCT OF DELHI) vs. RAVINDER SINGH [D. No. 41531/2022]
208.	GOVERNMENT OF NCT OF DELHI vs. SUDHIR SHUKLA [D.No. 41675/2023]
209.	THE LAND AND BUILDING DEPARTMENT vs. MUKHTYAR SINGH [D. No. 41703/2022]
210.	DELHI DEVELOPMENT AUTHORITY vs. KISHAN CHAND [D. No. 41774/2022]
211.	DELHI DEVELOPMENT AUTHORITY vs. KISHAN CHAND [D.No. 41777/2022]
212.	GOVT. OF NCT DELHI vs. MAHAVEER [D.No. 8250/2023]
213.	GOVERNMENT OF NCT OF DELHI vs. KUSHAL KUMAR GOGA [D. No. 24674/2022]
214.	DELHI DEVELOPMENT AUTHORITY vs. DEVESH CHHABRA [D.No. 1291/2023]
215.	DDA vs. ALLIMUDDIN [D.No. 527/2023]
216.	GOVT OF NCT OF DELHI vs. MANZOOR UL HAQ [D. No. 41008/2023]
217.	DELHI DEVELOPMENT AUTHORITY vs. DEW DROPS PROPERTIES PVT. LTD. [D.No. 668/2023]
218.	GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI vs. PUSHPA AGGARWAL [D. No. 42045/2022]
219.	GOVERNMENT OF NCT OF DELHI vs. SUBHASH GUPTA [D. No. 29697/2022]
220.	GOVERNMENT OF NCT OF DELHI vs. DEVI SINGH MATHUR (DEAD) [D. No. 29641/2022]
221.	GOVT. OF NCT OF DELHI vs. M/S GAURAV WELDMESH PVT. LTD [D.No. 32234/2023]
222.	LAND AND BUILDING DEPARTMENT vs. JAGBIR SINGH [D. No. 31083/2023]
223.	DELHI DEVELOPMENT AUTHORITY vs. CHAMAN SINGH [D. No. 1015/2023]
224.	DELHI DEVELOPMENT AUTHORITY vs. ANSAR AHMED [D.No. 446/2023]
225.	GOVT. OF NCT OF DELHI vs. BUNTI BAHRI [DIARY NO 39704/2023]

226.	GOVT. OF NCT OF DELHI vs. SHYAM SUNDER KANDOI [DIARY NO 18183/2023]
227.	GOVT. OF NCT OF DELHI vs. LALIT KUMAR [DIARY NO 16723/2023]
228.	GOVT. OF NCT OF DELHI vs. AJAB SINGH [D. No. 15558/2023]
229.	GOVERNMENT OF NCT OF DELHI vs. M/S REPUTE LAND AND LEASING PVT. LTD. [D. No. 15550/2023]
230.	DELHI DEVELOPMENT AUTHORITY VS. RAM CHANDER [D. No. 10339/2023]
231.	GOVT OF NATIONAL CAPITAL TERRITORY OF DELHI vs. NARINDER NATH [D. No. 32409/2022]
232.	LAND AND BUILDING DEPARTMENT THROUGH ITS SECRETARY vs. SAROJ BALA [D. No. 38874/2023]
233.	GOVT. OF NCT OF DELHI VS. CHHOTE LAL [D. No. 39771/2023]
234.	GOVERNMENT OF NCT OF DELHI VS. KARAN SINGH [D. No. 3760/2022]
235.	DELHI DEVELOPMENT AUTHORITY VS. RAMESH [D. No. 37258/2023]
236.	DELHI DEVELOPMENT AUTHORITY VS. KIRAN RAI [D. No. 4477/2023]
237.	LAND ACQUISITION COLLECTOR/A.D.M. VS. MANPREET SINGH [D. No. 13549/2023]
238.	DELHI DEVELOPMENT AUTHORITY VS. ALLIMUDDIN (D) BY LRS. [D. No. 541/2023]
239.	DELHI DEVELOPMENT AUTHORITY VS. JAI BHAGWAN YADAV [MA No. 627/2020]
240.	DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE CHAIRMAN vs. OM PRAKASH [SLP(C) No. 33345/2015]
241.	DELHI DEVELOPMENT AUTHORITY vs. MEHBOOB [D. No. 21786/2023]
242.	DELHI DEVELOPMENT AUTHORITY vs. SUSHIL KUMAR JAIN [D. No. 11706/2023]
243.	DELHI DEVELOPMENT AUTHORITY vs. MUKHTYAR SINGH [D.No.11554/2023]
244.	DELHI DEVELOPMENT AUTHORITY vs. M. SALIM [D. No. 11562/2023]
245.	DELHI DEVELOPMENT AUTHORITY vs. JASWANT SINGH [D. No. 12238/2022]

246.	GOVERNMENT OF NCT OF DELHI vs. SURESH KUMAR NANGIA [D.No.24734/2021]
247.	DELHI DEVELOPMENT AUTHORITY VS. ARVIND KUMAR SHARMA [D. No. 42064/2022]
248.	DELHI DEVELOPMENT AUTHORITY vs. ARVIND KUMAR SHARMA [D.No. 42071/2022]
249.	DELHI DEVELOPMENT AUTHORITY vs. ISHWAR SINGH (D) THR. LRS. [D.No.24734/2023]
250.	DELHI DEVELOPMENT AUTHORITY VS. KRISHAN KANT GOYAL [D. No. 42406/2022]
251.	DELHI DEVELOPMENT AUTHORITY VS. KRISHAN KANT GOYAL [42459/2022]
252.	DELHI DEVELOPMENT AUTHORITY vs. JAI KISHAN GOEL [D. No. 3484/2023]
253.	DELHI DEVELOPMENT AUTHORITY vs. MAHESH RAHEJA [D.No. 12526/2023]
254.	DELHI DEVELOPMENT AUTHORITY vs. CHANDER SAIN [D.No.12548/2023]
255.	DELHI DEVELOPMENT AUTHORITY VS. PREM SHARMA [D. No. 3578/2023]
256.	DELHI DEVELOPMENT AUTHORITY vs. MAHENDER SINGH [D. No. 12592/2023]
257.	DELHI DEVELOPMENT AUTHORITY vs. ARCHANA KHANNA [D. No. 12635/2023]
258.	DELHI DEVELOPMENT AUTHORITY vs. ARCHANA KHANNA [D. No. 12639/2023]
259.	DELHI DEVELOPMENT AUTHORITY vs. TEJPAL SINGH [D.No. 34835/2023]
260.	DELHI DEVELOPMENT AUTHORITY vs. TEJPAL SINGH [D.No.34776/2023 MA]
261.	DELHI DEVELOPMENT AUTHORITY vs. KHAZANI AND ORS. [D. No. 17744/2023]
262.	DELHI DEVELOPMENT AUTHORITY Vs. SANJAY SINGH [D No. 22699/2023]
263.	DELHI DEVELOPMENT AUTHORITY vs. GURBAKSHISH SINGH BATRA [D. No. 12549/2023]

List C: Review Petitions and Miscellaneous Applications

List C.1: Review Petitions and Miscellaneous Applications primarily pleading change of law

