# Kanhaiya Lal Gadri vs Moef on 29 July, 2022

Item No. 04

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Appeal No. 13/2022(CZ)
(I.A. No. 51/2022)

Kanhaiya Lal Gadri & Ors. Appellant(s)

Versus

MoEF&CC & Ors. Respondent(s)

Date of hearing: 29.07.2022

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Appellant (s): Mr. Biswaranjan Parmguru, Adv.

For Respondent(s) : Ms. Shilpa Nair, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. U. N. Tiwary, Adv.

ORDER

1. Challenge in this appeal is the environmental clearance dated 05.01.2022 passed by MoEF&CC whereby and whereunder the expansion of project for setting up Ammonium Phosphate Fertiliser Complex was granted to the project proponent (Respondent No.4 Hindustan Zinc Limited [HZL]) at Village-Baliya, Tehsil and District- Chittorgarh, State Rajasthan.

2. Learned counsel for the Respondent no. 4 put in appearance on the first date of hearing on 13.07.2022 and submitted that the same environmental clearance was challenged before the Special Bench in Appeal No. 01/2021(CZ) which was heard and finally decided by this Tribunal on 23.03.2021, the operative portion of the order is as follows :-

> 3. We do not find any merit in the appeal. The issue while granting EC is appraisal of impact on environment and mitigation of any sources of pollution. No issue is raised in the appeal on that aspect.
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> 4. Legality of land use is not the issue to be gone into by the authority granting the EC. If the appellant so wishes, issue of permissibility of land use can be raised before appropriate authority/forum and not by way of the present appeal. Scope of appeal is co-extensive with the scope of the original authority against which the appeal is filed. As already mentioned, such scope is limited to the appraisal of environment impact

and the appellant does not allege any deficiency in that regard. He has stated that the land was acquired in the year 2006 for the unit in question under Chapter-8 of the Land Acquisition Act, 1894 (acquisition of land for Company). The Company also applied for permission for conversion of land from the concerned authority which is yet to be granted and thus the project could not be set up on the land. This issue has to be raised at an appropriate forum. On that ground EC cannot be set aside.

3. Since in the copy of the order had the date printed as 25.01.2021, so on 13.07.2022, the counsel for the respondent No. 4 argued that it was typographical error and sought a short time to file the Memo of the Appeal, and same was filed.

4. The Memo of the appeal as filed reveals that order issued from MoEF&CC dated 05.01.2021 was subject matter of appeal mentioned above whereby and whereunder the order passed by the MoEF&CC for setting up Ammonium Phosphate Fertiliser at the same place mentioned above was challenged. The copy of the Environmental Clearance dated 05.01.2021 has been annexed. The perusal of the records, copy of the Environmental Clearance as filed in the present appeal dated 05.01.2021 and the copy of the Environmental Clearance filed in the previous appeal reveal that the order of the EC is the same (for the same project).

5. The perusal of the EC dated 05.01.2021 reveals that the project was considered by the MoEF&CC after the submission of the EAC report and after examining the proposal for setting up Ammonium Phosphate Fertiliser, the environmental clearance was accorded with the conditions as follows :-

> ☐4. The project shall be installed in two phases in an area of 10,14,500 m2 (101.45 Ha). Industry has developed greenbelt in an area of 4,93,100 m2 (49.31 Ha) covering f total project area. The estimated project cost is Rs 2700 crores. Total capital cost earmarked towards environmental pollution control measures is Rs 185 crores and the recurring cost (O&M) will be about Rs 37 crores per annum. The project will provide employment for 250persons. Industry proposes to allocate Rs. 25 crores cost towards Corporate Environmental Responsibility (CER).
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> 5. There are no National parks, Wildlife sanctuaries, Biosphere Reserves, Tiger/ Elephant Reserves, Wildlife Corridors etc. within 10 km distance from the project site. Seasonal Berach river, Putholinalla, Gambhiri river are passing at 680 m (SE), 250 m (S) and 5.5 km (S) respectively from the project site.
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> 6. Total water requirement is estimated to be 14,100 cum/day, which includes fresh water requirement of 10100 cum/day (5050 cum/day in each phase), proposed to be met from Gosunda dam/STP Udaipur/ proposed STP at Chittorgarh town. The fresh water requirement shall be reduced to 9600 cum/day by adopting industrial best practices. Effluent of 4220 cum/day quantity will be treated in ETP of capacity 4800 cum/day and recycled back in the system. Domestic Sewage water will be treated in sewage treatment plant (120 cum/day) and treated water will be utilized for plantation purpose and other uses. There will be no discharge of treated/untreated

waste water from the unit, and thus ensuring Zero Liquid Discharge.

Power requirement will be 35MW and will be met from State grid/ existing CPP of Chanderia Zinc Lead smelter. Unit proposes four DG sets of 2500 KVA capacity each (2 DGs in each phase), as standby during power failure. Stack (height 10m above building height) will be provided as per CPCB norms to the proposed DG sets. Phosphoric acid (100% $P_2O_5$ basis) & Hydro Fluosilicic Acid will be consumed within the process and surplus quantity shall be sold. Phosphogypsum will be utilized for cement manufacturing.

7. The project/activities are covered under category A of item 5(a) □Chemical fertilizers' of the Schedule to the Environment Impact Assessment Notification, 2006, and requires appraisal at central level by the sectoral Expert Appraisal Committee (EAC) in the Ministry.

8. The terms of references (ToR) for the project was issued by the Ministry vide letter dated 29 h May 2017. Public hearing for the proposed project has been conducted by the State Pollution Control Board on 12 h February, 2019 under the Chairmanship of Additional District Magistrate. The main issues raised during the public hearing are related to employment to local, pollution, land conversion from greenbelt to industrial use etc.

