Govt. Of Nct Of Delhi Thr Secretary, Land ... vs M/S. K.L. Rathi Steels Ltd. . on 17 March, 2023

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 32257/2021)
IN
CIVIL APPEAL NO. 11857 OF 2016

Govt. of NCT of Delhi Through the Secretary,
Land and Building Department & Another …Applicants

Versus

M/s. K.L. Rathi Steels Limited and others …Respondents

WITH

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 29713/2018)
IN
CIVIL APPEAL NO. 11857 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 23353/2019)
IN
CIVIL APPEAL NO. 8909 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 14614/2018)
IN
CIVIL APPEAL NO. 8529 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 36340/2018)
IN

CIVIL APPEAL NO. 11857 OF 2016

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MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 41755/2018)
IN
CIVIL APPEAL NO. 8899 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 42234/2018)
IN
CIVIL APPEAL NO. 8527 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 44917/2018)
IN
CIVIL APPEAL NO. 8547 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 46131/2018)
IN
CIVIL APPEAL NO. 8952 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 2230/2019)
IN
CIVIL APPEAL NO. 12111 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 6119/2019)
IN
CIVIL APPEAL NO. 8935 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 6120/2019)
IN
CIVIL APPEAL NO. 8954 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 6131/2019)
IN
CIVIL APPEAL NO. 9049 OF 2016

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MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 7653/2019)
IN
CIVIL APPEAL NO. 8559 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 7922/2019)
IN
CIVIL APPEAL NO. 8511 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 8510/2019)
IN
CIVIL APPEAL NO. 8925 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 8554/2019)
IN

CIVIL APPEAL NO. 9214 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 9317/2019)
IN
CIVIL APPEAL NO. 12114 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 20589/2019)
IN
CIVIL APPEAL NO. 9595 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 21094/2019)
IN
CIVIL APPEAL NO. 8898 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 21378/2019)
IN

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CIVIL APPEAL NO. 11853 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 22637/2019)
IN
CIVIL APPEAL NO. 4599 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 23912/2019)
IN
CIVIL APPEAL NO. 8921 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 24543/2019)
IN
CIVIL APPEAL NO. 8505 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 24209/2019)
IN
CIVIL APPEAL NO. 10206 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 24544/2019)
IN
CIVIL APPEAL NO. 8904 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 25574/2019)
IN
CIVIL APPEAL NO. 9719 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 26034/2019)
IN
CIVIL APPEAL NO. 12046 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 26476/2019)
IN

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CIVIL APPEAL NO. 8957 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 27950/2019)
IN
CIVIL APPEAL NO. 8922 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 28432/2019)
IN
CIVIL APPEAL NO. 8929 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 29785/2019)
IN
SPECIAL LEAVE PETITION(CIVIL) NO. 17316 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 31560/2019)
IN
CIVIL APPEAL NO. 8545 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 31822/2019)
IN
CIVIL APPEAL NO. 9598 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 37443/2019)
IN
CIVIL APPEAL NO. 11256 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 37444/2019)
IN
CIVIL APPEAL NO. 11854 OF 2016
MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 44515/2019)
IN

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CIVIL APPEAL NO. 9597 OF 2016

CONTEMPT PETITION(CIVIL) NO.735/2018
IN
CIVIL APPEAL NO. 11857/2016

MISCELLANEOUS APPLICATION NO. 159/2018
IN
CIVIL APPEAL NO. 11857 OF 2016

MISCELLANEOUS APPLICATION NO. OF 2022
(Diary No. 5715/2022)
IN
CIVIL APPEAL NO. 11841 OF 2016
REVIEW PETITION(CIVIL) NO. 882/2017
IN
CIVIL APPEAL NO. 11846 OF 2016

ORDER

M.R. SHAH, J.

1. As common question of law and facts arise in this group of applications/petitions, all these applications/petitions are decided and disposed of together by this common order.

2. Having heard learned counsel for the respective parties and in the facts and circumstances of the case, the delay caused in filing the respective review/recall applications is hereby condoned.

3. All these applications under Article 137 of the Constitution of India r/w Section 47 of the Civil Procedure Code (CPC) have been preferred by the Government of NCT of Delhi and Delhi Development Authority to review and recall the orders passed in the respective Civil Appeals in dismissing/disposing off the same and to restore the same to their original files to consider the same on merits.

4. Shri Sanjay Poddar, learned Senior Advocate appearing on behalf of the Government of NCT of Delhi and other learned counsel appearing on behalf of the Delhi Development Authority have vehemently submitted that while dismissing/disposing off all the respective Civil Appeals and holding and/or confirming the judgments of the respective High Courts declaring that the acquisition of the lands in question have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act'), reliance was placed on the decision of this Court in the case of Pune Municipal Corporation v. Harakchand Misirimal Solanki, (2014) 3 SCC 183. It is the case on behalf of the applicants that the decision of this Court in the case of Pune Municipal Corporation (supra), which was relied upon while dismissing/disposing off all the respective appeals has been specifically overruled by a Constitution Bench of this Court in the case of Indore Development Authority v. Manohar Lal & others, (2020) 8 SCC 129. It is submitted on behalf of the respective applicants that by specifically overruling the decision rendered in Pune Municipal Corporation (supra), the Constitution Bench of this Court has specifically observed and held that not only the decision rendered in Pune Municipal Corporation (supra) is overruled, but all other decisions in which Pune Municipal Corporation (supra) has been followed are also overruled. Heavy reliance is placed upon para 365 of the Constitution Bench of this Court in the case of Indore Development Authority (supra). 4.1 It is further submitted on behalf of the applicants that this Court in the earlier decision in the case of Indore Development Authority v. Shailendra (dead) through Lrs. & Others, (2018) 3 SCC 412, while holding that the decision in the case of Pune Municipal Corporation (supra) and other decisions following the view taken in Pune Municipal Corporation (supra) are per incuriam, it was observed that the decisions rendered on the basis of Pune Municipal Corporation (supra) are open to be reviewed in appropriate cases on the basis of the said decision. It is submitted that pursuant to the liberty reserved in the said decision, the present applications/petitions have been preferred. 4.2 It is further submitted that power to review flows from Article 137 of the Constitution of India. It is contended that once the law has been laid down by a Constitution Bench of this Court in the case of Indore Development Authority v. Manohar Lal & Others (supra) and specifically overruling the decision in the case of Pune Municipal Corporation

(supra) which was the basis to dispose of/dismiss the respective appeals, the principle of res judicata shall not be applicable on the question of law.

4.3 Learned counsel appearing on behalf of the respective applicants have also submitted that as such the judgment and order passed by this Court in the case of Pune Municipal Corporation (supra) has been subsequently recalled by a three Judge Bench of this Court vide order dated 16.07.2020 passed in Civil Appeal No. 877/2014. It is submitted that in that view of the matter also, the orders passed in the respective civil appeals dismissing/disposing off the same relying upon the decision in the case of Pune Municipal Corporation (supra) are also required to be reviewed/recalled.

4.4 Learned counsel appearing on behalf of the respective applicants have also relied upon some of the subsequent orders passed by this Court recalling similar orders dismissing/disposing off the civil appeals in which the decision in the case of Pune Municipal Corporation (supra) was relied upon and the respective proceedings are ordered to be restored to their original file in which the effect of the subsequent judgment rendered by the Constitution Bench in the case of Indore Development Authority (supra) Pune Municipal Corporation (supra) is under consideration. Reliance is placed on the order passed by this Court dated 15.02.2022 in Miscellaneous Application Diary No. 21678/2020.

4.5 Shri Sanjay Poddar, learned Senior Advocate appearing on behalf of the applicants has relied upon the decision of this Court in the case of Mathura Prasad Bajoo Jaiswal & Others v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613 in support of his submissions that as held by this Court that the decision on question of law where the law is altered since the earlier decision, the earlier decision will not operate as res judicata.

4.6 Relying upon the decision of this Court in the case of Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited, (2008) 14 SCC 171, it is submitted that as observed and held by this Court a judicial decision acts retrospectively. It is submitted that it is further observed that if a subsequent decision alters the earlier one, the later decision does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. It is submitted that it is further observed that to put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

4.7 It is further submitted by the learned counsel appearing for the respective applicants that in the present case, in many cases, the possession of the lands in question has been handed over to the DDA/applicants which are to be used for the public purpose. It is contended that because of the wrong interpretation of law in the case of Pune Municipal Corporation (supra), the acquisitions have been held to be lapsed. It is submitted that therefore in view of the subsequent decision of the Constitution Bench in the case of Indore Development Authority (supra) clarifying the law and specifically overruling the decision of this Court rendered in the case of Pune Municipal Corporation (supra), there shall not be any lapse of acquisition under the provisions of the 2013 Act. It is submitted that if the impugned orders passed in the respective Civil Appeals are not reviewed/recalled, in that case, the applicants/public authorities have to suffer and they will have to

handover the possession of the lands in question back to the original landowners and thereby the lands in question shall not be used for the public purpose for which they are acquired. It is contended that as observed and held by this Court in the case of Board of Control for Cricket in India v. Netaji Cricket Club (2005) 4 SCC 741, a mistake on the part of the Court may also call for a review of the order. It is submitted that in the aforesaid decision it is further observed and held by this Court that the words "sufficient reason" in order 47 Rule 1 CPC are wide enough to include a misconception of fact or law by a court or even an advocate. It is further observed that an application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.