S. No.	Case Title
1.	DELHI DEVELOPMENT AUTHORITY vs. MAHENDER SINGH [D. No. 12596/2023]
2.	DELHI DEVELOPMENT AUTHORITY VS. DEVINDER SINGH. [DIARY NO. - 13155/2023]
3.	DELHI DEVELOPMENT AUTHORITY VS. AJAY SINGHAL [DIARY NO. - 4242/2023]
4.	DELHI DEVELOPMENT AUTHORITY vs. GOVERDHAN [MA 1626/2023]
5.	DELHI DEVELOPMENT AUTHORITY vs. ASHISH PAUL [MA 1761/2023]
6.	DELHI DEVELOPMENT AUTHORITY vs. ANIL KUMAR [MA 700/2020]
7.	DELHI DEVELOPMENT AUTHORITY vs. KUSHAM JAIN [MA No. 001642 / 2023]
8.	DELHI DEVELOPMENT AUTHORITY vs. KUSHAM JAIN [MA No. 001643 /2023]
9.	DELHI DEVELOPMENT AUTHORITY vs. UDAY SINGH [MA No. 45/2023]
10.	DELHI DEVELOPMENT AUTHORITY vs. ISHWAR SINGH [D.No. 37093/2022]
11.	DELHI DEVELOPMENT AUTHORITY vs. ISHWAR SINGH [D.No.37562/2022]
12.	DELHI DEVELOPMENT AUTHORITY vs. KAILASH KUMAR DILWALI (DECEASED) [D. No. 28634/2018]
13.	DELHI DEVELOPMENT AUTHORITY vs. NARESH SEHRAWAT [D.No.14845/2023]
14.	DELHI DEVELOPMENT AUTHORITY vs. ASHOK KUMAR [D.No.4510/2023]
15.	DELHI DEVELOPMENT AUTHORITY vs. S. HARCHARAN SINGH [D.No.14180/2023]
16.	DELHI DEVELOPMENT AUTHORITY vs. M/S. K.L. RATHI STEELS LTD. [D. No. 29714/2018]
17.	DELHI DEVELOPMENT AUTHORITY vs. ASHOK KUMAR [D. No. 4743/2023]
18.	DELHI DEVELOPMENT AUTHORITY vs. AJIT SINGH [MA No. 001416/2019]

19.	DELHI DEVELOPMENT AUTHORITY vs. VIJAY DHALL [D.No. 2941/2023]
20.	DELHI DEVELOPMENT AUTHORITY vs. RAJIV CHOUDHRIE (HUF) [D.No. 30749/2021]
21.	DELHI DEVELOPMENT AUTHORITY VS. JAI KISHAN GOEL [DIARY NO. - 4367/2023]
22.	GOVERNMENT OF NCT OF DELHI THROUGH PRINCIPAL SECRETARY VS. MOHAN LAL GANDHI [D. No. 26490/2019]
23.	DELHI DEVELOPMENT AUTHORITY VS. NEENA WADHWA [D. No. 19545/2022]
24.	DELHI DEVELOPMENT AUTHORITY VS. BALBIR SINGH [MA No. 1267/2019]
25.	DELHI DEVELOPMENT AUTHORITY VS. DARYAO SINGH [MA No. 525/2020]
26.	DELHI DEVELOPMENT AUTHORITY VS. SHER SINGH [MA No. 611/2020]
27.	DELHI DEVELOPMENT AUTHORITY VS. RAM GARHIA SABHA [MA No. 804/2020]
28.	DELHI DEVELOPMENT AUTHORITY VS. GOVERDHAN [MA No. 1625/2023]
29.	DELHI DEVELOPMENT AUTHORITY VS. MAHENDER SINGH [D. NO. - 42742/2022]
30.	DELHI DEVELOPMENT AUTHORITY VS. DEWAN CHAND PRUTHI [MA 1919 - / 2023]

List C.2: Review Petitions and Miscellaneous Applications filed before Shailendra (supra) and/or not primarily pleading change of law

S. No.	Case Title
1.	DELHI DEVELOPMENT AUTHORITY vs. RAJESH WADHWA [R.P.(C) No. 002438/2017]
2.	DELHI DEVELOPMENT AUTHORITY vs. VED PRAKASH [R.P.(C)No.1637/2017]
3.	DELHI DEVELOPMENT AUTHORITY vs. NEELAM SRIVASTAVA [R.P.(C) No. 1882/ 2017]
4.	DELHI DEVELOPMENT AUTHORITY vs. RAMPHAL SINGH [D.No. 17789/2017]
5.	DELHI DEVELOPMENT AUTHORITY vs. PUNEET LAKRA [R.P.(C) No. 1/2018]

List D: Leave granted in previous SLP

List D.1: Previous SLP dismissed after granting leave

S. No.	Case Title
1.	GOVT. OF NCT OF DELHI vs. RAVI [D. No. 21004/2022]
2.	GOVT. OF NCT OF DELHI vs. RAJESH WADHWA [D. No. 20979/2022]
3.	LAND AND BUILDING DEPARTMENT vs. RAM BABU [D. No. 38004/2023]
4.	GOVT. OF NCT OF DELHI vs. RAKESH KUMAR JAIN [D. No. 3172/2022]
5.	GOVT. OF NCT OF DELHI SECRETARY vs. PUNEET SPALL [D. No. 7174/2018]
6.	GOVERNMENT OF NCT OF DELHI vs. LALIT KUMAR GOEL [D. No. 19415/2021]
7.	GOVT. OF NCT OF DELHI vs. ANCHAL PROPERTIES PVT. LTD. [D. No. 2407/2022]
8.	GOVERNMENT OF NCT OF DELHI vs. HARISH SAWHNEY [D. No. 4601/2023]
9.	LAND AND BUILDING DEPARTMENT vs. KAPTAN SINGH [D. No. 20986/2022]
10.	GOVT. OF NCT OF DELHI THROUGH THE SECRETARY vs. MANGE RAM [D. No. 7178/2018]
11.	GOVT. OF NCT OF DELHI vs. SHASHI KANT GOENKA [D. No. 21006/2022]
12.	GOVERNMENT OF NCT OF DELHI vs. NARENDER KUMAR [D. No. 21052/2022]
13.	GOVERNMENT OF NCT OF DELHI vs. ANSAR AHMED [D. No. 21072/2022]
14.	GOVT. OF NCT DELHI vs. TILAK RAJ [D. No. 4587/2023]
15.	GOVERNMENT OF NCT OF DELHI vs. ZIKRU REHMAN KHATRI [D.No. 10477/2022]
16.	GOVERNMENT OF NCT OF DELHI vs. KISHAN CHAND AND ORS [SLP(C) No. 4155 / 2017]
17.	LAND AND BUILDING DEPARTMENT vs. SHRI. CHAND OF NCT OF DELHI [D. No. 22630/2021]
18.	THE LAND AND BUILDING DEPARTMENT vs. CHARANJIT KAUR [SLP(C) No. 8320/2019]

19.	GOVT. OF NCT DELHI vs. GIRISH KUMAR [D. No.7087/2023]
20.	GOVT. OF NCT OF DELHI SECRETARY vs. DIWAN CHAND [D. No.7167/2018]
21.	GOVERNMENT OF NCT OF DELHI vs. AJIT SINGH [SLP(C) No. 022996 / 2015]
22.	GOVERNMENT OF NCT OF DELHI vs. RANVIR [D.No. 24253/2020]
23.	DELHI DEVELOPMENT AUTHORITY vs. LUV MALHOTRA [D.No. 13554/2023]
24.	GOVERNMENT OF NCT OF DELHI vs. M/S RYAN CONSTRUCTION PVT. LTD. [D. No. 24491/2020]
25.	GOVT. OF NCT DELHI vs. JITENDER KUMAR CHURAMANI [D.No.38890/2022]
26.	THE SECRETARY LAND AND BUILDING DEPARTMENT vs. S. SOHAN SINGH (DECEASED) THROUGH LR [D.No.15170/2021]
27.	LAND ACQUISITION COLLECTOR vs. RAJINDER SINGH [D.No.27649/2022]
28.	GOVT. OF NCT OF DELHI vs. RAJAN ANAND [D.No.29111/2021]
29.	GOVERNMENT OF NCT OF DELHI vs. MUKESH JAIN [D.No.17613/2021]
30.	DELHI DEVELOPMENT AUTHORITY vs. ATTRO DEVI [SLP(C) No. 1928/2020]
31.	GOVERNMENT OF NCT OF DELHI vs. ISHWAR SINGH [D.No. 28956/2020]
32.	GOVT. OF NCT OF DELHI vs. BHAG RATI [D.No. 29678/2022]
33.	GOVERNMENT OF NCT OF DELHI vs. VED PRAKASH [D.No.27959/2022]
34.	GOVERNMENT OF NCT OF DELHI vs. RAJESH KHANNA [D.No.27975/2022]
35.	GOVERNMENT OF NCT OF DELHI vs. DEEN MOHAMMAD DEENU [D.No.28053/2022]
36.	LAND AND BUILDING DEPARTMENT vs. DEVENDER KUMAR [D.No. 18136/2021]
37.	GOVT. OF NCT OF DELHI vs. JAGBIR SINGH [D. No. 28988/2020]
38.	GOVERNMENT OF NCT OF DELHI vs. VIJENDER SINGH [D. No. 15687/2022]