9. The proposal was considered by the Expert Appraisal Committee (Industry-2) in its meetings held on 23-25 October, 2019 and 30-31 December, 2019 & 1st January, 2020 in the Ministry, wherein the project proponent and their accredited consultant M/s EQMS India Pvt. Ltd. presented the EIA/EMP report as per the ToR. The Committee found the EIA/EMP report complying with the ToR and recommended the project for grant of environmental clearance.

10. The EAC, constituted under the provision of the EIA Notification, 2006 and comprising of Experts Members/domain experts in various fields, have examined the proposal submitted by the Project Proponent in desired form along with EIA/EMP report prepared and submitted by the Consultant accredited by the QCI/ NABET on behalf of the Project Proponent.

The Committee deliberated the action plan on the issues raised during the public hearing. The Committee found the detailed action plan submitted by the project proponent with budgetary provisions to be satisfactory and addressing the concerns raised during public hearing/consultation.

The EAC noted that the Project Proponent has given undertaking that the data and information given in the application and enclosures are true to the best of his knowledge and belief and no information has been suppressed in the EIA/EMP report and public hearing process. If any part of data/information submitted is found to be false/misleading at any stage, the project will be rejected and Environmental Clearance given, if any, will be revoked at the risk and cost of the project proponent.

The Committee noted that the EIA/EMP report is in compliance of the ToR issued for the project, reflecting the present environmental concerns and the projected scenario for all the environmental components. Issues raised during the public hearing has been properly addressed in the EIA/EMP

report. Additional information submitted by the project has been found to be in order. The EAC has deliberated the proposal and has made due diligence in the process as notified under the provisions of the EIA Notification, 2006, as amended from time to time and accordingly made the recommendations to the proposal.

11. Based on the recommendation of EAC, the proposal was examined in the Ministry. The Ministry, vide letter dated 17.02.2020, has sought updated land conversion status to industrial purpose. In this context, M/s HZL vide letter, dated 18.12.2020, has inter-alia, submitted that land conversion application was submitted by Project Proponent on 18.12.2018 which is still under process with the State Government. PP has also submitted the affidavit vide letter dated 18.12.2020, mentioned that the project activities will be carried out only after required permission from the State Government for land conversion to industrial purpose.

12. Based on the proposal submitted by the project proponent and recommendations of the EAC (Industry-2), Ministry of Environment, Forest and Climate change hereby accords environmental clearance to the project for Setting up Ammonium Phosphate Fertilizer Complex of 1.02 MTPA (2 x 0.51 MTPA) by M/s Hindustan Zinc Limited at Village Biliya, Tehsil & District Chittorgarh, Rajasthan, under the provisions of the EIA Notification, 2006, subject to the compliance of terms and conditions as under:-

i. M/s HZL vide letter, dated 18.12.2020, has mentioned that land conversion application was submitted on 18.12.2018 to State Government which is still under process with the State Government. Project Proponent shall start the project activities only after taking necessary permission/approval from the State Government for land conversion to industrial purpose.

ii. The project proponent shall start project/activities after obtaining necessary clearances from the various authorities of Central Government and State Government.

iii. As already committed by the project proponent, Zero Liquid Discharge shall be ensured and no waste/treated water shall be discharged outside the premises.

iv. Necessary authorization required under the Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016, Solid Waste Management Rules, 2016 shall be obtained and the provisions contained in the Rules shall be strictly adhered to.

v. The gaseous emissions ($SO_2$, NOx, $NH_3$ and HC) and particulate matter from various process units shall conform to the norms prescribed by the CPCB/SPCB from time to time. At no time, the emission levels shall go beyond the prescribed standards. In the event of failure of any pollution control system adopted by the unit, the respective unit shall not be restarted until the control measures are rectified to achieve the desired efficiency. Stack emissions shall be monitored regularly.

vi. To control source and the fugitive emissions, suitable pollution control devices shall be installed to meet the prescribed norms and/or the NAAQS. The gaseous emissions shall be dispersed through stack of adequate height as per CPCB/SPCB guidelines. Fugitive emissions shall be controlled at 99.5% with effective chillers.

vii. Total fresh water requirement shall not exceed 9600 cum/day, proposed to be met from Gosunda dam/STP Udaipur/ STP Chittorgarh. Prior permission in this regard shall be obtained from the concerned regulatory authority, and shall be renewed time to time.

viii. Process effluent/any wastewater shall not be allowed to mix with storm water. The storm water from the premises shall be collected and discharged through a separate conveyance system. ix. Hazardous chemicals shall be stored in tanks, tank farms, drums, carboys etc. Flame arresters shall be provided on tank farm, and solvent transfer through pumps.

x. The Company shall strictly comply with the rules and guidelines under Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989 as amended time to time. All transportation of Hazardous Chemicals shall be as per the Motor Vehicle Act, 1989.

xi. Fly ash, if any, should be stored separately as per CPCB guidelines so that it may not adversely affect the air quality. Direct exposure of workers to fly ash & dust should be avoided.

xii. The company shall undertake waste minimization measures as below

(a) Metering and control of quantities of active ingredients to minimize waste; (b) Reuse of by-products from the process as raw materials or as raw material substitutes in other processes. (c) Use of automated filling to minimize spillage. (d) Use of Close Feed system into batch reactors. (e) Venting equipment through vapour recovery system. (f) Use of high pressure hoses for equipment clearing to reduce wastewater generation.

xiii. The green belt of at least 5-10 m width shall be developed in nearly 33% of the total project area, mainly along the plant periphery. Selection of plant species shall be as per the CPCB guidelines in consultation with the State Forest Department. Records of tree canopy shall be monitored through remote sensing map. PP shall plant 1 Lakhs trees around the transportation route in one year. These plantations shall be other than green belt development. The implementation report shall be submitted to the RO of MoEFCC.

xiv. Rain water harvesting system shall be developed inside the complex and fresh water requirement shall be reduced by utilizing the collected water.

xv. All commitments made during public hearing/consultation shall be satisfactorily implemented. Preference shall be provided to local people for employment in the unit.