4.8 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present applications and review/recall the earlier orders passed in the respective Civil Appeals dismissing/disposing off the same, relying upon the decision in the case of Pune Municipal Corporation (supra), which has been subsequently overruled by a Constitution Bench of this Court in the case of Indore Development Authority (supra) and thereafter to decide and dispose of the same in light of the subsequent decision rendered by the Constitution Bench in the case of Indore Development Authority (supra). It is submitted that no prejudice shall be caused to the respective respondents if the matters are heard afresh on merits and the respective respondents/landowners will be heard on merits on all points.

5. All these review applications are opposed by Shri Shyam Divan, Sri V. Giri, Shri Neeraj Kumar Jain, Shri Vivek Chib, learned Senior Advocates and other counsel appearing for the respective respondents. 5.1 It is vehemently submitted on behalf of the respective respondents that the applicants have admittedly filed the instant review applications seeking review of the orders passed by this Court based on a subsequent decision. It is submitted that change in law in view of the subsequent decision of the Court cannot be a ground for review. It is submitted that even if the judgment of the Constitution Bench in the case of Indore Development Authority v. Manohar Lal (supra) has overruled the decision in the case of Pune Municipal Corporation (supra), the settled position inter parties may not be affected. 5.2 It is further submitted that even otherwise the judgment in Indore Development Authority (supra) may be construed to be prospective in its operation and cannot reopen claims/cases which have already attained finality.

5.3 It is submitted that the law operational at the time when the Delhi High Court delivered the judgment in the present matter (Civil Appeal No. 8529/2016) was that laid down in the case of Pune Municipal Corporation (supra).

5.4 It is contended that even before the date on which the judgment of the Constitution Bench in Indore Development Authority v. Manohar Lal (supra) was delivered, the matter had attained finality and rights of the respective respondents over the subject lands were crystallised. 5.5 It is urged that so far as the reliance placed upon para 365 of the decision in the case of Indore Development Authority v. Manohar Lal (supra) is concerned, the Constitution Bench was only concerned with the correctness of the law laid down in the case of Pune Municipal Corporation (supra) and Sree Balaji Nagar Residential Assn. v. State of Tamil Nadu (2015) 3 SCC 353. That the Constitution Bench was not considering the appeals in relation to Pune Municipal Corporation

(supra) or Sree Balaji Nagar Residential Assn. (supra), or for that matter a review of the decision in the aforesaid cases or any other case for that matter. Therefore, the Constitution Bench could not have and did not intend to reverse or review the judgments, as an expression of adjudication by this Court either in Pune Municipal Corporation (supra) or Sree Balaji Nagar Residential Assn. (supra) or any other judgment of the competent Court that has followed the aforesaid judgments. That the effect of overruling of the judgment could only be to address the precedential value of the judgments so overruled but cannot set at naught the decree that has been passed in that regard. It is submitted that by overruling a decision, the overruled judgment will lose its precedential value and nothing more than that. Reliance is placed on the decision of this Court in the case of BSNL v. Union of India (2006) 3 SCC 1. That in the said decision, it is observed that the overruling would not affect the binding nature of a decision between the parties to the lis.

5.5.1 Shri Divan, learned Senior Advocate has also relied upon the recent decision of this Court in the case of Neelima Srivastava v. State of U.P. (2021 SCC OnLine SC 610) in support of his submission that as held by this Court that mere overruling of the principles by a subsequent judgment will not dilute the binding effect of the decision inter-parties. It is urged that therefore para 365 of the Constitution Bench judgment in Indore Development Authority v. Manohar Lal (supra) does not aid the review petitioners.

5.6 It is further submitted by the learned counsel appearing for the respective respondents that even otherwise none of the conditions enumerated under Order 47 Rule 1 CPC and Order 47 of the Supreme Court Rules are satisfied. That the review petitions are filed under Article 137 of the Constitution r/w Order 47 of the Supreme Court Rules. That Article 137 states that “subject to the provisions of any law made by Parliament or any rules made under Article 145”, this Court shall have power to review its decision. It is submitted that Order 47 of the Supreme Court Rules states that “no application for review will be entertained in a civil proceeding except on the ground mentioned in Order 47 Rule 1 CPC. That Order 47 Rule 1 CPC states that a review petition may be preferred on the following grounds,

(a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him, OR

(b) order made, or on account of some mistake or error apparent on the face of the record, OR

(c) for any other sufficient reason.

It is submitted that in the case of Kamlesh Verma v. Mayawati (2013) 8 SCC 320, this Court has reiterated the law on review jurisdiction and it is observed and held that unless the aforesaid grounds are made out, the review petition shall not be maintainable. 5.7 It is further submitted that even otherwise overruling of an earlier decision cannot be a ground for review. It is contended that the sole ground raised in the present cases is that the decision in the case of Pune Municipal Corporation (supra) has been held to be per incuriam in the earlier decision of Indore Development Authority v. Shailendra (dead) through Lrs. (supra) and it is contended by the review petitioners that as per the judgment in Indore Development Authority v. Shailendra (dead) through Lrs.

(supra), the decisions rendered on the basis of the Pune Municipal Corporation (supra) were open to review in appropriate cases based on the said decision. It is submitted that the explanation to Order 47 of the Code states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be aground for the review of such judgment. It is submitted that a Constitution Bench of this Court in the case of Beghar Foundation v. K.S. Puttaswamy (2021) 3 SCC 1 has observed that change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review.

5.8 Learned counsel for the respective respondents have submitted that in some of the cases, similar review petitions post Constitution Bench decision in the case of Indore Development Authority v. Manohar Lal (supra) have been dismissed. It is submitted that merely because the judgment in the case of Pune Municipal Corporation (supra) has been recalled subsequently may not be a ground to review and/or recall the orders passed in the present cases and that too after such a long delay. It is submitted that the order of recall does not in any manner afford any additional impetus to the applicants to seek a review of the judgment in the present cases.

5.9 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the review applications.

6. I have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that in all these cases, the respective Civil Appeals have been dismissed/disposed of, confirming the orders passed by the respective High Courts, relying upon the decision of this Court in the case of Pune Municipal Corporation (supra). However, it is required to be noted that in Indore Development Authority v. Shailendra, (2018) 1 SCC 733, correctness of the decision in the case of Pune Municipal Corporation (supra) was doubted. The matter was placed before the three Judge Bench. By a majority decision, the decision in the case of Pune Municipal Corporation (supra) was held to be per incuriam. While holding so and overruling the decision in Sree Balaji Nagar Residential Assn. (supra) and other decisions following the said decision to the extent they were in conflict with the three Judge Bench decision, this Court also observed that the decisions rendered on the basis of Pune Municipal Corporation (supra) are open to be reviewed in appropriate cases on the basis of the said decision. That is how, the applicants have preferred the present review applications in view of the observations and liberty reserved in para 217 in the case of Indore Development Authority v. Shailendra (dead) through Lrs. (supra). The matter does not rest there. Thereafter, a reference was made to the five Judge Bench of this Court. A Constitution Bench of this Court in the case of Indore Development Authority v. Manohar Lal (supra) thereafter has specifically overruled the decision in the case of Pune Municipal Corporation (supra). In para 365, it is observed and held as under:

> “365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 has been followed, are also

> overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 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 [Indore Development Authority v. Shailendra, (2018) 3 SCC 412, the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment." Thus, the Constitution Bench of this Court in the aforesaid decision has not only observed that the decision rendered in Pune Municipal Corporation (supra) is overruled but has also specifically observed that all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. I have to give some meaning to the said observations. Thus, in view of the above specific observations made by the Constitution Bench of this Court, the objections, as above, raised on behalf of the respective respondents are to be overruled. None of the submissions/decisions relied upon on behalf of the respective respondents shall be of any assistance to the respondents, though there cannot be any dispute with respect to the proposition of law laid down in the relied upon judgments/decisions on the review jurisdiction, more particularly, in view of the observations made in para 217 in the earlier decision of this Court in the case of Indore Development Authority v. Shailendra (dead) through Lrs. (supra) and the observations made in para 365 in the subsequent decision of the Constitution Bench in the case of Indore Development Authority v.

Manohar Lal (supra), reproduced hereinabove.