39.	GOVERNMENT OF NCT OF DELHI vs. VIJENDER KUMAR [SLP(C) No. 13774/2022]
40.	DELHI DEVELOPMENT AUTHORITY vs. SHIREEN SUBRAMANYA [D. No. 29310/2022]
41.	LAND AND BUILDING DEPARTMENT vs. MAHENDER SINGH [SLP(C). No. 13933/2022]
42.	GOVT. OF NCT OF DELHI vs. NEELAM SRIVASTAVA [D. No. 42036/2022]
43.	LAND AND BUILDING DEPARTMENT vs. SHER SINGH [D. No. 14597/2022]
44.	GOVT. OF NCT OF DELHI vs. DINESH GAUTAM [D. No. 29650/2022]
45.	GOVERNMENT OF NCT OF DELHI vs. AJIT SINGH [D.No. 17211/2023]
46.	GOVT. OF NCT OF DELHI SECRETARY vs. TARUN KAPAHI [D.No. 7184/2018]
47.	GOVT. OF NCT OF DELHI vs. NEENA NARANG [D.No. 7188/2018]
48.	GOVT. OF NCT OF DELHI vs. SUKHVIR SINGH [D.No. 7195/2018]
49.	LAND AND BUILDING DEPARTMENT vs. UDAY SINGH [D.No. 7291/2023]
50.	GOVT. OF NCT OF DELHI vs. SURAJ PRAKASH BATRA [D.No. 8454/2021]
51.	GOVT. OF NCT OF DELHI VS. MANGAT RAM [DIARY NO. - 28993/2020]
52.	GOVERNMENT OF NCT OF DELHI vs. HANIF [D.No. 10218/2022]
53.	GOVERNMENT OF NCT OF DELHI VS. RATANI KAUL (DEAD) [D. No. 17118/2021]
54.	GOVT. OF NCT OF DELHI vs. JAGBIR [D. No. 27923/2022]
55.	DELHI DEVELOPMENT AUTHORITY vs. ANKIT BANSAL [SLP(C) No. 8765/2016]
56.	GOVT. OF NCT DELHI vs. KAILASH KUMAR DILWALI (DEAD) THROUGH LRS [D. No. 29548/2021]
57.	LAND ACQUISITION COLLECTOR vs. BALBIR SINGH [D.No. 381/2022]
58.	DELHI DEVELOPMENT AUTHORITY vs. POONAM SAWHNEY [D.No.501/2023]

List D.2 Previous SLP allowed after granting leave

S. No.	Case Title
1.	DELHI DEVELOPMENT AUTHORITY vs. PAWAN SAGAR JAIN [D. No. 937/2023]
2.	DELHI DEVELOPMENT AUTHORITY VS. KARAMPAL [SLP (C) No. 2878/2018]
3.	DELHI DEVELOPMENT AUTHORITY vs. DEVENDER KUMAR GUPTA [D. No. 21692/2019]
4.	DELHI ADMINISTRATION LAND AND BUILDING DEPARTMENT vs. SUDARSHAN KUMAR [SLP(C) No. 22412/2019]
5.	DELHI DEVELOPMENT AUTHORITY vs. RITU GUPTA [SLP(C) No.8773/2016]
6.	LAND AND BUILDING DEPARTMENT THROUGH SECRETARY GOVT OF NCT OF DELHI vs. KANTA GUPTA [D.No. 8526/2018]
7.	GOVT. OF NCT OF DELHI vs. MANJEET SINGH [D. No. 29668/2021]
8.	DELHI DEVELOPMENT AUTHORITY vs. VIKASH [SLP(C) No. 22808/2019]
9.	DELHI DEVELOPMENT AUTHORITY vs. RATI RAM [SLP(C) No. 020207/2018]
10.	DELHI DEVELOPMENT AUTHORITY vs. SARDAR MOHAMMAD [SLP(C) No. 20210/2018]
11.	DELHI DEVELOPMENT AUTHORITY vs. RATIRAM [D.No.15399/2021]
12.	DELHI DEVELOPMENT AUTHORITY vs. MANJEET KAUR [SLP(C) No. 2260/2020]
13.	LAND AND BUILDING DEPARTMENT vs. SHIV RAJ [D.No. 29096/2021]
14.	GOVERNMENT OF NCT OF DELHI vs. ASHA PRAKASH [D.No. 28682/2021]
15.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. JAI PAL [SLP(C) No. 003065 - 003066 / 2018]
16.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. VED WATI [SLP(C) No. 003056-003057 /2018]
17.	DELHI DEVELOPMENT AUTHORITY vs. AJAY SINGH [SLP(C) No. 026089/2018]
18.	DELHI DEVELOPMENT AUTHORITY vs. GAJINDER [D.No.31393/2021]

19.	DELHI DEVELOPMENT AUTHORITY vs. RAJ SINGH [SLP(C) No. 026393/2018]
20.	GOVERNMENT OF NCT OF DELHI vs. KRISHNA [D. No. 30585/2021]
21.	EAST DELHI MUNICIPAL CORPORATION vs. ROHIT JAIN [SLP(C) No. 002264 / 2020]
22.	DELHI DEVELOPMENT AUTHORITY vs. SUNIL KUMAR DHANKAR [SLP(C) No. 815/2020]
23.	GOVERNMENT OF NCT OF DELHI vs. DHARAMVIR [SLP(C) No. 29192/2019]

List E: Leave not granted in previous SLP

List E.1: No previous SLP/leave not granted in previous SLP, notice issued on delay, but no notice issued on merits in the present SLP

S. No.	Case Title
1.	GOVERNMENT OF NCT OF DELHI vs. GURBAKSHISH SINGH BATRA [D. No. 9201/2022]
2.	GOVT. OF NCT OF DELHI vs. BIJIT SEHGAL [D. No. 3096/2022]

List E.2: No previous SLP/leave not granted in previous SLP, notice on merits issued in the present SLP, and Manoharlal (supra) test applicable

S. No.	Case Title
1.	DELHI DEVELOPMENT AUTHORITY vs. HARISH CHANDER (DEAD) [D. No. 1698/2021]
2.	DELHI DEVELOPMENT AUTHORITY VS. KANWAR SINGH (DEAD) [SLP(C) No. 4073 - / 2020]
3.	DELHI DEVELOPMENT AUTHORITY VS. DEEP CHAND [DIARY NO. 53/2021]
4.	GOVT OF NCT OF DELHI vs. IQBAL AHMED [D. No. 3283/2023]
5.	DELHI DEVELOPMENT AUTHORITY vs. BALRAJ [D. No. 118/2021]
6.	GOVT. OF NCT OF DELHI vs. SATYA DEV SINGH BIDHURI [D. No. 4531/2023]
7.	UNION OF INDIA vs. CHARAN SINGH [SLP (C) 14207/2022]