xvi. The activities and the action plan proposed by the project proponent to address the public hearing and socio-economic issues in the study area, shall be completed as per the schedule presented before the Committee and as described in the EMP report in letter and spirit. All the commitments made during public hearing shall be satisfactorily implemented. Preference shall be given to local villagers for employment in the unit. The project proponent shall utilize the amount mainly for addressing the issues.

xvii. Safety and visual reality training shall be provided to employees.

xviii. For the DG sets, emission limits and the stack height shall be in conformity with the extant regulations and the CPCB guidelines. Acoustic enclosure shall be provided to DG set for controlling the noise pollution.

xix. The unit shall make the arrangement for protection of possible fire hazards during manufacturing process in material handling. Fire-fighting system shall be as per the norms.

xx. Occupational health surveillance of the workers shall be done on a regular basis and records maintained as per the Factories Act. xxi. Continuous online (24x7) monitoring system for stack emissions shall be installed for measurement of flue gas discharge and the pollutants concentration, and the data to be transmitted to the CPCB and SPCB server. For online continuous monitoring of effluent, the unit shall install web camera with night vision capability and flow meters in the channel/drain carrying effluent within the premises. xxii. Transportation of raw material/product shall be in GPS enabled trucks/authorize source only. Parking facility shall be provided inside the complex and no vehicles bound for industry shall be parked outside the complex.

xxiii. Process safety and risk assessment studies shall be further carried out using advanced models, and the mitigating measures shall be undertaken accordingly.

xxiv. The company shall comply with all the environmental protection measures and safeguards proposed in the documents submitted to the Ministry. All the recommendations made in the earlier EIA/EMP report and updated in respect of environmental management, and risk mitigation measures relating to the project shall be implemented.

12.1 The grant of environmental clearance is further subject to compliance of other general conditions as under:-

> i. The Project Proponent shall obtain all other statutory/necessary permissions/ recommendations/NOCs prior to start of construction/operation of the project, which inter alia include, permission/approvals under the Forest (Conservation) Act, 1980; Wildlife (Protection) Act, 1972; the Coastal Regulation Zone Notification, 2019, amended from time to time, and other Office Memoranda/Circular issued by the Ministry of Environment, Forest and Climate Change from time to time, as applicable to the project.

ii. The project proponent shall ensure compliance of 'National Emission Standards', as applicable to the project, issued by the Ministry from time to time. The project proponent shall also abide by the rules/regulations issued by the CPCB/SPCB for control/abatement of pollution.

iii. The project authorities shall adhere to the stipulations made by the State Pollution Control Board/Committee, Central Pollution Control Board, State Government and any other statutory authority.

iv. The project proponent shall prepare a site specific conservation plan and wildlife management plan in case of the presence of Schedule-1 species in the study area, as applicable to the project, and submit to Chief Wildlife Warden for approval. The recommendations shall be implemented in consultation with the State Forest WildlifeDepartment in a time bound manner.

v. No further expansion or modifications in the plant, other than mentioned in the EIA Notification, 2006 and its amendments, shall be carried out without prior approval of the Ministry of Environment, Forest and Climate Change. In case of deviations or alterations in the project proposal from those submitted to this Ministry for clearance, a fresh reference shall be made to the Ministry to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any.

vi. The energy source for lighting purpose shall be preferably LED based, or advance having preference in energy conservation and environment betterment.

vii. The locations of ambient air quality monitoring stations shall be decided in consultation with the State Pollution Control Board (SPCB) and it shall be ensured that at least one station each is installed in the upwind and downwind direction as well as where maximum ground level concentrations are anticipated.

viii. The National Ambient Air Quality Emission Standards issued by the Ministry vide G.S.R. No. 826(E) dated 16th November, 2009 shall be followed.

ix. The overall noise levels in and around the plant area shall be kept well within the standards by providing noise control measures including acoustic hoods, silencers, enclosures etc. on all sources of noise generation. The ambient noise levels shall conform to the standards prescribed under Environment (Protection) Act, 1986 Rules, 1989 viz. 75 dBA (day time) and 70 dBA (night time).

x. The Company shall harvest rainwater from the roof tops of the buildings and storm water drains to recharge the ground water and to utilize the same for process requirements.

xi. Training shall be imparted to all employees on safety and health aspects of chemicals handling. Pre-employment and routine periodical medical examinations for all employees shall be undertaken

on regular basis. Training to all employees on handling of chemicals shall be imparted.

xii. The company shall also comply with all the environmental protection measures and safeguards proposed in the documents submitted to the Ministry. All the recommendations made in the EIA/EMP in respect of environmental management, d risk mitigation measures relating to the project shall be implemented.

xiii. The company shall undertake all relevant measures for improving the socio- economic conditions of the surrounding area. CER activities shall be undertaken by involving local villages and administration and shall be implemented.

xiv. The company shall undertake eco-developmental measures including community welfare measures in the project area for the overall improvement of the environment.

xv. A separate Environmental Management Cell (having qualified person with Environmental Science/Environmental Engineering/specialization in the project area) equipped with full fledged laboratory facilities shall be set up to carry out the Environmental Management and Monitoring functions.

xvi. The company shall earmark sufficient funds towards capital cost and recurring costper annum to implement the conditions stipulated by the Ministry of Environment, Forest and Climate Change as well as the State Government along with the implementation schedule for all the conditions stipulated herein. The funds so earmarked for environment management/ pollution control measures shall not be diverted for any other purpose.

xvii. A copy of the clearance letter shall be sent by the project proponent to concerned Panchayat, Zilla Parishad/Municipal Corporation, Urban local Body and the local NGO, if any, from whom suggestions/ representations, if any, were received while processing the proposal.

xviii. The project proponent shall also submit six monthly reports on the status of compliance of the stipulated Environmental Clearance conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF&CC, the respective Zonal Office of CPCB and SPCB. A copy of Environmental Clearance and six monthly compliance status report shall be posted on the website of the company.

