Govt. Of Nct Of Delhi Thr. Its Secretary, ... vs M/S. K.L. Rathi Steels Ltd. on 17 May, 2024

Author: Dipankar Datta

Bench: Dipankar Datta, Surya Kant

2024 INSC 454 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO. 414 OF 2023
IN
CIVIL APPEAL NO. 11857/2016

GOVT. OF NCT OF DELHI
THROUGH ITS SECRETARY,
LAND AND BUILDING DEPARTMENT
& ANOTHER …APPLICANTS

VERSUS

M/S. K.L. RATHI STEELS LIMITED
AND OTHERS …RESPONDENTS

WITH
MA No.808/2023 in C.A. No.12239/2016
R.P.(C) No.882/2017 in C.A. No. 11846/2016
MA No.159/2018 in C.A. No.11857/2016
R.P.(C) No.396/2023 in C.A. No. 11857/2016

R.P.(C) No.409/2023 in C.A. No. 8511/2016

R.P.(C) No.410/2023 in C.A. No. 8925/2016

Reason:

R.P.(C) No.412/2023 in C.A. No. 12114/2016

R.P.(C) No.414/2023 in C.A. No. 8898/2016
R.P.(C) No.416/2023 in C.A. No. 4599/2016
R.P.(C) No.419/2023 in C.A. No. 10206/2016
R.P.(C) No.418/2023 in C.A. No. 8505/2016
R.P.(C) No.425/2023 in C.A. No. 8929/2016
R.P.(C) No.428/2023 in C.A. No. 8545/2016
R.P.(C) No.1731/2023 in C.A. No. 9598/2016
R.P.(C) No.429/2023 in C.A. No. 11256/2016
R.P.(C) No.431/2023 in C.A. No. 9597/2016
R.P.(C) No.432/2023 in C.A. No. 11841/2016
CONMT.PET.(C) No.735/2018 in C.A. No. 11857/2016
R.P.(C) No.398/2023 in C.A. No. 8529/2016
R.P.(C) No.399/2023 in C.A. No. 11857/2016
R.P.(C) No.400/2023 in C.A. No. 8899/2016
R.P.(C) No.401/2023 in C.A. No. 8527/2016
R.P.(C) No.402/2023 in C.A. No. 8547/2016
R.P.(C) No.403/2023 in C.A. No. 8952/2016
R.P.(C) No.405/2023 in C.A. No. 8935/2016
R.P.(C) No.406/2023 in C.A. No. 8954/2016
R.P.(C) No.407/2023 in C.A. No. 9049/2016
R.P.(C) No.408/2023 in C.A. No. 8559/2016
R.P.(C) No.411/2023 in C.A. No. 9214/2016
R.P.(C) No.413/2023 in C.A. No. 9595/2016
R.P.(C) No.397/2023 in C.A. No. 8909/2016
R.P.(C) No.417/2023 in C.A. No. 8921/2016

R.P.(C) No.420/2023 in C.A. No. 8904/2016
R.P.(C) No.421/2023 in C.A. No. 9719/2016
R.P.(C) No.423/2023 in C.A. No. 8957/2016
R.P.(C) No.424/2023 in C.A. No. 8922/2016
R.P.(C) No.426/2023 in SLP(C) No. 17316/2016
R.P.(C) No.430/2023 in C.A. No. 11854/2016
C.A. No.1522/2023
Diary No(s). 14831/2023
Diary No(s). 15893/2023
R.P.(C) No. 422/2023 in C.A. No. 12046/2016
R.P.(C) No. 404/2023 in C.A. No. 12111/2016
R.P.(C) No. 415/2023 in C.A. No. 11853/2016

J U D G M E N T

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 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.

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.

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. 2023 SCC OnLine SC 288

4. The 2013 Act was enforced with effect from 1 st 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. (2014) 3 SCC 183 (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:
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> 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:

> (2018) 3 SCC 412 "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 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 Verma6 directed the matters to be placed before an (2018) 3 SCC 585 (2020) 15 SCC 342 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 (2020) 8 SCC 129 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."

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 (2020) 6 SCC 304 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 16 th 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 in Shailendra [3-Judge] (supra), followed by its overruling in Manoharlal [5-Judge, lapse] (supra) and (2020) 6 SCC 304, Para 45 2020 SCC OnLine SC 1471 ultimately recalled on 16 th July, 2020 in Harakchand Misirimal Solanki [Recall Order] (supra).

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.

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.

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.

2005 4 SCC 741

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 ...".

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. Neki15 and Haridas Das v. Usha Rani Banik16 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 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.

AIR 1922 PC 112 (2006) 4 SCC 78

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.
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> 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.
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> b) BSNL v. Union of India17 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 (2006) 3 SCC 1 2021 SCC OnLine SC 610 precedential value; it, however, does not affect the binding nature of a decision that has attained finality inter se the parties.
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> 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.
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> 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.
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> 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).

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

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?
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> 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.

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 Jagad19. 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 (2019) 18 SCC 586

(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.

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 Athanasius20.

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 AIR 1954 SC 526 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 54 th report of the Law Commission. The decisions in Syed Liaqat Husain v. Mohd. Razi21, Lachhmi Narain Balu v. Ghisa Bihari 22 and Patel Naranbhai Jinabhai v. Patel Gopaldas 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 Kuttan24 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 AIR 1944 Oudh 198 AIR 1960 Punjab 43 AIR 1972 Gujarat 229 AIR 1969 Kerala 186 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 125."

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 "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." 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 15 th 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 Rao27, 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. Yarlagadda28 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.

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

XXXI CWN 822 = AIR 1927 Cal 920 LR (1899-1900) 27 IA 197 AIR 1933 Madras 485

49. The earliest decision is Shanti Devi v. State of Haryana29 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:

> "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 ***".
>
> (1999) 5 SCC 703 (2000) 9 SCC 252 (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 Parsedia31, 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 Sengupta32 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 (2001) 9 SCC 325 (2008) 8 SCC 612 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 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 Nadu33, 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." (2014) 5 SCC 75

54. The final one is a decision of the Constitution Bench in Beghar Foundation v. K.S. Puttaswamy34. 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."

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.

56. Two of these decisions, viz. A.C. Estates v. Serajuddin35 and Raja Shatrunji v. Mohd. Azmat Azim Khan36 were rendered prior to introduction of the Explanation (2021) 3 SCC 1 (1966) 1 SCR 235 (1971) 2 SCC 200 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 Rao37).

(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 LR (1899-1900) 27 IA 197 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 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 (2008) 7 SCC 38 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. Mayawati39, 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 Reddy40, 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).

63. Before answering question (a), we take up questions

(b), (c) and (d) first with (b) and (c) together for answers.

(2013) 8 SCC 320 2022 SCC OnLine SC 1034

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 (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 1992 Supp (3) SCC 62 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., 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 (duty) and (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:
>
> (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 Rawat43. 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:

> (2021) 13 SCC 1 (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. Nayak45, 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 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 (1988) 2 SCC 602 (1971) 3 SCC 844 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 Pradesh47 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 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 & others48 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 (1961) 1 SCR 884 2022 SCC OnLine SC 1063 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 (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 others49, 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 (2000) 7 SCC 296 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 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 others50 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 (2023) 10 SCC 817 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')".

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.

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 22 nd 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.

……J (SURYA KANT) ……J (DIPANKAR DATTA) .....J (UJJAL BHUYAN) New Delhi;

17th May, 2024.