8.	GOVERNMENT OF NCT OF DELHI vs. MOHAN LAL [D. No.57/2020]
9.	DELHI DEVELOPMENT AUTHORITY vs. RAFIQ AHMED [SLP(C) No. 14200/2022]
10.	DELHI DEVELOPMENT AUTHORITY vs. VIJAY MOHAN [D. No. 19172/2019]
11.	EAST DELHI MUNICIPAL CORPORATION vs. GOBIND RAM ARORA [D. No. 45830/2019]
12.	DELHI DEVELOPMENT AUTHORITY vs. RAM KISHAN [D. No. 12518/2022]
13.	DELHI DEVELOPMENT AUTHORITY vs. DUNGER SINGH TOKAS [D. No. 12519/2022]
14.	DELHI DEVELOPMENT AUTHORITY vs. INDRAJ [D.No. 20620/2022]
15.	DELHI DEVELOPMENT AUTHORITY vs. RAM KRISHNA [D. No. 12377/2022]
16.	LT. GOVERNOR OF DELHI vs. GOBIND RAM ARORA [D. No. 4265/2023]
17.	UNION OF INDIA vs. SHIV KUMAR [D. No. 1204/2023]
18.	DELHI DEVELOPMENT AUTHORITY vs. AJIT KUMAR @ AJIT KUMAR CHAUDHARY [12203/2022]
19.	DELHI DEVELOPMENT AUTHORITY vs. SATVIR [D.No. 39067/2022]
20.	DELHI DEVELOPMENT AUTHORITY vs. ANIL KUMAR JAIN (DEAD) [D. No. 21380/2019]
21.	DELHI DEVELOPMENT AUTHORITY vs. RAJINDER KUMAR GUPTA [D.No. 21381/2019]
22.	DELHI DEVELOPMENT AUTHORITY vs. SAROJ BALA [D. No. 21382/2019]
23.	DELHI DEVELOPMENT AUTHORITY vs. VIPIN CHUGH [D. No. 21741/2019]
24.	GOVERNMENT OF NCT OF DELHI vs. SATBIR SINGH MALIK [21831/2021]
25.	DELHI DEVELOPMENT AUTHORITY vs. SATYA DEV SINGH BIDHURI [SLP (C) No. 10948/2019]
26.	DELHI DEVELOPMENT AUTHORITY vs. AJIT KUMAR CHAWLA [SLP(C) No.11135/2023]
27.	GOVERNMENT OF NCT OF DELHI vs. PADMA MAHANT [D. No. 21920/2021]

28.	DELHI DEVELOPMENT AUTHORITY vs. YUDHVIR SINGH [D. No. 10284/2022]
29.	DELHI DEVELOPMENT AUTHORITY vs. BATTI [SLP(C) No. 22854/2019]
30.	DELHI DEVELOPMENT AUTHORITY vs. NATHI SINGH [SLP(C) 21275/2018]
31.	GOVT. OF NCT OF DELHI vs. DUNGER SINGH TOKAS (DEAD) THROUGH LRS [D. No. 21978/2022]
32.	DELHI DEVELOPMENT AUTHORITY vs. M/S. B.M. PROPERTIES [SLP(C) No. 584 / 2017]
33.	DELHI DEVELOPMENT AUTHORITY vs. RAVINDER KUMAR [D. No. 22116/2020]
34.	LAND AND BUILDING DEPARTMENT THROUGH SECRETARY vs. NATHI SINGH [D. No. 22128/2021]
35.	DELHI DEVELOPMENT AUTHORITY vs. SUNANDA JAIN [SLP(C) No. 4298 /2017]
36.	GOVERNMENT OF NCT OF DELHI vs. SIMLA DEVI [D. No. 22256/2021]
37.	DELHI DEVELOPMENT AUTHORITY vs. PRITAM SINGH (DECEASED) THROUGH LRS [D. No. 1377/2022]
38.	DELHI DEVELOPMENT AUTHORITY vs. AZHAR AHMED [D. No. 1456/2019]
39.	DELHI DEVELOPMENT AUTHORITY vs. KASHI RAM [SLP(C) No. 20205/2018]
40.	GOVERNMENT OF NCT OF DELHI vs. MAHENDER SINGH [SLP(C) No.20204/2018]
41.	GOVERNMENT OF NCT OF DELHI THROUGH SECRETARY LAND AND BUILDING DEPARTMENT vs. JAGBIR [D. No. 4029/2020]
42.	GOVERNMENT OF NCT OF DELHI THROUGH SECRETARY LAND AND BUILDING DEPARTMENT vs. ANGURI DEVI [SLP(C) No. 14851/2020]
43.	GOVERNMENT OF NCT OF DELHI vs. RAMPAL [SLP(C) 14777/2020]
44.	DELHI DEVELOPMENT AUTHORITY vs. NIRANJAN SINGH [SLP(C) No. 6519/2020]
45.	DELHI DEVELOPMENT AUTHORITY vs. SUSHIL BANSAL (D) THROUGH LRS. [SLP(C) No. 8769/2016]
46.	DELHI DEVELOPMENT AUTHORITY vs. DHANWAN SINGH [SLP(C) No.6568/2020]

47.	DELHI DEVELOPMENT AUTHORITY vs. PAWAN KUMAR [SLP(C) No.5910/2016]
48.	DELHI DEVELOPMENT AUTHORITY vs. VEENA JAIN [SLP(C) No.8775/2016]
49.	GOVERNMENT OF NCT OF DELHI vs. M/S PARAM EXPORT AND CONSTRUCTION PVT. LTD. [SLP(C) No. 7909/2023]
50.	GOVERNMENT OF NCT OF DELHI vs. JAI KISHAN GUPTA [SLP(C) No. 10946/2019]
51.	DELHI DEVELOPMENT AUTHORITY vs. ROOP CHAND VASHISHT [SLP(C) No. 7948/2019]
52.	LAND AND BUILDING DEPARTMENT SECRETARY vs. M/S INSPIRATION ENGINEER PVT. LTD [D. No. 8479/2018]
53.	DELHI DEVELOPMENT AUTHORITY vs. PRATAP SINGH [SLP(C) No. 7949/2019]
54.	DELHI DEVELOPMENT AUTHORITY vs. ASHOK KUMAR [SLP(C) No. 10384/2019]
55.	DELHI DEVELOPMENT AUTHORITY vs. RITA MARWAH [SLP(C) No. 9061/2019]
56.	DELHI DEVELOPMENT AUTHORITY vs. MANJU SHARMA [SLP(C) No. 10169/2016]
57.	DELHI DEVELOPMENT AUTHORITY vs. RAMESH CHANDER DABAS [SLP(C) No. 10386/2019]
58.	DELHI DEVELOPMENT AUTHORITY vs. BALWANT SINGH [SLP(C) No. 10154/2019]
59.	DELHI DEVELOPMENT AUTHORITY vs. JAGDEV SINGH [SLP(C) No. 11164/2019]
60.	DELHI DEVELOPMENT AUTHORITY vs. M/S KAMLA DEVI MEMORIAL EDUCATIONAL WELFARE AND CHARITABLE SOCIETY [SLP(C) No. 3060/2018]
61.	DELHI DEVELOPMENT AUTHORITY vs. ANGURI DEVI [SLP(C) No.30101/2018]
62.	DELHI DEVELOPMENT AUTHORITY vs. DUNGER SINGH TOKAS (DECEASED) [SLP(C) 29611/2018]
63.	DELHI DEVELOPMENT AUTHORITY vs. RAJENDER SINGH [SLP(C) No. 22340/2019]
64.	DELHI DEVELOPMENT AUTHORITY vs. ATTAR SINGH [SLP(C) No. 26698/2019]
65.	DELHI DEVELOPMENT AUTHORITY vs. MAHIPAL [SLP(C) No. 18/2020]