xix. The environmental statement for each financial year ending 31st March in Form-V as is mandated shall be submitted to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of environmental clearance conditions and shall also be sent to the respective Regional Offices of MoEF&CC by e-mail.

xx. The project proponent shall inform the public that the project has been accorded environmental clearance by the Ministry and copies of the clearance letter are available with the SPCB/Committee and may also be seen at Website of the Ministry and at https://parivesh.nic.in/. This shall be

advertised within seven days from the date of issue of the clearance letter, at least in two local newspapers that are widely circulated in the region of which one shall be in the vernacular language of the locality concerned and a copy of the same shall be forwarded to the concerned Regional Office of the Ministry.

xxi. The project authorities shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities and the date of start of the project.

xxii. This Environmental clearance is granted subject to final outcome of Hon'ble Supreme Court of India, Hon'ble High Court, NGT and any other Court of Law, if any, as may be applicable to this project.

13. The Ministry reserves the right to stipulate additional conditions, if found necessary at subsequent stages and the project proponent shall implement all the said conditions in a time bound manner. The Ministry may revoke or suspend the environmental clearance, if implementation of any of the above conditions is not found satisfactory.

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17. This issues with approval of the competent authority.

6. Learned counsel for respondent no. 4 has argued that matter is barred by the principle of res-judicata and relied on the judgment of this Tribunal pronounced on 31.05.2022 passed in Appeal No. 17/2021 (University of Delhi Vs. MoEF&CC & Ors .). Learned counsel quoted following paragraphs :-

> □165. Further application of the principle of res-judicata has also to be seen in the backdrop of the fact that this Tribunal has been constituted under NGT Act, 2010 and it is not a □Court' as defined under Code of Civil Procedure, 1908 (hereinafter referred to as □CPC'). Section 19 clearly says that Tribunal is not bound by the procedure laid down by CPC but shall be guided by the □principles of natural justice and subject to NGT Act 2010, Tribunal shall have power to regulate its own procedure. Sub-section 4 of Section 19 of NGT Act 2010, says that Tribunal shall have, for the purpose of discharging its functions under NGT Act 2010, same powers as are vested in civil court under CPC while trying a suit, in respect of the matters enumerated in clauses (a) to (k). The provision of □res-judicata' prescribed under Section 11 CPC, as such is not applicable to NGT but it is also true that it is a principle of well accepted doctrine that no one shall be vexed twice for the same cause or that it is for the public good that there be an end of litigation, hence, if on an issue between

the parties, there is already an adjudication, the principle of constructive res-judicata, even in the matter before Tribunal shall apply. This is a well-recognized principle applied since ancient time so as to quite to a dispute and not to allow the same party to litigate over the same matter again and again.

166. Res-judicata is a principle or doctrine or concept which is well recognized since ancient times. It is a principle of universal application treated to be a fundamental and basic idea in every developed jural society. The very objective of adjudication of a dispute by an adjudicatory forum, whatever name it is called, is to bring to an end dispute or lis between the parties. The seed of justice, thus, aims to have every matter fairly tried once and, thereafter, further litigation should be barred treating to be concluded for all times to come between the parties. So far as the dispute which has already been adjudicated, it is a rule common to all, well defined in a civilized system of jurisprudence, that, the solemn and deliberate sentence of law upon a disputed fact pronounced, after a proper trial, by its appointed organ should be regarded as final and conclusive determination of the question litigated and should set at rest, forever, the controversy. This rule which treats the final decision of a competent Tribunal as □irrefragable truth□ was well known to Hindu and Mohammadan lawyers and jurists since long as the system is recognized in Hindu as well as Muslim laws also.

167. So far as Europe is concerned, it is mainly influenced with the legal system of Roman jurisprudence. This principle is one of the great gains of Roman jurisprudence carried to modern jural system of Europe. In the Anglo saxon jurisprudence, this principle is formerly based on a maxim of Roman jurisprudence □interest reipublicae ut sit finis litium□ (it concerns the state that there should be an end to law suits) and partly on the maxim □nemo debut bis vexari pro una at eadem cause□ (no man should be vexed twice over for the same cause). The Act 8 of 1859 provided the principle of the res judicata in Section 2 which read as under:

□The civil court shall not take cognizance of any suit brought on or cause of action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they claim.

168. The principle of res-judicata was inserted vide Section 2 of C.P.C., i.e., Act 8 of 1859. This provision came to be considered before Privy Council in Soorjomonee Dayee vs. Suddanund Mahapatter (1873) 12 BLR 304, 315 (P.C.). Judicial Committee said □We are of the opinion that Section 2 of the Code of 1859 would by no means prevent operation of the general law relating to res judicata founded on the principle □nemo debet bis vexari pro eadem causa□.

169. The principle of res-judicata has been discussed very elaborately by a full bench of Lahore High Court in Mussammat Lachhmi vs. Mussammat Bhulli, 1927 ILR (VIII) 384, and the relevant extract thereof is as under:

□In the mitakshra (Book II, Chap. I, Section V, verse 5) one of the four kinds of effective answers to a suit is □a plea by former judgment□ and in verse 10, Katyayana is quoted as laying down that □one against whom a judgment had formerly been given, if he bring forward the matter again, must be answered by a plea of Purva Nyaya or former judgment□ (Macnaughten and Colebrooke's translation page 22). The doctrine, however, seems to have been recognized much earlier in Hindu Jurisprudence, judging from the fact that both the Smriti Chandrika (Mysore Edition, pages 9798) and the Virmitrodaya (Vidya Sagar Edition, page 77) base the defence of Prang Nyaya (=former decision) on the following text of the ancient lawgiver Harita, who is believed by some Orientalists to have flourished in the 9th Century B.C. and whose Smriti is now extant only in fragments :-

□The plaintiff should be non-suited if the defendants avers; 'In this very affair, there was litigation between him and myself previously,' and it is found that the plaintiff had lost his case□.