7. It is also required to be noted that in similar set of facts and circumstances, this Court had condoned the delay and reviewed/recalled the similar order in which the decision in the case of Pune Municipal Corporation (supra) was relied upon. It may be true that in some cases, the review applications have been dismissed. However, considering the orders passed in rejecting review applications, it appears that attention of the Court to paras 365 and 366 of the decision of the Constitution Bench in Indore Development Authority v. Manohar Lal (supra) and para 217 of the earlier decision in the case of Indore Development Authority v. Shailendra (dead) through Lrs. (supra) were not brought to the notice of the Court.

8. Now so far as the submission on behalf of the respective respondents that the case does not fall under Order 47 CPC and that the subsequent overruling cannot be a ground to review the earlier order(s) is concerned, at the outset, it is required to be noted that here is a peculiar case where the earlier decision in the case of Pune Municipal Corporation (supra), upon which reliance has been placed earlier, was itself doubted in the subsequent decision in the case of Indore Development Authority (supra) and that the matter was referred to the Constitution Bench and thereafter the Constitution Bench has declared the law as above, more particularly paras 365 and 366 of the judgment in the case of Indore Development Authority (supra). It is also required to be noted that in most of the cases solely relying upon the earlier decision in the case of Pune Municipal Corporation (supra) and though the possession of the lands in question have been taken over and in many cases

it might have been utilised/used by the beneficiary authorities, orders are passed declaring the deemed lapse of acquisition. The resultant effect would be to return the possession of the land/s which might have been used by the beneficiary authorities. Therefore also in the larger public interest, the review applications are required to be allowed and the respective appeals are required to be considered and decided afresh. Therefore, in the facts and circumstances of the case, these are the cases where the review applications are to be allowed and the appropriate public authorities are to be given an opportunity to put forward their case afresh, which shall be in the larger public interest.

9. In view of the above and for the reasons stated above, all these review/recall applications are allowed. The orders passed in the respective Civil Appeals are hereby recalled and the respective Civil Appeals are hereby ordered to be restored to their original file. Let the said Civil Appeals be considered in accordance with law and on their own merits and in light of the decision in the case of Indore Development Authority v. Manohar Lal (supra). All the defences and/or contentions which may be available to the respective parties are kept open including the possession and neither I have entered into the questions on merits nor expressed anything on merits in favour of either of the parties.

10. In view of the order passed in the review applications, no further order is required to be passed in Contempt Petition (Civil) No. 735/2018 in Civil Appeal No. 11857/2016, which stands disposed of.

.....J. [M.R. SHAH] NEW DELHI;

MARCH 17, 2023.

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION MISCELLANEOUS APPLICATION NO._____ @DIARY NO. 32257 OF 2021 IN CIVIL APPEAL NO. 11857 OF 2016 GOVT. OF NCT OF DELHI THR. SECRETARY, LAND AND ..... APPELLANT(S) BUILDING DEPARTMENT VERSUS M/S. K.L. RATHI STEELS LTD.

& ORS. ETC. …. RESPONDENT(S)

WITH

CONNECTED MATTERS

JUDGMENT

NAGARATHNA, J.

I have had the advantage of reading the judgment proposed by His Lordship M.R. Shah, J. in these review petitions. However, I am unable to agree with the reasoning as well as the conclusions

arrived at by him.

2. In these batch of cases, the issue revolves around in my view the very maintainability of these review petitions both on the ground of delay and on a consideration of Article 137 of the Constitution of India as well as Order XLVII Rule 1 of the Supreme Court Rules, 2013 (for short, "S.C. Rules - 2013") and Order XLVII Rule 1 of the Code of Civil Procedure, 1908 ('CPC' for short). The aforesaid provisions are respectively extracted as under for immediate reference:

> "Article 137 of the Constitution of India:
>
> '137. Review of judgments or orders by the Supreme Court. -Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.' ****** Order XLVII Rule 1 of Supreme Court Rules, 2013:
>
> 'Order XLVII Rule 1- The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII Rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.
>
> The application for review shall be accompanied by a certificate of the Advocate on Record certifying that it is the first application for review and is based on the grounds admissible under the Rules.' ****** 'Order XLVII Rule 1 CPC-
>
> 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 to the Court which passed the decree or made the order.

2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

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

3. Before applying the said provisions to these review petitions, it is necessary to give a brief factual background to these cases.

4. Land Acquisition Act, 1894 (for short, "L.A. Act, 1894") was a pre-Independence legislation applicable to acquisition of land on the principle of eminent domain. The same was repealed and substituted by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('L.A. Act, 2013' for the sake of convenience). L.A. Act, 2013 came into effect from 01.01.2014. Section 24 with particular reference to Section 24 (2) of L.A. Act, 2013, is relevant for the purpose of these review petitions. The said provision reads as under:

> of 1894 shall be deemed to have lapsed in certain cases.–(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—
>
> (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
>
> (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
>
> (2) Notwithstanding anything contained in sub-

section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

> Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

5. Sub-Section 2 of Section 24 of L.A. Act, 2013 was a subject matter of consideration and interpretation in the case of Pune Municipal Corporation vs. Harakchand Misirimal Solanki (2014) 3 SCC 183 (Pune Municipal Corporation) and Indore

Development Authority vs. Manoharlal (2020) 8 SCC 129 (Indore Development Authority).

6. A Three-Judge Bench of this Court in Pune Municipal Corporation interpreted Section 24 of L.A. Act, 2013. In one of the cases, namely, Indore Development Authority vs. Shailendra (2018) 1 SCC 733, the matter was referred to a Three-Judge Bench vide order dated 07.12.2017. In Indore Development Authority vs. Shailendra (2018) 3 SCC 412, the Three-Judge Bench took a view that the judgment in Pune Municipal Corporation did not consider several aspects relating to the interpretation of Section 24 of the L.A. Act, 2013 Act. Pune Municipal Corporation was a judgment by a Bench of coordinate strength of three Judges. Two of the three learned Judges in Indore Development Authority vs. Shailendra opined prima facie that the decision in Pune Municipal Corporation appears to be per incuriam while Shantanagoudar J. dissented on one point.

Consequently, the Bench ordered that the matters could be listed before the appropriate Bench subject to the orders of Hon'ble the Chief Justice of India. Later, in Indore Development Authority vs. Shyam Verma (2018) SCC Online SC 3324, this Court considered it appropriate to again place the matter before Hon'ble the Chief Justice of India to refer the issues to be resolved by a Larger Bench. There were other cases also touching upon the same controversy which were referred to a Larger Bench and ultimately, in Indore Development Authority vs. Manoharlal, a five-Judge Bench was constituted by the Hon'ble Chief Justice of India, which, after hearing the learned counsel for the parties, framed the following questions for consideration:

"4.1. (1) What is the meaning of the expression "paid"/"tender" in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act") and Section 31 of the Land Acquisition Act, 1894 ("the 1894 Act")? Whether non-deposit of compensation in court under Section 31(2) of the 1894 Act results into lapse of acquisition under Section 24(2) of the 2013 Act. What are the consequences of non-deposit in court especially when compensation has been tendered and refused under Section 31(1) of the 1894 Act and Section 24(2) of the 2013 Act? Whether such persons after refusal can take advantage of their wrong/conduct?

4.1. (2) Whether the word "or" should be read as conjunctive or disjunctive in Section 24(2) of the 2013 Act?

4.1. (3) What is the true effect of the proviso, does it form part of sub-section (2) or main Section 24 of the 2013 Act?

4.1. (4) What is mode of taking possession under the Land Acquisition Act and true meaning of expression 'the physical possession of the land has not been taken' occurring in Section 24(2) of the 2013 Act?

4.1. (5) Whether the period covered by an interim order of a court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the 2013 Act? 4.1. (6) Whether Section 24 of the 2013 Act revives barred and stale claims?

5. In addition, question of per incuriam and other incidental questions also to be gone into."

7. As the L.A. Act, 2013 has repealed the L.A. Act 1894, Section 24 of L.A. Act, 2013 begins with a non-obstante clause and overrides all other provisions of L.A. Act, 2013. Section 24 of L.A. Act, 2013 is in the nature of a saving clause.

8. Submissions were made before the Five-Judge Bench that this Court should overrule the decision in Pune Municipal Corporation and other judgments which have followed the said dictum. After analysing Section 24(1)(a) and Section 24 (1)(b) of the L.A. Act, 2013 at paragraph 366 of Indore Development Authority, it has been observed as under:

"366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act. 366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled,

interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act. 366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years. 366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e., 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

9. However, while doing so in para 365, it was observed as under:

"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 vs. Shailendra, the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in

the light of the discussion in the present judgment."

10. Subsequent to the aforesaid judgment passed in Indore Development Authority by the Five-Judge Bench and having regard to the fact that Pune Municipal Corporation and all other judgments following Pune Municipal Corporation have now been overruled, the review petitioners, who are either the acquiring body/State or the beneficiary have preferred these review petitions.