66.	LAND ACQUISITION COLLECTOR vs. SUKHBIR SINGH [SLP(C) No. 10674/2020]
67.	DELHI DEVELOPMENT AUTHORITY vs. INDRA DEVI [SLP(C) No. 29831/2018]
68.	UNION OF INDIA vs. GURCHARAN SINGH [SLP(C) No. 21759/2019]
69.	DELHI DEVELOPMENT AUTHORITY vs. RAJ KUMAR [D. No. 39904/2022]
70.	GOVERNMENT OF NCT OF DELHI vs. RAJ SINGH [SLP(C) No. 022434/2019]
71.	LAND AND BUILDING DEPARTMENT vs. UDAI SINGH [SLP(C) No. 21758/2019]
72.	LAND AND BUILDING DEPARTMENT vs. LOV RAM [SLP(C) No. 5308/2020]
73.	DELHI DEVELOPMENT AUTHORITY vs. CHARAN SINGH [SLP(C) No. 22033/2019]
74.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) THROUGH ITS MANAGER vs. HARI SINGH [SLP(C) No. 003071 - 003072 / 2018]
75.	DELHI DEVELOPMENT AUTHORITY vs. RAMJAS FOUNDATION [SLP(C) No. 020458 - / 2018]
76.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. RAJ SINGH [SLP(C) No. 3047- 3048/ 2018]
77.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. ROHTASH [SLP(C) No. 003043 - 003044 / 2018]
78.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. CHETAK DABAS [SLP(C) No. 003052 - 003053/2018]
79.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. KANHAIYA LAL [SLP(C) No.3054-3055 /2018]
80.	DELHI DEVELOPMENT AUTHORITY vs. RANDHIR SINGH (DEAD BY LRS.) [SLP(C) No.32417/2018]
81.	DELHI DEVELOPMENT AUTHORITY vs. RAJINDER KUMAR [SLP(C) No.702/2020]
82.	DELHI DEVELOPMENT AUTHORITY vs. VINAY BHASIN [SLP(C) No.4110/2020]

83.	GOVERNMENT OF NCT OF DELHI vs. SAMO [D.No. 24247/2020]
84.	LAND ACQUISITION COLLECTOR vs. SHIV KUMAR THROUGH GURNAM SINGH KOCHHAR [D. No. 30121/2022]
85.	DELHI DEVELOPMENT AUTHORITY VS. SAMAY SINGH [DIARY NO. 9555/2021]
86.	DELHI DEVELOPMENT AUTHORITY vs. LALIT KUMAR SHARMA [D.No.4276/2021]
87.	LAND AND BUILDING DEPARTMENT vs. RAJKUMARI KHANDELWAL [D.No.24368/2020]
88.	DELHI DEVELOPMENT AUTHORITY vs. OM PRAKASH [D. No. 11493/2022]
89.	GOVERNMENT OF NCT OF DELHI vs. RATAN SINGH [D.No. 24494/2020]
90.	DELHI DEVELOPMENT AUTHORITY vs. GANESH SETH [D.No. 38278/2022]
91.	DELHI DEVELOPMENT AUTHORITY vs. POOJA GARG [SLP(C) No. 20798/2019]
92.	DELHI DEVELOPMENT AUTHORITY vs. PRAKASH [SLP(C) No. 28212/2018]
93.	LAND AND BUILDING DEPARTMENT vs. ARUN DAYAL [D. No.24631/2020]
94.	DELHI DEVELOPMENT AUTHORITY vs. HUKUM SINGH [SLP(C) No. 029144 - / 2018]
95.	DELHI DEVELOPMENT AUTHORITY vs. SATPAL [SLP(C) No. 22847/2019]
96.	DELHI DEVELOPMENT AUTHORITY vs. KELA DEVI [SLP(C) No.6029/2020]
97.	DELHI DEVELOPMENT AUTHORITY vs. KAMAL KUMAR JAIN [SLP(C) No. 2272/2019]
98.	DELHI DEVELOPMENT AUTHORITY vs. RAJESH SAINI [SLP(C) No. 020209/2018]
99.	DELHI DEVELOPMENT AUTHORITY vs. SURESH KUMAR [SLP(C) No. 22851/2019]
100.	EAST DELHI MUNICIPAL CORPORATION vs. INDER RAJ KOHLI [D. No. 46016/2019]
101.	UNION OF INDIA vs. YUDHVIR SINGH [D. No. 28686/2021]
102.	DELHI DEVELOPMENT AUTHORITY vs. RAM PRASAD [SLP(C) No. 22864/2019]

103.	DELHI DEVELOPMENT AUTHORITY vs. SATBIR SINGH MALIK [SLP(C) No. 20206/2018]
104.	EAST DELHI MUNICIPAL CORPORATION vs. S.HARROOP SINGH SURI [D.No.46004/2019]
105.	PRINCIPAL SECRETARY LAND AND BUILDING DEPARTMENT GOVERNMENT OF NCT OF DELHI vs. NIRMALA [SLP(C) No. 16015/2021]
106.	DELHI DEVELOPMENT AUTHORITY vs. PREM RANI @ PREM SAIM [D.No.29803/2021]
107.	DELHI DEVELOPMENT AUTHORITY vs. DAYA RAM MITTAL [SLP(C) No. 020459/2018]
108.	DELHI DEVELOPMENT AUTHORITY vs. AZAD SINGH [D.No. 27769/2022]
109.	DELHI DEVELOPMENT AUTHORITY vs. MOHD. MAQBOOL [D.No.28141/2021]
110.	DELHI DEVELOPMENT AUTHORITY vs. JAI BHAGWAN [SLP(C) No. 028277 / 2016]
111.	DELHI DEVELOPMENT AUTHORITY vs. KRISHAN [SLP(C) No. 27464/2019]
112.	DELHI DEVELOPMENT AUTHORITY vs. SATPAL [SLP(C) No. 022115/2018]
113.	LAND AND BUILDING DEPARTMENT vs. KAMAL KANT BANSAL [D.No. 29098/2021]
114.	LAND AND BUILDING DEPARTMENT vs. PHOOL SINGH [D.No.28960/2020]
115.	UNION OF INDIA vs. CHET RAM [D. No. 29097/2021]
116.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. BALJEET SINGH [SLP(C) No. 003061-003062/2018]
117.	DELHI DEVELOPMENT AUTHORITY vs. MAHENDER SINGH [D.No. 31839/2021]
118.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. JAGMEL SINGH (DECEASED) THROUGH HIS LRS. [SLP(C) No. 003063 - 003064/2018]
119.	EAST DELHI MUNICIPAL CORPORATION vs. SARDAR GURBAX SINGH [D.No.45820/2019]
120.	GOVERNMENT OF NCT OF DELHI vs. KULDEEP SINGH [D.No.29182/2021]

121.	DELHI DEVELOPMENT AUTHORITY vs. M/S AMAR IRON STORE [17929/2022]
122.	DELHI DEVELOPMENT AUTHORITY Vs KARAN SINGH [SLP(C) No. 22688/2018]
123.	EAST DELHI MUNICIPAL CORPORATION vs. DES RAJ ARORA [D.No.45825/2019]
124.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. NEERAJ KUMAR [SLP(C) No. 3067-3068/2018]
125.	LAND AND BUILDING DEPARTMENT vs. MANOHAR LAL [SLP(C) No. 13889/2022]
126.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. NIRMALA [SLP(C) No.3041-3042/2018]
127.	GOVERNMENT OF NCT OF DELHI Vs MAHARAJ SINGH (DEAD) [D.No.14006/2023]
128.	DELHI DEVELOPMENT AUTHORITY vs. GAJRAJ [SLP(C) No.12601/2019]
129.	DELHI DEVELOPMENT AUTHORITY vs. HARISH CHAND [SLP(C) No. 28442/2018]
130.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. RANVIR SINGH [SLP(C) No. 003058 - 003059/2018]
131.	GOVERNMENT OF NCT OF DELHI vs. SWARUP NARAIN BHATNAGAR [D.No.28110/2021]
132.	DELHI DEVELOPMENT AUTHORITY vs. IQBAL AHMED [D. No. 28767/2021]
133.	GOVERNMENT OF NCT OF DELHI vs. NEERAJ KUMAR [SLP(C) No. 29191/2019]
134.	EAST DELHI MUNICIPAL CORPORATION vs. GURCHARAN SINGH [SLP(C) No. 4923/2020]
135.	DELHI DEVELOPMENT AUTHORITY vs. RAJESH SAXENA [SLP(C) No. 12600/2019]
136.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. RAN SINGH [SLP(C) No. 016350/2018]
137.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. KRISHAN [SLP(C) No. 016349/2018]