There are texts of Parsara (Bengal Asiatic Society Edition, page 56) and of the Mayukha (Kane's Editiona, page 15) to the same effect.

Among Muhammadan lawgivers similar effect was given to the plea of □NizaImunfasla□ or □Amar Mania Taqrir Mukhalif□. Under Roman Law, as administered by the Proetors' Courts, a defendant could repel the plaintiff's claim by means of □exceptio res judicata□ or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in Roby's Roman Private Law (Vol. II, page 338) the general principle recognized was that □one suit and one decision was enough for any single dispute□ and that □a matter once brought to trial should not be tried except, of course, by way of appeal□.

The spirit of the doctrine is succinctly expressed in the well known maxim □Nemo debet bis vexari pro eadem causa□ (no one shall be twice vexed for the same cause). At times the rule worked harshly on individuals (E.g., when the former decision was obviously erroneous) but its working was justified on the great principle of public policy □Interest rei publicant sit finis litium□ (it is for the public good that there be an end of litigation).

In some of these ancient systems, however, the operation of the rule was confined to cases in which the plaintiff put forward his claim to □the same subject matter with regard to which his request had already been determined by a competent Court and had passed into judgment□. In other words, it was what is described as the plea of □estoppel by judgment□ or □estoppel by record□, which was recognized and given effect to. In several European continental countries even now the rule is still subject to these qualifications, e.g., in the Civil Code of France, it is said □The authority of the thing adjudged (chose judge) has place only in regard to that which has constituted the object of a judgment. It is necessary that the thing demanded be the same; that

the demand be founded upon the same cause; that it be between the same parties and found by and against them in the same capacity. In other countries, and notably in England, the doctrine has developed and expanded, and the bar is applied in a subsequent action not only to cases where claim is laid to the same property but also to the same matter (or issue) as was directly and substantially in dispute in the former litigation. In other words, it is the identity of the issue, which has already been □necessarily tried between the parties and on which a finding has been given before, and not the identity of the subject matter which attracts the operation of the rule. Put briefly the plea is not limited to □estoppel by judgment (or record), but is also extended to what is described as □estoppel by verdict . The earliest authoritative exposition of the law on the subject in England is by Chief Justice DeGrey in the Duchess of Kingston Case (1), which has formed the basis of all subsequent judicial pronouncements in England, America and other countries, the jural systems of which are based on or inspired by British Jurisprudence. In that case a number of propositions on the subject were laid down, the first of them being that □the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea a bar, or as evidence conclusive, between the same parties upon the same matter, directly in question in another Court. In British India the rule of res-judicata seems to have been first introduced by Section 16 of the Bengal Regulation III of 1793, which prohibited the Zilla and City Courts 'from entertaining any cause, which form the production of a former decree of the record of the Court, shall appear to have been heard and determined by any judge or any superintendent of a Court having competent jurisdiction . The earliest legislative attempt at codification of the law on the subject was, however, made in 1859, when the first Civil Procedure Code was passed. Section 2 of the Code barred the cognizance by Courts of suits based on the same cause of action, which had been heard and determined before by Courts of competent jurisdiction. It will be seen that this was only a partial recognition of the English rule in so far as it embodied the principles relating to estoppel by judgment (or record) only and did not extend to estoppel by verdict. In 1877 when the Code was revised, the operation of the rule was extended in section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition equally applied against reagitating an issue, which had been heard and finally decided between the same parties in a former suit by a competent Court. The section has been amended and amplified twice again and has assumed its present form in section 11 of the Code of 1908, the principal amendments which have a bearing on the question before us, being (a) that the expression 'former suit was defined as meaning a suit which has been first decided and not one which was first instituted, and (b) that the competence of a Court is not regulated by the course of appeal of the former suit but by its capacity to try the subsequent suit as an original Court.

But although the Indian Legislature has from 1859 onwards made several attempts to codify the law on the subject and the present section 11 is a largely modified and improved form of the original section 2 of Act VIII of 1859, it must be borne in mind

that the section as even now enacted, is not exhaustive of the law on the subject, and the general principles of res judicata apply to matters on which the section is silent and also govern proceedings to which the section does not in terms apply.

170. In Krishna Behary Ray vs. Bunwari Lal Ray, (1875) 1 Cal. 144 (146), Privy Council while construing the expression □cause of action held that it cannot be interpreted in its literal and restricted sense. If a material issue had been tried and determined between the same parties by a competent court, the same cannot be reagitated again by the parties in a later suit who were also parties in the former suit.

171. In Ram Kirpal vs. Rup Kuari (1883) ILR 6 (Alld.) 269 (P.C.), it was held that Section 13 of 1877 Act would not apply to execution proceedings but upon general principles of law the decision of a matter once decided in those proceedings was a bar to the same matter being reagitated at a subsequent stage thereof.

172. Act 5 of 1908 contains the provision of res judicata under Section 11 which substantially is same as it was in Act 14 of 1882, but includes certain explanations clarifying some aspects of the matter considered to be necessary in the light of some judgments of different High Courts. It underwent some amendments (including insertion of Explanation VII and VIII) in 1976, but has withstood the test of time, more than a century. Section 11 of Act 5 of 1908, as it stands today, reads as under:

□1. Res judicata. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I-The expression □former suit shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other. Explanation IV-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII -An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

173. The application of principle of res judicata is based on public policy and in the interest of the State as well. However, we would like to clarify here itself that it may not be understood that the principle of res judicata is confined to Section 11 of the Act 5 of 1908. The principle of res-judicata was well recognized in the ancient legal systems also and it has consistently been held as not limited to the specific words of the Code for its application.

174. One of the oldest cases which considered doctrine of res judicata vide Section 11, CPC, 1908 is Sheoparsan Singh and others vs. Ramnandan Prasad 43 IA 91(PC)= 20 C.W.N. 738 (P.C.) wherein their Lordships reminded the dictum in the words of Lord Coke in Priddle vs. Napper 6 Coke IA 1777 which said □Interest reipublicae ut sit finis litium , otherwise great oppression might be done under colour and pretence of law. (See also Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. JT 2009 (6) SC 29).