11. The object and purpose of filing these review petitions is to seek review of the judgment impugned in the review petitions and for re-

hearing of the Special Leave Petitions or the Civil Appeals, as the case may be, which were disposed of in terms of Pune Municipal Corporation, in light of the latest pronouncement of this Court in Indore Development Authority.

12. According to Sri Sanjay Poddar, learned senior counsel and other learned counsel appearing for the review petitioners, on an interpretation of para 365 of Indore Development Authority, it is clear that not only the judgment in Pune Municipal Corporation is overruled but all other judgments following the said decision also stand overruled. Consequently, the judgements passed by this Court following the dictum in Pune Municipal Corporation are subject to review and hence these review petitions have been filed.

13. The main plea of the review petitioners is to recall the judgments/orders impugned in the review petitions and to restore the Civil Appeals or Special Leave Petitions, as the case may be, on the file of this Court and to rehear the same and to dispose them in terms of the latest dictum of the Larger Bench of this Court in the case of Indore Development Authority.

14. Learned senior counsel and learned counsel for the petitioners relied upon Mathura Prasad Sarjoo Jaiswal and Others vs. Dossibai N.B. Jeejeebhoy AIR 1971 SC 2355; and Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited (2008) 14 SCC 171; in support of their submissions that when a question of law is altered by a subsequent decision, the earlier decision does not operate as res judicata. Further, that a decision rendered later on would have a retrospective effect clarifying the legal position which was earlier not accordingly understood.

15. Per contra, learned senior counsel Sriyuth V. Giri, Shyam Divan, Neeraj Kumar Jain, Vivek Chib and other learned counsel have vehemently objected to the very maintainability of the review petitions. This is by contending that having regard to the scope of review as provided under Order XLVII Rule 1 CPC and particularly, the Explanation thereto, these review petitions are not at all maintainable. In other words, it is their contention that despite what has been stated in paragraph 365 of Indore Development Authority, in view of the bar contained in the Explanation to Order XLVII Rule 1 CPC, the review petitions are not maintainable and the review petitions have to be dismissed in limine. In other words, it is contended that the purport of what has been opined in paragraph 365 is to denude the judgment passed in Pune Municipal Corporation and all other judgments or orders following Pune Municipal Corporation of their precedential authority and

effect. This implies that the said judgment cannot be cited as a precedent in future in view of the subsequent law being laid down by the Larger Bench in Indore Development Authority by overruling the judgment in Pune Municipal Corporation. However, the judgment themselves do not get effaced and they are binding on the parties to the said cases although they can no longer be cited as a precedent. Heavy reliance has been placed on the Explanation to Order XLVII Rule 1 CPC to contend that when a decision on a question of law on which the judgment of the Court has been reversed or modified by the subsequent decision of the superior Court, it shall not be a ground for review of such judgment. Thus, the contention on behalf of the respondents is that the judgment in Pune Municipal Corporation and all other judgments following the aforesaid judgment, having been overruled, would cease to be a precedent for future cases. It is submitted that merely because the Larger Bench of this Court in Indore Development Authority has laid down the new law by a different interpretation being given to Sub-Section (2) of Section 24 of L.A. Act, 2013, it cannot give rise to a review of the judgment passed in Pune Municipal Corporation and all other judgments following Pune Municipal Corporation.

16. Learned senior counsel for the respondents further submitted that there is delay in filing the review petitions.

17. Learned senior counsel, Sri Shyam Divan, appearing for one of the respondents, placed reliance on the two judgments of this Court:

(i) Dr. Subramaniam Swamy vs. State of Tamil Nadu and Ors.

(2014) 5 SCC 75, with particular reference to para 52 thereof to contend that having regard to the Explanation to Order XLVII Rule 1 CPC, 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, of which review is sought, suffers from an error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. Rajender Kumar vs. Rambhai (2007) 15 SCC 513, also alludes to the same principle.

(ii) Further, in Beghar Foundation through its Secretary vs. Justice K.S. Puttaswamy (Retd.) & Ors. (2021) 3 SCC 1, while considering the review petitions filed against the final judgment and order passed in Justice K.S. Puttuswamy vs. Union of India (2019) 1 SCC 1 (Aadhaar – 5 J.), it was observed that there was no case for review of the said judgment. It was further observed that, “change in the law or subsequent decisions/judgment of a Larger Bench by itself cannot be regarded as ground for relief.” The review petitions were, accordingly, dismissed by the majority of the Judges on the Bench (4:1), while Dr. D.Y.Chandrachud, J. expressed his dissenting opinion in the said case.

(iii) Reliance was also placed on Bharat Sanchar Nigam Ltd. and Another vs. Union of India and Others (2006) 3 SCC 1 and Kamlesh Verma vs. Mayawati and Others (2013) 8 SCC 320 in support of their submissions.

18. By way of reply, learned senior counsel and learned counsel for the review petitioners sought refuge under the expression "for any other sufficient reason" in Order XLVII Rule 1 CPC to contend that in view of the changed circumstances, inasmuch as the dictum in Pune Municipal Corporation is overruled by the Larger Bench of this Court and all other judgments following the judgment in Pune Municipal Corporation have also been overruled, there is good ground to review and reopen all previous judgments passed on the basis of the overruled judgment in Pune Municipal Corporation. Hence, these review petitions are maintainable and ought to be allowed. In this regard, learned counsel for the review petitioners placed reliance on The Bengal Immunity Company Ltd. vs. The State of Bihar AIR 1955 SC 661.

19. Having regard to the rival submissions made, I find that the bone of contention between the parties is with regard to the maintainability of these review petitions bearing in mind the scope and purport of Order XLVII Rule 1 CPC and particularly, the Explanation thereto. In other words, the point for consideration is, whether, the judgment passed in Pune Municipal Corporation and all other judgments following the said dictum, which have been overruled, could be reviewed by entertaining these review petitions and the said orders be recalled and the said cases be reheard and decided in light of Indore Development Authority.

20. At the outset, it is observed that this is not a case where the question involved is, whether, the judgment in Pune Municipal Corporation calls for a review or reconsideration. It has already been reconsidered by this Court, by the Larger Bench in Indore Development Authority. The pertinent question involved in this case is, whether, the judgment in Pune Municipal Corporation having been overruled and all other judgments following Pune Municipal Corporation having been overruled in Indore Development Authority, would call for review of all those judgments despite having attained finality between the parties. In other words, whether, on the basis of a subsequent decision, on a pure question of law, the earlier decisions arrived at, on the basis of law as it was, could now be recalled at the instance of one of the parties to the earlier decisions.

21. The specimen judgment / Orders sought to be reviewed in the instant cases, namely, Civil Appeals and SLPs, read as under:

> "1. Leave granted.
>
> 2. The issue, in principle, is covered against the appellants by judgments in Civil Appeal No. 8477of 2016 arising out of Special Leave Petition (C) No. 8467 of 2015 and Civil Appeal No. 5811 of 2015 arising out of Special Leave Petition (C) No. 21545 of 2015. The appeals filed by the requisitioning authority, namely the Delhi Development Authority, have already been dismissed by this Court.
>
> 3. These appeals are, accordingly, dismissed.
>
> 4. In the peculiar facts and circumstances of these cases, the appellants are given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

> Resettlement Act, 2013 for initiation of the acquisition proceedings afresh.
>
> 5. We make it clear that in case no fresh acquisition proceedings are initiated within the said period of one year from today by issuing a Notification under Section 11 of the Act, the appellants, if in possession, shall return the physical possession of the land to the original land owner.

Pending applications, if any, stand disposed of. No costs." (Emphasis by me)

22. The order dated 01/07/2016 in SLP (C) CC No. 11422 of 2016 and 11005 of 2016 is as under:

> "Delay Condoned Dismissed."

23. Black's Law Dictionary defines a "decision" as "a determination arrived at after consideration of facts, and in legal context, law"; an "opinion" is defined as "the statement by a Judge or Court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based". It explains the difference between a "decision" and "opinion" as follows:

> "'Decision' is not necessarily synonymous with 'opinion'. A decision of the court is its judgment; the opinion is the reasons given for that judgment, or the expression of the views of the Judge."

24. This Court while considering the difference between the two expressions, namely, "decision" and "opinion" or view of law stated that, "it is necessary to bear in mind that the principles in regard to the highest Court departing from its binding precedent are different from the grounds on which a final judgment between the parties can be reconsidered."