138.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. SATPAL SINGH [SLP(C) No. 016348/2018]
139.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. AJIT SINGH [SLP(C) No. 016351/2018]
140.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. HARKESH [SLP(C) No. 16352/2018]
141.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. SARJO [SLP(C) No. 016353/2018]
142.	DELHI STATE INDUSTRIAL INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD. (DSIIDC) vs. SANJAY SINGH [SLP(C) No. 025394/2018]
143.	GOVERNMENT OF NCT OF DELHI vs. BALJEET SINGH [SLP(C) No. 21608/2022]
144.	DELHI DEVELOPMENT AUTHORITY vs. PHOOL SINGH (DEAD) [D.No.29032/2021]
145.	DELHI DEVELOPMENT AUTHORITY vs. KARTAR SINGH [SLP(C) No. 1382/2019]
146.	GOVERNMENT OF NCT OF DELHI vs. HARMAN JASPAL [D.No.30583/2021]
147.	DELHI DEVELOPMENT AUTHORITY vs. RAJENDER SINGH [C.A. No. 1012/2017]
148.	DELHI DEVELOPMENT AUTHORITY vs. ASHOK KUMAR [C.A. No. 001013/2017]
149.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) vs. TRIPAT KAUR [SLP(C) No. 228/ 2019]
150.	DELHI DEVELOPMENT AUTHORITY vs. DEVENDER KUMAR [D. No. 41445/2022]
151.	DELHI DEVELOPMENT AUTHORITY vs. AZHAR AHMED [SLP(C) No. 32416/2018]
152.	DELHI DEVELOPMENT AUTHORITY vs. JAGBIR SINGH [SLP(C) No. 31862 / 2018]
153.	DELHI DEVELOPMENT AUTHORITY vs. PREM RAJ [SLP(C) No. 003991/2020]
154.	UNION OF INDIA vs. DHRUV BHASIN [D. No. 15896/2019]
155.	DELHI DEVELOPMENT AUTHORITY vs. NAFE SINGH [SLP(C). No. 5347/2019]

156.	UNION OF INDIA LAND ACQUISITION COLLECTOR vs. ROOP CHAND VASHISHT [SLP(C) No. 16233/2018]
157.	DELHI DEVELOPMENT AUTHORITY vs. PUNAM LAUL (DEAD) THROUGH LRS. [SLP(C) No. 15346/2015]
158.	DELHI DEVELOPMENT AUTHORITY vs. JAGWANT SINGH [SLP(C) No. 029159/2018]
159.	DELHI DEVELOPMENT AUTHORITY vs. RATI RAM [SLP(C) No. 028439/2018]
160.	GOVT. OF NCT OF DELHI vs. HARISH CHAND LOHIYA DECEASED THROUGH SHRI SATISH CHAND GUPTA [D.No. 26807/2021]
161.	DELHI DEVELOPMENT AUTHORITY vs. PADAM CHAND KANODIA [D. No. 6926/2020]
162.	DELHI DEVELOPMENT AUTHORITY vs. AMAR SINGH [SLP(C) No. 015071/2019]
163.	GOVERNMENT OF NCT OF DELHI vs. RAJINDER KUMAR GUPTA [D.No. 17418/2021]
164.	GOVERNMENT OF NCT OF DELHI vs. SANJAY SINGH [D.No. 26601/2021]
165.	LAND ACQUISITION COLLECTOR (NORTH EAST) vs. GANPATI ROLLING (P) LTD [D.No. 7350/2023]
166.	GOVERNMENT OF NCT OF DELHI vs. HARI SINGH [D. No. 26605/2021]
167.	DELHI DEVELOPMENT AUTHORITY vs. ASHU [SLP(C) No. 018861/2023]
168.	LAND AND BUILDING DEPARTMENT THR. ITS SECRETARY GOVT. OF NCT OF DELHI vs. KAMAL KANT BANSAL [SLP(C) No. 023373/2018]
169.	DELHI DEVELOPMENT AUTHORITY vs. KARAM SINGH [D. No. 8470/2020]
170.	DELHI DEVELOPMENT AUTHORITY vs. JAL KAUR EDUCATIONAL SOCIETY [D. No. 8804/2020]
171.	GOVT. OF NCT OF DELHI vs. SHRI RAMI [D. No. 9194/2023]
172.	LAND AND BUILDING DEPARTMENT vs. OM PRAKASH [D. No. 10043/2021]
173.	DELHI DEVELOPMENT AUTHORITY vs. HARI RAM (SINCE DECEASED) THR LEGAL REPRESENTATIVE PADAM KUMAR [D. No. 22098/2019]
174.	GOVERNMENT OF NCT OF DELHI vs. DURGA PRASAD PATODIA [D. No. 28449/2022]

175.	DELHI DEVELOPMENT AUTHORITY vs. SHIV KUMAR [D. No. 2/2022]
176.	GOVERNMENT OF NCT OF DELHI vs. HARKESH [D.No.28978/2021]
177.	GOVERNMENT OF NCT OF DELHI vs. TIKA RAM [SLP(C) No. 14776/2020]
178.	DELHI DEVELOPMENT AUTHORITY vs. M/S. DELHI HOUSE SOCIETY (REGD.) [SLP(C) No. 004299 / 2017]
179.	DELHI DEVELOPMENT AUTHORITY vs. RAGHUVAR SINGH [D.No. 2001/2021]
180.	DELHI DEVELOPMENT AUTHORITY vs. HARDEEP SINGH CHAHAL [SLP(C) No. 8797/ 2016]
181.	DELHI DEVELOPMENT AUTHORITY vs. T.R. GUPTA [SLP(C) No. 008761 / 2016]
182.	DELHI DEVELOPMENT AUTHORITY vs. PREM LATA GUPTA [SLP(C) No. 008776 / 2016]
183.	DELHI DEVELOPMENT AUTHORITY vs. SANDEEP MITTAL [SLP(C) No. 008766 / 2016]
184.	DELHI DEVELOPMENT AUTHORITY vs. PREMWATI [SLP(C) No. 008791 / 2016]
185.	DELHI DEVELOPMENT AUTHORITY vs. ASHEY RAM @ ASHA RAM [D.No. 5024/2022]
186.	DELHI DEVELOPMENT AUTHORITY vs. SARABJEET KAUR [D. No. 28547/2021]
187.	GOVT. OF NCT OF DELHI vs. JAYBIR [D. No. 28987/2020]
188.	DELHI DEVELOPMENT AUTHORITY vs. RAJESH AGGARWAL [SLP(C) No. 031868/2018]
189.	DELHI DEVELOPMENT AUTHORITY vs. KULDEEP SINGH [D.No.41709/2019]
190.	DELHI DEVELOPMENT AUTHORITY vs. ASHISH SINGH [SLP(C) 4399/2019]
191.	DELHI DEVELOPMENT AUTHORITY vs. HARSH GUPTA [C.A. No. 005538 / 2017]
192.	DELHI STATE INDUSTRIAL AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LTD (DSIIDC) THROUGH ITS MANAGER vs. RAVI KUMAR [SLP(C) No. 003069 - 003070/2018]
193.	DELHI DEVELOPMENT AUTHORITY VS. RANDHIR SINGH [SLP(C) No. 032415/2018]