175. The statement of law as propounded in Sheoparsan Singh (supra) has been approved in Iftikhar Ahmed vs. Syed Meharban Ali 1974 (2) SCC 151.

176. In Hook vs. Administrator General of Bengal 1921 (ILR) 48 (Cal.) 499 (P.C.), it was said that Section 11 of the Code is not exhaustive of the circumstances in which an issue is res judicata. Even though the Section may not apply, the plea of res-judicata still would remain operative apart from the limited provisions of the Code and would bar a subsequent suit on the same issue unless is shown to be inapplicable by the defendants referring to pleading, parties and cause of action etc. It was reaffirmed by Lord Buckmaster in T.B. Ramachandra Rao and another vs. A.N.S. Ramchandra Rao and others, AIR 1922 PC 80 wherein the remarks were □that the principle which prevents the same case being twice litigated is of general

application, and is not limited by the specific words of the Code in this respect.

177. In Kalipada De vs. Dwijapada Das, AIR 1930 PC 22, Privy Council held □the question as to what is considered to be res judicata is dealt with by Section 11 of CPC 1908. In that section many examples and circumstances in which the rule concerning res judicata applies are given; but it has often been explained by this Board that the terms of Section 11 are not to be regarded as exhaustive .

178. The plea of res judicata is an inhibition against the Court and a finding in favour of a party on the plea of res judicata would oust the jurisdiction of the Court to try the subsequent suit or the suit in which such issue has been raised, which has been heard and finally decided in the former suit (see Pandurang Dhondi Chougule vs. Maruti Hari Jadhav AIR 1966 SC

153).

179. In Gulam Abbas vs. State of U.P. AIR 1981 SC 2199, it was held that Section 11 is not exhaustive of the general doctrine of res judicata.

Though the rule of res judicata as enacted in Section 11 has some technical aspects, the general doctrine is founded on consideration of high public policy to achieve two objectives namely that there must be a finality to litigation and that individuals should not be harassed twice over the same kind of litigation.

180. It is thus clear that principle of res judicata is based on sound policy and not an arbitrary one. Henry Campell Black in his Treatise □for law of judgments 2nd Edition Vol. I, para 242 has observed, □Where the court has jurisdiction of the parties and the subject matter in the particular case, its judgment unless reversed or annulled or impeachment by parties or privies, in any collateral action or proceeding whatever the Doctrine of this Court, and of all the courts of this country, is formerly established, that if the court in which the proceedings took place had jurisdiction to render the judgment which it did no error in its proceedings which did not affect the jurisdiction will render the proceedings void, nor can such errors be considered when the judgment is brought collaterally into question one. This principle is not merely an arbitrary rule or law but it is a doctrine which is founded upon reason and the soundest principle of public policy .

181. In Jenkins vs. Robertson, (1867) LRIHL 117, Lord Romily observed □res judicata by its very words means a matter upon which the court has exercised its judicial mind and has come to the conclusion that one side is right and has pronounced a decision accordingly. In my opinion res judicata signifies that the court has after argument and considerations come to a decision on a contested matter .

182. In Corpus Juris, Vol. 34, it is said that it is a rule of universal law providing every regulated system of jurisprudence and is put upon two grounds embodied in various maxims of common law, the one of public policy and necessity which makes it to the interest of the state that there should be

an end of litigation, and, the other, hardship on the individual that he should not be vexed twice for the same cause.

183. In Smt. Raj Lakshmi Dasi and others vs. Banamali Sen and others AIR 1953 SC 33, Court remarked "When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of res judicata on general principle can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc. It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute ".

184. In Lal Chand vs. Radha Kishan, AIR 1977 SC 789=1977(2) SCC 88 the Court reiterated, "the principle of res judicata is conceived in the larger public interest which requires that all the litigation must sooner than later come to an end. The principle is also founded on equity, justice and good conscious which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving the same issue ".

185. In K. Ethirajan vs. Lakshmi and others, AIR 2003 SC 4295, the Court referring to para 26 of its earlier judgement in Hope Plantations Ltd. vs. Taluk Land Board, Peermade, JT 1998 (7) SC 404, held, that, rule of res judicata prevents the parties to a judicial determination from litigating the same question over again. Where the proceedings have attained finality, parties are bound by the judgement and cannot litigate again on the same cause of action.

186. In Sulochana Amma vs. Narayanan Nair, AIR 1994 SC 152, the scope of Section 11 CPC was considered and it was said that Section 11 does not create any right or interest in the property but merely operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue which directly and substantially has arisen in the former suit between the same parties or their privies, decided and became final so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. The above judgement also clarifies Explanation VIII that the decree of a Court of limited jurisdiction would also operates as res judicata in the subsequent suit though the subsequent suit was not triable by that Court.

187. In Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors., 2005(10) SCC 51, it was said, that principle of res judicate is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute hook with a view to bring the litigation to an end so that the other side may not be put to harassment. Recently, the above view is reiterated in Brij Narain Singh vs. Adya Prasad, JT 2008 (3) SC 1.

188. In Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others vs. Vithu Hira Mahar (Dead) by LRs. and Others 2009(10)SCC273, Court observed that well known doctrine of resjudicata is codified in Section 11 of C.P.C. It generally comes into play in relation to civil suits.

189. Apart from the codified law, the doctrine of resjudicata or the principle of the resjudicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive resjudicata is engrafted in Explanation IV of Section 11 C.P.C. and in many other situations also principles not only of direct resjudicata but of constructive resjudicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as resjudicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of resjudicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the principle of resjudicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided.