25. When a review application is filed by an aggrieved party, the same can be dismissed ex parte without issuing notice to the other side on the ground that there is no sufficient ground to call upon the opposite party to show cause as to why review should not be granted. If notice is issued to the other side, then, after hearing both sides, it is necessary to consider whether the review petition ought to be allowed or rejected. It is at that stage the maintainability of the review petition would also have to be considered such as if there is a bar to the very maintainability of the review petition having regard to the scope to Order XLVII Rule 1 CPC. Then, the review petition has to be dismissed at that stage itself. But, if the Court is convinced that there is ground for reviewing the order or judgment impugned, then the review petition has to be allowed by recalling the orders sought to be reviewed. Thereafter, the matter has to be reheard on merits by the Court. After rehearing the case, the Court may either confirm the original order or modify it. An order made subsequently whether reversing, confirming or modifying the earlier order would be superseding the original one. Therefore, it is at the stage prior to rehearing the matter on merits that the maintainability of the review petition has to be ascertained i.e., whether the grounds for seeking review enunciated in Order XLVII Rule 1 CPC are made out or not.

26. Article 137 of the Constitution of India speaks about the review of judgments or orders passed by the Supreme Court of India. It states that subject to the provisions of any law made by Parliament or any Rule made under Article 145 of the Constitution of India, the Supreme Court shall have the power to review any judgment pronounced or order made by it. However, the power of the Supreme Court of India to review its judgment or order is subject to (i) the provisions of any law made by the Parliament, or (ii) any Rule made under Article 145 of the Constitution of India.

27. Rule 1 of Order XLVII of the S.C. Rules, 2013 made by virtue of Article 145 of the Constitution of India states that, in any civil case, review lies on any of the grounds stated under Order XLVII Rule 1 CPC. Thus, the scope and power to review a judgment or order by the Supreme Court is restricted to the contours of Order XLVII Rule 1 CPC. Further, though the power to review is conferred by the Constitution and is therefore a Constitutional power, that power is circumscribed by the CPC and S.C. Rules, 2013 which have been extracted above. Order XLVII Rule 1 CPC states that an aggrieved person -

i) due to discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person aggrieved or the person seeking review could not be produced by him at the time when the decree was passed or order made, or

ii) due to a mistake or error apparent on the face of the record, or

iii) on account of any other sufficient reason, may seek review of a judgment or order of this Court.

28. Thus, it is noted that any person considering himself aggrieved can seek review of the judgment or order only on the aforesaid three grounds and none other. In the instance case, according to petitioners' counsel, the first and second grounds for review do not apply. Learned senior counsel for the petitioners have relied upon the third ground. The third ground is "on account of any other sufficient reason". The said expression may mean that the reason must be sufficient to the Court to which the application for review is made.

29. In the present batch of cases, serious arguments have been advanced on both sides on, what I consider, the maintainability of these review petitions revolving around the Explanation to Order XLVII Rule 1 CPC. Hence, in my view, the recalling of the judgments passed following the judgment in Pune Municipal Corporation, which is no doubt, overruled, will have to be reconsidered in light of Order XLVII Rule 1 CPC.

30. On a consideration of Order XLVII Rule 1 CPC, it is noted that there are three main grounds referred to above on which a review of a decree or order could be sought by an aggrieved person. Much emphasis has been laid by the learned senior counsel for the review petitioners herein, on the expression "sufficient reason" so as to contend that since Pune Municipal Corporation was decided contrary to the intent and purport of Section 24(2) of L.A. Act, 2013 and the same has been overruled by a Larger Bench comprising of five Judges in Indore Development Authority, there is sufficient reason to review all judgments passed by this Court following Pune Municipal Corporation. Hence, the present review petitions have been filed although there may be a delay in

doing so.

31. It was further contended that having regard to paragraph 365 of the judgment in Indore Development Authority, the dictum in Pune Municipal Corporation as well as all decisions following Pune Municipal Corporation have been expressly overruled. Therefore, there is sufficient reason to review and recall all those erroneous decisions in light of the subsequent decision in Indore Development Authority. Hence, the review petitions have been filed.

32. While considering the aforesaid submission, it is also necessary to bear in mind the arguments advanced by learned senior counsel and counsel on behalf of the respondents as they have drawn our particular attention to the Explanation to Order XLVII Rule 1 CPC. It was contended that the said Explanation clearly bars a review of a judgment on the ground that a subsequent decision has been rendered by a superior Court, i.e. a Larger Bench of five Judges in the instant case, reversing or overruling the earlier decision. It was contended that when such a decision is on a pure question of law, it is not a ground for review of the judgments which have been overruled by the Larger Bench. It was further submitted that the overruled judgments are still binding on the parties to the said judgments and have attained finality and in view of the Explanation, they cannot be reopened or reviewed.

33. Applying the Explanation to the facts of the present case, it was contended that in Indore Development Authority, the judgment in Pune Municipal Corporation was overruled on a pure question of law and further, all other judgments following Pune Municipal Corporation also stood overruled. But the overruling of the decision in Pune Municipal Corporation by a subsequent decision of a Larger Bench of five Judges in Indore Development Authority is not a ground for review and recall of the very decision in Pune Municipal Corporation and all other decisions following Pune Municipal Corporation. It was submitted that the Explanation to Order XLVII Rule 1 CPC bars the review petition being entertained in the instant cases. Hence, in these cases, the review petitions may have to be rejected/dismissed.

34. The expression “any other sufficient reason” which is a ground for review and which is the sheet anchor of the petitioner’s review petition has not been defined in the Code. However, the judgments of the

(i) Privy Council in Chajju Ram vs. Neki AIR 1922 P.C. 112; Bisheshwar Pratap Sahi vs. Parath Nath AIR 1934 P.C. 213;

(ii) Federal Court in Hari Sankar Pal vs. Anath Nath Mitter AIR 1949 FC 106, and,

(iii) This Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Paulose Athanasius AIR 1954 SC 526 have held that words must mean “a reason sufficient on grounds, at least analogous to those specified in the Rule”.

35. In Chajju Ram vs. Neki (supra), the Privy Council held that there cannot be a review on the ground that the judgment proceeded on an incorrect exposition of law. Further, the Court has no

jurisdiction to order a review because it was of the opinion that a different conclusion of law should have been arrived at. It was also observed that if a decision is erroneous in law that is not a ground for ordering review. If a court has decided a point erroneously, the error could not be one apparent on the face of the record or even analogous to it. Therefore, subsequent events or the fact that the Court took a different view in a subsequent case is not a sufficient reason for granting review (vide Explanation to Order XLVII Rule 1 CPC).

36. Although, the expression "for any other sufficient reason" in Order XLVII Rule 1 CPC is wide enough to take within its scope and ambit many circumstances or situations which do not fall in the earlier part of the Order XLVII Rule 1 CPC which are the two grounds

(i) and (ii) referred to above, in my view, the Explanation to the said provision carves out an exception to the expression "for any other sufficient reason" as a ground for review of a judgment in ground (iii). The Explanation being in the nature of an exception is to be read outside the scope of the expression "for any other sufficient reason" in Order XLVII Rule 1 CPC. In other words, if, on a question of law, a decision of a Court is reversed by a subsequent decision of a superior Court (Larger Bench in the instant case) and the same is reopened on the basis of the said subsequent decision there would be no finality of judgments of the Court even between the parties thereto. It is, hence, observed that even an erroneous judgment or order is binding on the parties thereto even if subsequently that very judgment is reversed in a subsequent decision of a superior Court. Otherwise, there would be chaos and no finality of any decision of a Court which is against public policy. Judgments rendered by a Court of competent jurisdiction as per the prevailing law are binding on the parties to the said judgment. Merely because that judgment is subsequently overruled by a subsequent decision of a superior Court in any other case, the same shall not be a ground for review of such judgment.

37. In this context, the object and purpose of the Explanation to Order XLVII Rule 1 CPC cannot be lost sight of and it needs to be emphasised. In my view, the Explanation to Order XLVII Rule 1 CPC is in the nature of an exception to the expression "for any other sufficient reason". This would mean that if, in the mind of a Court there is a sufficient reason for the review of a judgment, it cannot be on the ground/reason covered in the Explanation to Order XLVII Rule 1 CPC. Thus, the circumstances mentioned in the Explanation would be an exception and is outside the scope and ambit of "for any other sufficient reason".

38. An Explanation is at times appended to a Section to explain the object and content as well as the meaning of words contained in the Section. An Explanation may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some words occurring in it. Even a negative Explanation which excludes certain types or a category from the ambit of the Section may have the effect of showing that the category leaving aside the excepted types is included within it. An Explanation can also be added to serve as a proviso to the main Section vide Y.P. Chawla and Others vs. M.P. Tiwari and another AIR 1992 SC 1360. When an Explanation is in the nature of a proviso, it is used to remove special cases from the general provision and provide for them especially. Sometimes an Explanation is added to clarify a doubtful point of law as in the instant case the Explanation to Order XLVII Rule 1 CPC has been inserted by

the amendment made in the year 1976. [Source: G.P. Singh's "Principles of Statutory Interpretation" – 15th Edition].