194.	DELHI DEVELOPMENT AUTHORITY vs. ALEP KAUR [SLP(C) No. 3743/2019]
195.	DELHI DEVELOPMENT AUTHORITY VS. IQBAL AHMED [SLP(C) No. 031869- / 2018]
196.	DELHI DEVELOPMENT AUTHORITY vs. REKHA [D. No. 2927/2021]
197.	DELHI DEVELOPMENT AUTHORITY vs. AZAD SINGH [SLP(C) No. 032414 - / 2018]
198.	DELHI DEVELOPMENT AUTHORITY vs. NIRMALA JAIN [D. No. 25769/2020]
199.	GOVERNMENT OF NCT OF DELHI vs. PUNAM LAUL [D. No. 7087/2022]
200.	DELHI DEVELOPMENT AUTHORITY vs. ATTAR SINGH [DIARY NO 9841/2022]
201.	DELHI DEVELOPMENT AUTHORITY vs. GAJRAJ [SLP(C) No. 031309 / 2018]
202.	DELHI DEVELOPMENT AUTHORITY vs. AJIT SINGH MANN [SLP(C) No. 5812/2019]
203.	DELHI DEVELOPMENT AUTHORITY vs. BHAGRATI [SLP(C) No. 031861 / 2018]
204.	DELHI DEVELOPMENT AUTHORITY vs. SATWANT SINGH [SLP(C) No. 012155 -/2019]
205.	DELHI DEVELOPMENT AUTHORITY vs. PREM SINGH [SLP(C) No. 20908/2019]
206.	DELHI DEVELOPMENT AUTHORITY vs. ARUN MEHRA [SLP(C) No. 006457 -/2019]
207.	DELHI DEVELOPMENT AUTHORITY vs. SUDHIR KUMAR YADAV [SLP(C) No. 22859/2019]
208.	DELHI DEVELOPMENT AUTHORITY vs. PYARE LAL SAFAYA [SLP(C) No. 002463/ 2020]
209.	DELHI DEVELOPMENT AUTHORITY vs. BRIJ MOHAN [SLP(C) No. 3407/ 2020]
210.	DELHI DEVELOPMENT AUTHORITY vs. MAAN SINGH [SLP(C) No.8323/2019]
211.	DELHI DEVELOPMENT AUTHORITY vs. ASHOK KUMAR AGGARWAL [SLP(C) No.3420/2020]
212.	DELHI DEVELOPMENT AUTHORITY vs. POONAM YADAV [SLP(C) No.3989/2020]

213.	PRINCIPAL SECRETARY LAND AND BUILDING DEPARTMENT GOVERNMENT OF NCT OF DELHI vs. ROHTASH [SLP(C) No. 947 / 2020]
214.	DELHI DEVELOPMENT AUTHORITY vs. RAJ SINGH [SLP(C) No.4251/2020]
215.	DELHI DEVELOPMENT AUTHORITY VS. BRAHAM PRAKASH YADAV [SLP(C) No. 27211/2019]
216.	DELHI DEVELOPMENT AUTHORITY vs. AJAB SINGH [SLP(C) No.4077/2020]
217.	DELHI DEVELOPMENT AUTHORITY vs. LOV RAM [SLP(C) No.2259/2020]
218.	GOVT OF NCT OF DELHI THROUGH SECRETARY vs. VIKRAM MATHUR [SLP(C) No.937/2020]
219.	DELHI DEVELOPMENT AUTHORITY vs. USHA PIR [SLP(C) No. 28645/2019]
220.	GOVT. OF NCT OF DELHI vs. VEENA JAIN [SLP(C) No. 12894/2019]
221.	DELHI ADMINISTRATION THROUGH SECRETARY LAND AND BUILDING DEPARTMENT vs. RAJINDER KUMAR [D. No. 4034/2020]
222.	DELHI DEVELOPMENT AUTHORITY vs. JAGBIR [SLP(C) 002876/2018]
223.	DELHI DEVELOPMENT AUTHORITY vs. KARTARI DEVI(D) THROUGH HER LEGAL HEIRS [D. No. SLP(C) 2034/2019]
224.	GOVT. OF NCT DELHI VS. NIHAL SINGH (DEAD) THROUGH LRS [D. No. 24353/2022]
225.	DELHI DEVELOPMENT AUTHORITY VS. DAYA CHAND [D. No. 7493/2020]
226.	DELHI DEVELOPMENT AUTHORITY vs. PRITAM KAUR (D) THR. LRS. [C.A. No. 8565/2016]
227.	GOVERNMENT OF NCT OF DELHI VS. ISHWAR SINGH [SLP(C) No. 14870/2020]
228.	GOVT OF NCT OF DELHI vs. AMAN [SLP(C) No. 18608/2022]
229.	GOVERNMENT OF NCT OF DELHI vs. RAHUL BHATIA [D.No.28059/2022]
230.	KRISHNA KHANDELWAL vs. UNION OF INDIA [SLP (C) No. 14569/2019]
231.	JAGBIR SINGH vs. UNION OF INDIA [SLP (C) No. 019817 -/2018]
232.	V.P. CHAUDHARY vs. DELHI DEVELOPMENT AUTHORITY [D. No. 21033/2022]

List E.3: No previous SLP/leave not granted in previous SLP, notice issued on merits in the present SLP, Manoharlal (supra) test not applicable

S. No.	Case Title
1.	GOVT. OF NCT OF DELHI vs. PYARE LAL SAFAYA [D. No. 5385/2023]
2.	THE LAND AND BUILDING DEPARTMENT NATIONAL CAPITAL OF DELHI vs. ARCHANA GUPTA [D. No. 14829/2021]
3.	LAND AND BUILDING DEPARTMENT THROUGH SECRETARY vs. SIMLA DEVI [SLP (C) No. 29190/2019]

Result of the case: Appeals disposed of.

†*Headnotes prepared by:* Divya Pandey

[2024] 5 S.C.R. 1305 : 2024 INSC 538

Bank of India & Ors.
v.
Pankaj Srivastava

(Civil Appeal No. 6837 of 2023)

30 April 2024

[J.K. Maheshwari and Sanjay Karol, JJ.]

Issue for Consideration

Whether there is relevant material on record that could be construed as contemplation of the disciplinary proceedings against the deceased employee which would *prima facie* result in award of major penalty, and thereby bar the Respondent's claim for compassionate appointment.

Headnotes†

Compassionate Appointment – No relevant material to contemplate that the initiation of disciplinary proceedings would lead to prima facie award of major penalty prior to the death of the deceased employee:

Held: 1. Upon reviewing Clause 10(iv) of the Scheme prevalent for for grant of compassionate appointment vide Branch Circular No. 92/64 dated 17.03.1999 and the amended directions from the bank's Board Meeting on 20.06.2002, it is clear that even if disciplinary proceedings against an employee were pending or under contemplation at the time of their death, which could *prima facie* lead to a major penalty, the dependents of the deceased employee are still not entirely excluded from consideration for compassionate grounds and it was subject to government approval. [Paras 6, 8, 9]

2. The court further noticed that the deceased employee was not placed under suspension, initiation, or contemplation of the disciplinary proceedings before his death and the chargesheet was also not issued. It is merely said that the chargesheet was under preparation. Therefore, in absence of any relevant material disclosed it cannot be presumed to be case of prima facie award of major penalty on account of contemplation of disciplinary proceedings. Claim for appointment of Respondent on compassionate ground directed to be considered by the Petitioner. [Paras 9, 10]

Case Law Cited

State of Himachal Pradesh and Anr. v. Shashi Kumar [2019] 2 SCR 432 : **(2019) 3 SCC 653 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Service Law; Disciplinary proceedings; Compassionate Appointment.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6837 of 2023

From the Judgment and Order dated 26.05.2022 of the High Court of Judicature at Allahabad, Lucknow Bench in SPLAD No. 42 of 2022

Appearances for Parties

Rajesh Kumar Gautam, Anant Gautam, Samir Mudgil, Dinesh Sharma, Ms. Shivani Sagar, R. P. Daida, Advs. for the Appellants.