190. The doctrine of res judicata has been extended to public interest litigation also in State of Karnataka and another vs. All India Manufacturers Organization and others, 2006(4) SCC 683 and the Court has said:

> □As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. Hence the litigation is bonafide, a judgement in previous public interest litigation would be a judgement in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of public interest litigation. (Emphasis added)

191. In Mathura Prasad Sarjoo Jaiswal and others vs. Dossibai AIR 1971 SC 2355, Court clarified that the doctrine of res judicata is in the domain of procedure and cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to interpretation of the enactment affecting the jurisdiction of the Court finally between them even though no question of fact or mixed question of law and fact and relating to the right in issue between the parties once determined thereby. It also said that a decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties; the □matter in issue may be an issue of fact, an issue of law or one of mixed law and fact. However, the Court said that the previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata, and said as under:

> □The previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata.

192. Another aspect as to when the rule of res judicata would not be attracted has been dealt with in detail in para 10 of the judgment in Mathura Prasad Serjoo Jaiswal (supra) which reads as under:

> □A mixed question of law and fact determined in the earlier, proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue in S. 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land. (Emphasis added)

193. In other words, what we could discern from the above authorities is that the res judicata is a fundamental principle in a legal system to set at rest a dispute once settled so as not to trouble the parties again and again on the same matter. It operates on the principle that a question must be once fairly and finally tried by a competent Court and, thereafter, further litigation about it between the same parties must be deemed to have concluded and should not be allowed to be reagitated. The maxim to be attracted is □no one shall be vexed twice over the same matter . [See Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. (supra)].

194. It is not that every matter decided in a former suit can be pleaded as res judicata in a subsequent suit. To attract the plea of res-judicata, the conditions precedent, which need be proved, are:

> i. The matter directly and substantially in issue in the subsequent suit must be the same matter, which was directly and substantially in issue, either actually or constructively, in the former suit.
>
> ii. The former suit must have the same parties or the parties under whom they or any of them claims.
>
> iii. The parties must have litigated under the same title in the former suit.
>
> iv. The Court, which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue has been subsequently raised.
>
> v. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

195. Very recently, a constitution bench of Supreme Court in Civil Appeal No. 10866-10867 of 2010, M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Others, decided on 09.11.2019, (ayodhya verdict) has said that applicability of Section 11 is premised on certain governing principles which are:

> i. The matter directly and substantially in issue in the suit should have been directly and substantially in issue in a former suit; ii. The former suit should be either between the same parties as in the latter suit or between parties under whom they or any of them claim litigating under the same title;
>
> iii. The court which decided the former suit should have been competent to try the subsequent suit or the suit in which the issue has been subsequently raised; and iv. The issue should have been heard and finally decided by the court in the former suit.

196. In certain cases, the applicability of res judicata qua the aforementioned conditions precedent came to be considered with certain different angles, which may be useful to be referred hereat.

197. One such aspect came to be considered by Privy Council in Midnapur Zamindary Co. Ltd. vs. Kumar Naresh Narayan Roy and others, AIR 1924 P.C. 144. The plaintiff excluded certain question by the statement of his pleader and, therefore, the trial court did not decide the issue. In the first appeal the defendant urged that the Trial Judge was wrong in not deciding this question even though his action was based on the plaintiff's advisor's statement and the defendant asked the first appellate court expressly to decide the question. The court did so. The question was whether it can be argued that the point decided was not raised and, therefore, the court did not consider it to be a necessary issue. On the contrary, when the first appellate court decided the issue and the same became final, it would operate as res judicata to the subsequent suit involving the same issue.

198. Another angle of the above aspect came to be considered by the Privy Council in Prem Narain vs. Ram Charan and others, AIR 1932 P.C. 51 where though the point was not properly raised in the plaint but both parties without protest chose to join issue upon that point and it was held that the decision on the point would operate as res judicata between the parties.

199. In Jagdeo Misir vs. Mahabir Tewari, AIR 1927 All. 803, a Division Bench held:

> □We think that those two cases are authorities for the proposition that if a party raised an issue, however improperly, in a case which is accepted by the other side and if the Court itself accepts the issue to be one relevant to the enquiry and necessary for the determination of the case, and that issue is argued out by both parties and a judicial decision come to, it is not open subsequently for either of the parties or their successors in interest or the person claiming through them, to say that the issue does not constitute res judicata.

200. In Dhan Singh vs. Jt. Director of Consolidation, U.P. Lucknow and others, AIR 1973 All. 283 (supra), Court also held that res judicata may apply even though the parties against whom it is

sought to enforce did not enter appearance and contest question in the previous suit. But in such a case it has to be shown that such a party had notice that the relevant question was in issue and would have to be decided for which the burden lie on the person who pleaded bar of res judicata. For above propositions, Court followed and relied on Chandu Lal vs. Khalilur Rahman, AIR 1950 P.C. 17.

201. Even if a judgement in a previous case is erroneous, it would be binding on the parties thereto and would operate as res judicata in subsequent case as held in Gorie Gouri Naidu (Minor) and another vs. Thandrothu Bodemma and others, AIR 1997 SC 808.

202. In short, it can be said that though in order to have the defence of res- judicata accepted, it is necessary to show not only that the cause of action was same, but also that the plaintiff had an opportunity of getting the relief in the former proceedings, which he is now seeking.

203. In Jaswant Singh vs. Custodian of Evacuee Property 1985 (3) SCC 648, it was pointed out that the test is whether the claim in the subsequent suit or proceeding is in fact founded upon the same cause of action, which was the foundation of the former suit or the proceeding. The cause of action for a proceeding has no relation, whatsoever, to the defence, which may be set up, nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application, as the case may be, as the cause of action or in other words, to the media upon which the plaintiff or the applicant ask the Court to arrive at a conclusion in his favour.

204. Sometimes res-judicata is misunderstood as estoppel. The fact is that in principle, both are different connotations and refers to different essential indices.