39. It is also in the nature of an exception intended to restrain the enacting clause to particular cases. The Explanation in the instant case being in the nature of a proviso is a qualifying or excepting provision to what is stated in Order XLVII Rule 1 CPC which state the grounds for seeking a review. Hence, the object and intendment of the proviso must be given its full effect. The object and purpose of the Explanation can be related to the following three maxims:

> (i) Nemo debet bis vexari pro una et eadem causa (No man should be vexed twice for the same cause);
>
> (ii) Interest reipublicae ut sit finis litium (It is in the interest of the State that there should be an end to a litigation); and
>
> (iii) Res judicata pro veritate occipitur (A judicial decision must be accepted as correct).

These maxims would indicate that there must be an end to litigation otherwise the rights of persons would be in an endless confusion and justice would suffer.

40. At the same time, there are a line of decisions which have held that exercising power of review for "for any other sufficient reason" must be analogous to the two reasons mentioned in the provision therein, namely, –

1) 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 was made; or

2) on account of some mistake or error apparent on the face of the record.

41. The Explanation to Order XLVII Rule 1 CPC states that the fact that a decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Thus, the bar is for a Court to review its judgment, when a Court superior to it has subsequently reversed or modified a judgment on a question of law. As far as this Court is concerned, a superior Court would mean a Larger Bench of this Court which would pass a judgment or order contrary to the judgments sought to be reviewed.

42. However, in taxation matters, the position is slightly different. In Bharat Sanchar Nigam Ltd. vs. Union of India (2006) 3 SCC 1, it was observed that overruling of a decision takes place in a subsequent lis where the precedential value of the decision is called in question. That in our judicial system, it is open to a Court of superior jurisdiction or strength before which a decision of a Bench of lower strength is cited to act as an authority to overrule such a decision. But this overruling would

not operate to upset the binding nature of the decision on the parties to an earlier lis. In that lis, the principle of res judicata would continue to operate. But in tax cases relating to a subsequent year involving the same issue as an earlier year, the Court can differ from the view expressed if the case is distinguishable or per incuriam.

43. Learned senior counsel for the petitioners relied upon the following judgments in their arguments as well as reply arguments:

> (a) Mathura Prasad Sarjoo Jaiswal vs. Dossibai N.B. Jeejeebhoy (supra) was a question related to jurisdiction of a Court which cannot be deemed to have been finally determined by an erroneous decision of the court. It was observed that if by an erroneous interpretation of the statute the court holds that it has no jurisdiction, the question would not, operate as res judicata.

Similarly, by an erroneous decision if the court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the parties, whether the cause of action in the subsequent litigation is the same or otherwise, because if those decisions are considered as conclusive, it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the court in derogation of the rule declared by the Legislature. Reliance on the said decision is placed as the controversy involved therein, was in the context of the doctrine of res judicata, wherein, it was observed that the previous decision on a matter in issue alone is res judicata. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. It was further observed that a previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be a res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding is the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law. Therefore, if a subsequent proceeding is initiated between the parties in these cases, then the decision arrived at in terms of the impugned judgment in these review petitions would be binding on the parties. This does not mean that a decision rendered between the parties in Pune Municipal Corporation or decision following Pune Municipal Corporation can be reviewed or recalled by filing review petitions on the ground that subsequently in Indore Development Authority, Pune Municipal Corporation has been overruled and sought to be contended by the learned counsel for the petitioners. The same would be contrary to the Explanation in Order XLVII Rule 1 CPC.

(b) Similarly, reliance was placed on Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited (supra). A judgment which was pronounced earlier by a superior Court and holding the field, was not noticed by the Income Tax Appellate Tribunal, subsequently, while deciding a matter. Hence, it was observed that there was a mistake apparent from the record as there was non-consideration of a binding decision of superior Court by the said Tribunal. Hence, the same could be rectified under Section 254(2) of the Income Tax Act, 1961.

The above decision is also not applicable in the instant case for the reason that when Pune Municipal Corporation was decided there was no judgment of Indore Development Authority. The decision of the Larger Bench in Indore Development Authority is not prior to but subsequent to the judgment in Pune Municipal Corporation. The judgment and decision in Pune Municipal Corporation dated 08.02.2018 held the field till the judgment in Indore Development Authority which was pronounced on 06.03.2020. Therefore, the judgment in Indore Development Authority being a subsequent decision cannot give rise to review and recall of the decision in Pune Municipal Corporation as well as other judgments following the aforesaid case, on the basis that judgment in Pune Municipal Corporation has been overruled in the subsequent case, namely, Indore Development Authority.

(c) In Shakuntla Devi vs. Kamla (2005) 5 SCC 390, a declaratory decree was granted on the basis of law as it stood then i.e. the date when the declaratory decree was passed. But by the time the second declaratory decree was passed between the same parties in a subsequent suit, this Court had declared the law under Section 14 of the Hindu Succession Act, 1956 holding that the estate of women gets enlarged in terms of the said provision. Since the law on the date of the second declaratory decree was contrary to the earlier declaration of law made by this Court, the earlier decree in the first suit would not operate as res judicata even between the same parties when the second suit on a different cause of action between the same parties is being considered. Thus, in the above circumstances, the principle of res judicata would not apply. It is in the context of the principle of res judicata, it was observed by this Court that if the earlier declaratory decree which is sought to be made the basis of res judicata, is delivered by a Court without jurisdiction or is contrary to the existing law at the time and the issue comes up for reconsideration, such earlier declaratory decree cannot be held to be res judicata in a subsequent case unless, of course, protected by any special enactment. Therefore, it was held in the said case that if a subsequent suit is based on an earlier declaratory decree and such decree is contrary to the law prevailing at the time of the consideration of the second suit as to its legality or is a decree granted by a Court which had no jurisdiction to grant such decree, principles of res judicata under Section 11 CPC will not be attracted. It is then open to the defendant in the second suit to establish that the declaratory decree relied upon by the plaintiff granted in the earlier suit is not based on good law or that the Court granting such decree did not have the jurisdiction to grant such decree. In the aforesaid case, the second suit was filed for possession of the suit properties on the basis of a declaratory decree obtained earlier in the first suit which was not found to be a lawful decree as per the law prevailing at the time when the second suit was considered.

The aforesaid decision does not apply to the present case as herein, review petitions have been filed seeking review of the judgments passed by this Court on the basis of the decision in Pune Municipal Corporation which has been subsequently overruled by this Court in Indore Development Authority on a pure question of law and the review petitions are hit by the Explanation to Order XLVII Rule 1 CPC. This is not a case where a subsequent fresh petition has been filed before the High Court seeking reliefs based on the judgment of this Court in Pune Municipal Corporation. It is necessary to emphasise that these review petitions have been filed before this Court to review the judgments/orders passed by this Court on the basis of the judgment in Pune Municipal Corporation which has been overruled by a subsequent judgment in Indore Development Authority. In my view,

these review petitions are not maintainable in view of the bar contained in the Explanation to Order XLVII Rule 1 CPC.

(d) Learned senior counsel for the petitioners has relied upon the expression "sufficient reason" found in Order XLVII Rule 1 CPC being a ground for review in these cases. In this regard, he placed reliance on Board of Control for Cricket in India vs. Netaji Cricket Club, wherein it was observed that an application for review would also be maintainable if there exists sufficient reason thereof. What would constitute sufficient reason would depend on the facts and circumstances of the case. In the said case, reliance was placed on a judgment of the Privy Council in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius (supra), dealing with the limitations in the application of review and it was observed that the expression "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule." In Netaji Cricket Club (supra), this Court recognised that there was a mistake on the part of this Court which would include a mistake in the understanding of the nature of an undertaking given to this Court and therefore, the review application was entertained by accepting the mistake in the nature and purport of the undertaking given before this Court. In the aforesaid factual matrix, the review petition was entertained.

(e) In the same context, Lily Thomas vs. Union of India (2000) 6 SCC 224 could be adverted to wherein it has been held that the power to review is not an appeal in disguise but is a creature of statute and not an inherent power. In the said case, the question was with regard to the consideration of a subsequent event to mould the relief accordingly. It was observed that while exercising its review jurisdiction, the Court can take into consideration a subsequent event for the purpose of rectifying its own mistake. A party cannot be made to suffer on account of an act of the Court which is expressed in the well-recognised maxim of equity, namely, actus curiae neminem gravabit which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense or otherwise a man would be compelled to do what he cannot possibly perform, which the law does not permit (lex non cogit ad impossibilia). The above proposition would fall within the scope of "any other sufficient reason" when there is a mistake of the Court which has led to injustice. That is a situation which does not take in a situation covered by the Explanation to Order XLVII Rule 1 CPC, which, as already observed, is an exception to Order XLVII Rule 1 CPC. Hence, the aforesaid judgment does not apply to the instance cases.

44. The aforesaid cases turn on their own facts and do not fall within the scope of exception which is in the nature of an Explanation. The aforesaid judgments cannot be a precedent in the instant case where the review petition has been filed in order to set at naught the impugned orders following the judgment in Pune Municipal Corporation passed by this Court which held the field till it was subsequently overruled in Indore Development Authority. Having regard to the Explanation provided in Order XLVII Rule 1 CPC review in these cases is impermissible.