Ardhendumauli Kumar Prasad, Sr. Adv., Rohit K. Singh, Pritam Bishwas, Prakhar Srivastava, Ms. Ananya Sahu, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. Being aggrieved by the judgment of Single Bench, allowing the writ petition of the respondent and directing the bank to consider his claim for appointment on compassionate ground; confirmed in appeal by the Division Bench, this appeal has been preferred.

2. The facts in shorn are, the respondent filed a writ petition seeking directions to consider his case being eligible and grant compassionate appointment on the post of Clerk with immediate effect on account of death of his father during course of employment. Prayer was also made to quash the order dated 20.06.2002 issued by the bank.

3. In the short counter-affidavit filed by the bank, the scheme prevalent for grant of compassionate appointment vide Branch Circular No. 92/64 dated 17.03.1999 was referred, in particular, Clause 10(iv) thereof. Further reference was made regarding revised guidelines

vide letter No. 18/80/97-IR dated 19.02.2002 delegating the authority to the bank for appointment of dependents of deceased employee on compassionate ground relating to cases involving major penalty and not required to be referred to Government of India for clearance. Apropos the letter dated 20.06.2002 issued by Bank of India in Board Meeting, indicates that the Executive Director of the Bank is directed not to consider those cases which involve award/consideration/ contemplation of major penalty to employees on account of fraud/ forgery/misappropriation or due to any vigilance angle/negligence. The bank had also filed a supplementary affidavit before the writ Court which was also placed on record.

4. Learned Single Bench proceeded on the premise that as per the contents of the supplementary affidavit, no charge sheet was served upon prior to the death of the employee, and opined that the disciplinary proceedings were neither under contemplation nor initiated, however, the defence taken was not found plausible in terms of the policy.

5. On filing intra court appeal by bank, the High Court referred the scheme dated 17.03.1999 and analyzed the purport of Clause 10(iv) and the letter of the Bank of India in Board Meeting dated 20.06.2002. In reference thereto, the Court observed that the deceased was neither punished with major penalty nor such penalty was in contemplation against him prior to his death. It is said that father of the respondent died on 28.07.2000 and till his death he was not placed under suspension either due to contemplation or initiation of the departmental proceedings. As per averments in the counter-affidavit, the charge sheet was not issued, except to say that it was under preparation. However, the Division Bench in the impugned judgment has opined as under: -

> "In our considered opinion, merely because the charge-sheet was said to be under preparation before the death of the father of the respondent – petitioner, it cannot be said that any major penalty was in contemplation. Thus, the aforesaid submission made by the learned counsel for the appellants does not appeal to this Court which is hereby rejected."

The Bench also denied to accede the plea raised relying on the judgment of **State of Himachal Pradesh and Anr. Vs. Shashi Kumar (2019) 3 SCC 653** and observed that in the present case, there is no delay either in applying or taking recourse before the

Court for appropriate directions to appoint the writ petitioner on compassionate ground and thus, accepted the reasonings as given by learned Single Judge.

6. Having heard learned counsel for the parties and on perusal of the scheme dated 17.03.1999, in particular, Clause 10(iv), which specifies the exceptions to recruitment of the dependents of the employees who died in harness, is relevant, and extracted for ready reference as under: -

> 10(iv). In case where the deceased employee had been awarded minor penalty or disciplinary proceedings against the employee was pending or contemplated at the time of death of the employee, which would prima-facie have resulted in award of minor penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the bank's board. In case where the deceased employee had been awarded major penalty or disciplinary proceedings against the employee was pending or contemplated at time of death of the employee, which would prima-facie have resulted in award of major penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).

7. The afore-quoted clause specifies two exceptions, first, in the cases where minor penalty had been awarded or disciplinary proceedings against the deceased employee was pending or contemplated at the time of death of employee which would *prima facie* result in award of minor penalty, there would not be any impediment to consider the case of dependents for compassionate appointment with the approval of Bank's board. While in the second exception it is clarified that where the deceased employee had been awarded major penalty or the disciplinary proceedings against the employee was pending or contemplated at the time of death of employee which would *prima facie* result in award of major penalty, the consideration of appointment on compassionate ground of the dependents of such employee may be made with the approval of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).

8. The letter of the Bank of India in Board Meeting dated 20.06.2002 has been relied upon which was issued in reference to the revised

Government guidelines vide letter F. No. 18/80/97-IR dated 19.02.2002. The relevant portion of the letter dated 20.06.2002 is reproduced as thus: -

> "Scheme for appointment of dependents of deceased employees on compassionate ground cases involving major penalty proceeding referred to Government of India for clearance as per earlier Government guidelines vide its letter F. No. 18/80/97-IR dated 03.11.1998 Revised Government guidelines vide letter F. No. 18/80/97-IR dated 19.2.2002 delegating authority to Bank in the above cases.
>
> Apropos the directive given at the Board Meeting held on 20.04.2002 that the Board would decide on case to case basis upon resubmission of the above referred 12 individual cases to it, memorandum No. P/A/SSG/2002-03/212 dated 27.05.2002, together with annexures, embodying the factual details of the said 12 cases, submitted by Personal Department, was considered.
>
> The Board **DIRECTED** that employment on compassionate ground need not be considered in cases where major penalty was awarded considered/contemplated to employees on account of fraud/forgery/misappropriation, on account of any vigilance angle/negligence and authorized the Executive Director to consider only those cases not involving the above, for employment of dependent of deceased employees on compassionate ground.
>
> Stamp
> Bank of India
> Board of Meeting
> 20.06.2002"

9. On perusal of Clause 10(iv) of the Scheme and the amended directions in bank's Board Meeting dated 20.06.2002, it is luculent that even in cases where the disciplinary proceedings against the employee were pending or were under contemplation prior to his death which would *prima facie* result in award of major penalty, the case of the dependents of the deceased employee on compassionate ground has not been completely refused from consideration and it was subject to approval of the Government. In compliance of government circular dated 19.02.2002, the bank in its Board of Meeting dated

20.06.2002 authorized the Executive Director of the Bank and said that the cases for appointment on compassionate ground shall not be considered where the major penalty was awarded/contemplated to employee on account of fraud/forgery/misappropriation and on account of any vigilance angle/negligence. The above letter does not debar the cases where disciplinary proceedings were pending or were in contemplation against the employee at the time of death which would *prima facie* result in award of major penalty. In our view, the decision of the bank in its Board Meeting dated 20.06.2002 is logical whereby the cases wherein the penalty was either awarded or contemplated to the deceased employee was not required to be considered. The letter is silent with respect to contemplation of the disciplinary proceedings against the deceased employee which would *prima facie* result in award of major penalty. In the facts of the case in hand, the deceased employee was not placed under suspension on account of contemplation of the disciplinary proceedings and the charge sheet was also not issued. It is merely said that the charge sheet was under preparation, however, in absence of any relevant material disclosed, it might not be presumed to be a case of *prima facie* award of major penalty on account of contemplation of disciplinary proceedings. Therefore, in our considered opinion, reasoning as given in the judgment by the Division Bench is completely in consonance with the spirit of the Circular and it rightly affirmed the decision of the Single Bench to consider the case of the respondent for grant of compassionate appointment.

10. In view of the above discussion, we do not find any merit in the contention to interfere with the order passed by the Single Bench and the Division Bench of the High Court. Accordingly, this appeal stands dismissed, being bereft of any merit. However, we direct that the order passed by the High Court be now implemented within a period of four months from the date of the order.

Result of the case: Appeal Dismissed.

†*Headnotes prepared by:* Himanshu Rai, Hony. Associate Editor
(Verified by: Liz Mathew, Sr. Adv.*)*