45. A few judgments of this Court could be referred to at this stage in support of the view that I wish to take in this case:

a) In Haridas Das vs. Usha Rani Banik (2006) 4 SCC 78, it has been observed that one of the parameters prescribed in Order XLVII Rule 1 CPC for allowing the review petition for rehearing the case is "on account of some mistake or error apparent on the face of the record or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the later to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulates a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. It was further observed categorically that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning.

b) In fact, in Thungabhadra Industries Ltd. vs. Government of A.P. AIR 1964 SC 1372: (1964) 5 SCR 174, it has been observed that there is a distinction which is real between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is corrected but lies only for a patent error without any elaborate argument that one could point to the error and therefore, a clear case of error apparent on the face of the record would be made out.

c) Reliance could also be placed on Union of India vs. Mohd. Nayyar Khalil (2000) 9 SCC 252, wherein it was observed that if an order following a Three-Judge Bench decision is passed and at that time the Three-Judge Bench decision had not been upset, even in the future or later if the Constitution Bench takes a contrary view, it would be a subsequent judgment which cannot be a ground for review in view of the Explanation to Order XLVII Rule 1 CPC.

d) Similarly, in Shanti Devi vs. State of Haryana (RP Dy. No. 1249 of 1999) in Civil Appeal No. 14608 of 1996 as reported in (1999) 5 SCC 703, this Court held that the contention that the judgment sought to be reviewed was overruled in another case, subsequently, is no reason for reviewing the said decision in view of the Explanation to Order XLVII Rule 1 CPC. The said review petition was dismissed both on the ground of unexplained inordinate delay as well as on merits.

e) In Usha Bharti vs. State of Uttar Pradesh (2014) 7 SCC 663, it was held that the Supreme Court, in exercise of its power of review may in an appropriate case reopen the case and rehear the entire matter but while doing so the Court must remain conscious of the provisions contained in Order XLVII Rule 1 CPC as well as the Rules framed by the Supreme Court. Thus, the expression "for any other sufficient reason" has been intentionally used in Order XLVII Rule 1 CPC by the Legislature to cater to possible exceptional cases in which injustice may have been meted out.

46. The following relevant judgments could also be discussed at this stage:

(a) Reliance could be placed on State of Gujarat & Anr. vs. Justice R.A. Mehta (Retd.) (2013) 3 SCC 1, wherein following several earlier decisions of this Court, it was observed that a decision does not lose its authority "merely because it was badly argued, inadequately considered or fallaciously reasoned."

(b) In fact, in Madan Mohan Pathak & Anr. vs. Union of India AIR 1978 SC 803; (1978) 2 SCC 50, a Seven-Judge Bench of this Court considered the question whether Parliament enacting an Act consequent upon the judgment of the Calcutta High Court would unsettle the binding effect of the said judgment. In that case, the appeal filed against the judgment of the Calcutta High Court was not pressed before this Court and the said judgment was allowed to become final. This Court held that there was nothing in the Act passed subsequent to the judgment of the Calcutta High Court which had nullified the effect of the same or which could unsettle the judgment or take away the binding character of the same. In the circumstances, it was held that Life Insurance Corporation which was a party in that case was liable to make the payment of cash bonus for the year 1975-1976 to its Class III and IV employees in accordance with the said judgment of the Calcutta High Court as it was not absolved of the obligations imposed by the said judgment despite the Parliament passing an Act subsequent thereto on the ground that the judgment of the Calcutta High Court was binding on the parties thereto.

(c) Further, in Neelima Srivastava vs. State of Uttar Pradesh (2021) SCC online 610, reference was made to Secretary, State of Karnataka vs. Uma Devi (3) (2006) 4 SCC 1 ("Uma Devi 3"), in which the Constitution Bench had stated, "it is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of its status as precedent." It was observed in Neelima Srivastava that the import of the aforesaid observations was that earlier decisions running counter to the principles settled in the decision of Uma Devi could not be treated as a precedent. This does not mean that the judgment of a competent Court delivered prior to the decision in Uma Devi which attained finality and is binding inter-se between the parties need not be implemented. It was further observed that, "mere overruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught." Moreover, it was held that there is a distinction between overruling of a principle and reversal of a judgment. The judgment between the parties has to be assailed and overcome in a manner known to or recognised by law by a higher forum. Mere overruling of principles by a subsequent judgment will not dilute the binding effect of the decision on parties to the judgment overruled. It was held that observation at paragraph 54 of Uma Devi case does not absolve the parties in other cases to comply with the directions issued prior to the judgment in Uma Devi's case.

(d) Reference can also be made to Union of India vs. Major S.P. Sharma (2014) 6 SCC 351, in which it was stated that "a decision rendered by a competent Court cannot be

challenged in collateral proceedings for the reason that if it is permitted to do so there would be confusion and chaos and the finality of the proceeding would cease to have any meaning". It was further observed that it is not permissible in law for the parties to reopen concluded judgments of the Court as the same may not only tantamount to an abuse of the process of the Court but would have a far-reaching adverse effect on the administration of justice.

(e) When reconsideration of a judgment of this Court is sought, there are two limitations which have been observed – one jurisdictional and the other self-imposed. The same has been explained in Natural Resources Allocation, in Re: Special reference no. 1 of 2012, speaking through D.K. Jain, J., as under:

"The first limitation is that a decision of this Court could be reviewed only under Article 137 or a curative petition and in no other way. Once a lis between parties is decided, the operative decree can only be opened in review. Overruling the judgment— as a precedent—does not reopen the decree. The second limitation, a self-imposed rule of judicial discipline, was that overruling the opinion of the Court on a legal issue does not constitute sitting in appeal, but is done only in exceptional circumstances, such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and capable of causing public mischief." It was further observed that "in fact, the overruling of a principle of law is not an outcome of appellate jurisdiction but a consequence of its inherent power. This inherent power can be exercised as long as a previous decree vis-à-vis a lis inter partes is not affected".

(f) Further, a Seven-Judge Bench of this Court speaking through Chandrachud, C.J. in Special Courts Bill, 1978, In RE (1979) 1 SCC 380, observed that it is always open to this Court to re-

examine the question already decided by it and to overrule, if necessary, the view earlier taken by it. But insofar as all other Courts in the territory of India are concerned, they ought to be bound by the view expressed by this Court even in the exercise of its advisory jurisdiction under Article 143(1) of the Constitution of India.

Although the principle of stare decisis is not applicable to this Court, on the strength of Article 137 of the Constitution of India, this Court, in a subsequent judgment, can overrule a previous judgment but the same would not unsettle the dictum in the judgment overruled inter partes. Further, the overruled judgment which has held the field is bound to be followed in all other cases till the subsequent judgment overruling the earlier judgment is passed.

(g) In State of West Bengal vs. Kamal Sengupta (2008) 8 SCC 612, Section 22(3) of the Administrative Tribunal Act, 1985 came up for consideration in the context of the power of review. While dealing with the said question, it was held that a Tribunal established under the aforesaid Act is entitled to review its order or decision if either of the grounds enumerated in Order XLVII Rule 1

CPC was available. In that case, the question, whether, the subsequent contra judgment by the same or a superior Court on a point of law can be treated as an error apparent on the face of the record for the purpose of review of an earlier judgment, was considered as there was a divergence of opinion among the High Courts on the said question. It was observed that in view of there being a dichotomy of opinion on the issue, the Law Commission took cognizance of the same and suggested an amendment to Order XLVII Rule 1 CPC which led to the insertion of the Explanation after Order XLVII Rule 2 CPC. The following cases were referred to in the aforesaid judgment:

> (i) Hari Sankar Pal vs. Anath Nath Mitter 1949 FCR 36, a Five-Judge Bench decision of the Federal Court was alluded to, wherein it was observed that if a decision is erroneous in law, the same is certainly no ground for ordering review.

Moreover, if the case had been decided erroneously, the error could not be construed as being one apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII Rule 1 CPC.

(ii) Reliance was also placed on Parison Devi vs. Sumitri Devi (1997) 8 SCC 715 and it was observed that there is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

(iii) In Nalagarh Dehati Coop. Transport Society Ltd. vs. Beli Ram AIR 1981 HP 1, a Full Bench of the Himachal Pradesh High Court considered the Explanation and held that a subsequent judgment of the Supreme Court or a Larger Bench of the same Court taking a contrary view on the point covered by the judgment does not amount to a mistake or error apparent on the face of the record of the judgment sought to be reviewed.

(iv) Reference was also made to Gyan Chandra Dwivedi vs. 2nd ADJ, Kanpur AIR 1987 All 40, in which it was observed that almost all the High Courts except Kerala High Court were unanimous in their opinion of the fact that if a point of law in a judgment has been altered by a subsequent decision of the superior Court in another case, the same could not afford a valid ground for the review of the judgment.

(v) Further, with reference to Netaji Cricket Club (supra), on which reliance has been placed by the review petitioners, it was observed that the consideration of the 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. Hence, it was opined that the decision in Netaji Cricket Club could not be applied as a general ratio.

While delineating the principles from the aforesaid judgments, inter alia, the following principles relevant to the instant cases are reiterated:

i) the expression "any other sufficient reason" appearing in Order XLVII Rule 1 CPC has to be interpreted in light of other grounds specified in the said provision.

ii) an erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(h) In a recent judgement dated 18.08.2022 in Civil Appeals Nos. 5503-5504 of 2022 arising out of SLP (C) Nos. 9602-9603 of 2022 along with Civil Appeal No. 5505 of 2022 arising out of SLP (C) No. 11290 of 2022, a Three-Judge Bench of this Court in the case of S. Madhusudhan Reddy vs. V. Narayana Reddy (2022) SCC OnLine SC 1034 had made specific reference to the aforementioned cases of Chajju Ram vs. Neki AIR 1922 P.C 112 and Moran Mar Basselios Catholics vs. Most Rev. Mar Paulose Athanasius (supra) wherein the words "any other sufficient reason appearing in Order XLVII Rule 1 CPC" was defined to mean "a reason sufficient on grounds at least analogous to those specified in the Rule." In making reference to these cases, the Three-Judge Bench reiterated that an essential principle for exercising review jurisdiction under Order XLVII Rule 1 CPC is that the review will be maintainable for "any other sufficient reason", and has narrowed the scope of this ground to mean a reason sufficient on grounds at least analogous to those specified in the rule.

(i) In the aforesaid case Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors. (2013) 8 SCC 337 has also been adverted to wherein this Court delineated on some of the grounds as to when the review will not be maintainable as under: -

"(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications,

(ii) Minor mistakes of inconsequential import,

(iii) Review proceedings cannot be equated with the original hearing of the case,

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice,

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error,

(vi) The mere possibility of two views on the subject cannot be a ground for review,

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched,

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition, and

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

47. In fact, in State of Haryana vs. G.D. Goenka Tourism Corporation Corporation Ltd. (2018) 3 SCC 585, this Court directed that pending a final decision on making a reference to a Larger Bench on the interpretation of Section 24 of the L.A. Act, 2013, the High Courts ought not to deal with any case relating to the said interpretation. Therefore, between 21.02.2018 till the date of pronouncement of the judgment by the Larger Bench in Indore Development Authority i.e., 06.03.2020, the High Courts were requested not to deal with cases arising under Section 24(2) of the L.A. Act, 2013, and its applicability to acquisition arising under L.A. Act, 1894, i.e. only insofar as acquisition initiated under L.A. Act, 1894. But insofar as cases which were decided prior to the aforesaid directions issued by this Court or the High Court or cases decided even by this Court on the strength of the dictum in Pune Municipal Corporation cannot be set at naught between the parties to those cases. The judgment in Pune Municipal Corporation having been overruled, it would only lose its value as a precedent subsequent to the dictum of the Larger Bench in Indore Development Authority and therefore, cannot be cited as a precedent.

48. Hence, in my view, having regard to the scope and ambit of the Explanation to Order XLVII Rule 1 CPC, these review petitions are not maintainable and the judgment and the orders of this Court ought not be reviewed and the review petitions are liable to be dismissed.

49. It is also important to bear in mind that in various High Courts across the country following the judgment in Pune Municipal Corporation, Writ Petitions have been disposed of and the said decisions passed in the said writ petitions or intra court appeals, as the case may be, may have attained finality and binding on the parties thereto. If these review petitions are allowed and are held to be maintainable there would be hundreds of review petitions which would be filed seeking review of the decisions passed by various High Courts in writ petitions following the judgment in Pune Municipal Corporation. This would open a Pandora's Box and upset the binding nature of the decisions between the parties and be contrary to the doctrine of finality in litigation.

50. In Indore Development Authority vs. Shailendra (supra), a majority of two Hon'ble Judges in paragraph 217 while opining that, the judgment rendered in Pune Municipal Corporation and other decisions following Pune Municipal Corporation are per incuriam observed that the "decisions rendered on the basis of Pune Municipal Corporation are open to be reviewed in appropriate cases on the basis of this decision". However, the Larger Bench in Indore Development Authority did not observe the above, either in paragraph 365 of the judgment or any other paragraph. In fact, the reason as to why a Larger Bench of five Judges was constituted, was because a majority of 2:1 in Indore Development Authority vs. Shailendra had taken a view that Pune Municipal Corporation was per incuriam and also the decision in Pune Municipal Corporation was by a Two-Judge Bench. Therefore, in order to make an authoritative pronouncement on the question of law concerning the interpretation of Section 24(2) of L.A. Act, 2013 and since there were many orders passed by this Court questioning the correctness of the decision in Pune Municipal Corporation, a Larger Bench of five Judges was constituted by Hon'ble the Chief Justice of India. Now, the unanimous judgment of the Larger Bench of five Judges holds the field. However, in paragraph 365 of the said judgment or

in any other paragraph, there is no observation that on overruling the decision in Pune Municipal Corporation as well as all decisions following Pune Municipal Corporation, the overruled decisions have to be reviewed. The said observation is conspicuous by its absence obviously for the reason that such a review is impermissible having regard to the Explanation to Order XLVII Rule 1 CPC which aspect has been elaborately discussed above. In fact, the Explanation to Order XLVII Rule 1 CPC has not been noticed by the two learned Judges constituting the majority in Indore Development Authority vs. Shailendra.

51. There is another aspect which ought to be considered. That in two matters i.e., in the very case of Pune Municipal Corporation (decided on 08.02.2018) which has been overruled by Indore Development Authority (decided on 06.03.2020) by a Bench of three Judges but the judgment has also been recalled vide Order dated 16.07.2020. Similarly, another judgement dated 31.08.2016 passed by this Court following Pune Municipal Corporation has been recalled by order dated 15.02.2022 by this very Bench. I must be forthright in saying that the recalling of the said Orders/Judgment dated 08.02.2018 and 31.08.2016 was done so in the absence of any arguments being advanced on the maintainability of review petitions itself as in the present cases and without taking into consideration the Explanation to Order XLVII Rule 1 CPC. I find that the Explanation to Order XLVII Rule 1 CPC is a bar to the very maintainability of these review petitions in these cases. Hence, before hearing the Civil Appeals / Special Leave Petitions on merits, the Orders passed recalling the decision passed earlier would call for reconsideration.

All judgments and orders which have been recalled till date subsequent to the judgment in Indore Development Authority on the basis that Pune Municipal Corporation was incorrectly decided are also not in accordance with law in view of the discussion made above.

52. Having held that the judgments/orders sought to be reviewed by the petitioners is impermissible in law, the ground realities would also have to be now taken into consideration on account of the passage of time. It is noted that Section 24 of the L.A. Act, 2013 is in the nature of a saving clause which is evident on a reading of the same, including the proviso to Sub-Section 2 of Section 24 of the L.A. Act, 2013. The object is to save the acquisition as far as possible. Possibly taking a cue from the proviso, this Court in the impugned judgments reserved liberty to the petitioners herein to initiate acquisition proceedings afresh within one year in some of the cases failing which the land was to be returned to the land owners if in possession of the review petitioners herein. Thus, if no fresh acquisition proceedings are initiated within the said period of one year by issuing a notification under Section 11 of the L.A. 2013 Act and if the review petitioners herein are in possession of the land, the physical possession thereof shall be returned to original land owners.

53. In the circumstances, the only relief that can be granted to the review petitioners/applicants is to extend the period for initiation of acquisition under the provisions of L.A. Act, 2013 to a period of one year from today. Till then, in those cases where physical possession of the land has already been taken over by the acquiring body or has been handed over to the beneficiary the same shall continue to remain with the acquiring body or the beneficiary, as the case may be.

54. Thus, only a limited relief is being given to the review petitioners/applicants and impugned judgments/orders of this Court are not being reviewed in the review petitions. There is a delay in filing the same in certain cases. This is owing to the passage of time from the date of passing the judgments/orders sought to be reviewed and the uncertainty in the interpretation of Section 24 (2) of L.A. Act, 2013 and due to Covid-19 and one year time being granted to initiate fresh acquisition, in the impugned order itself. Hence, the said delay is condoned.

55. Where no such direction has been issued in the impugned orders and the Special Leave Petitions have been dismissed, the petitioners are at liberty to initiate fresh acquisition proceedings under the L.A. Act, 2013, if so advised.

56. In the result, the review petitions are disposed of in the above terms.

No costs.

.....J. [B.V. NAGARATHNA] NEW DELHI;

17 MARCH, 2023.