205. Both these principles are based on public policy and justice. Often, they are treated as a branch of law having same traits but both differ in several aspects. Doctrine of res judicata sometimes is construed as a branch of doctrine of estoppel but as said earlier, both have different connotation. In Hope Plantations Ltd. (supra), in para 26 of the judgement, Court said:

> It is settled law that the principles of estoppel and resjudicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel through these two doctrines differ in some essential particulars

206. The estoppel is part of the law of evidence and prevents a person from saying one thing at one time and opposite thing at another time while res judicata precludes a man from avowing the same thing in successive litigations. (Cassomally vs. Carrimbhoy (1911) 36 Bom. 214; Radharani vs. Binodamoyee AIR 1942 Cal. 92; Rajah of Venkatgiri vs. Provinces of Madras AIR (34) 1947 Madras 5. It would be useful to refer distinction elucidated by Hon'ble Mahmood J. in Sitaram vs. Amir Begum (1886) ILR 8 Alld. 324 Perhaps shortest way to describe difference between the plea of res judicata and estoppel is to say that while the former prohibits the Court from entering into an inquiry at all as to a matter already adjudicated upon, the later prohibits a party after the inquiry has already been entered upon from proving any thing which would contradict his own previous declaration or acts to the prejudice of another party who, relying upon those declaration or acts to

the prejudice of another party, has altered his position. In other words, res judicata prohibits an inquiry in limine, whilst an estoppel is only a piece of evidence .

207. Res-judicata has been held to be a branch or specie of the rule of estoppel called □estoppel by record . In Guda Vijayalakshmi vs. Guda Ramchandra Sekhara Sastry, AIR 1981 SC 1143 in para 3, Court observed:

> □Res judicata, after all, is a branch or specie of rule of estoppel called estoppel by record and though estoppel is often described as a rule of evidence, whole concept is more correctly viewed as a substantive rule of law.

208. A judgment operates as estoppel on all points considered and decided therein. It is the decision and not decree that creates bar of res judicata. Res judicata, therefore, is estoppel by judgement or record and not by decree. The judgment operates as estoppel in respect to all the findings which are essential to sustain the judgments. What has taken place, recorded and declared final, cannot be questioned subsequently by anyone which has already an opportunity to adjudicate and this is what is called as estoppel on record. The distinction between the doctrine of res-judicata and estoppel would lie with the estoppel results from the acts and conduct of the parties while the res judicata prohibits the Court from entering into an inquiry as to a matter already adjudicated upon. While in the case of estoppel, it prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who relying upon those declaration or acts has altered his position. Rule of res-judicata prevents the parties to a judicial determination from litigating the same question over and again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are □cause of action estoppel and □issue estoppel . It is held that these two terms are of common law origin.

209. One cannot correctly find whether res judicata will apply or not unless understand the import of words □suit ; □issue ; and, □directly and substantially in issue .

210. The term □issue has also not been defined in CPC. Whartons □Law Lexicon says that □issue means "the point in question at the conclusion of the pleading between the contending parties in an action, when one side affirms and the other side denies . Order XIV of CPC deals with the settlement of □issues and determination of suit on issues of law or on issues agreed upon. Rule 1 deals with the framing of issues as follows:

> (i) Issues arise when a material proposition of fact or law is affirmed by the one party and deemed by the other.
>
> (ii) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(iii) Every material proposition affirmed by one party and denied by the other, shall form the subject of a distinct issue.

(iv) Issues are of two kinds.

(a)Issues of fact

(b)Issues of law

211. Then comes as to what constitute □a matter directly and substantially in issue □. One of the tests recognized is, if the issue was necessary to be decided for adjudicating on the principal issue, and, was decided.

212. A collateral or incidental issue is one i.e., ancillary to a direct and substantive issue; the former is an auxiliary issue and the later the principal issue. The expression collateral or incidental in issue implies that there is another matter which is directly and substantially in issue. (Mulla's C.P.C. 16th Edition, Vol. I, page 179).

213. Difficulty, however, in distinguishing whether a matter was directly in issue or collaterally in issue confronted various Courts in different Countries and certain test were laid down therein. Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.) says □difficulty arises in the application of the rule, in determining in each case what was the point decided and what was the matter incidentally cognizable, and the opinion of Judges seems to have undergone some fluctuations.

214. In □The Doctrine of Res Judicata □ (2nd Edn., 1969, p. 181), □Spencer Bower and Turner □, quoted Dixon, J. of the Australian High Court in Blair vs. Churran (1939) 62 CLR 464 at page 553; □The difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment □.

215. The aforesaid authorities opined, in order to understand this essential distinction, one has always to inquire with unrelenting severity is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another test to pass: viz. whether the determination is the □immediate foundation □ of the decision as opposed to merely □a proposition collateral or subsidiary only, i.e., not more than part of the reasoning supporting the conclusion. It is well settled, say the above authors, □that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision.

216. Corpus Juris Secundum (Vol. 50, para 725) noticed the above aspects and conceded, it is sometimes difficult to determine when particular issue determined is of sufficient dignity to be

covered by the rule of estoppel. It is said that estoppel by judgment does not extend to any matter which was only incidentally cognizable or which came collaterally in question, although it may have arisen in the case and have been judicially passed on.

217. However, this rule did not prevent a judgment from constituting an estoppel with reference to incidental matters necessarily adjudicated in determining ultimate vital point.

218. American Jurispudence (Vol. 46, Judgments, para 422) says; □Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties.

219. The word □substantially means □of importance and value . When a matter is substantially in issue, when it is of importance and value for the decision of main proceeding. When parties go to a trial on a particular issue treating it as material and invites the Court to give a decision thereon, that will be an issue substantially and directly involved and would operate as res judicata. However, a mere expression of opinion on a question not in issue cannot operate as res judicata as held in Ragho Prasad Gupta vs. Krishna Poddar AIR 1969 SC 316.

220. In Sajjadanashin Sayed Md. B.E. Edr. (D) By LRS. vs. Musa Dadabhai Ummer and others 2000 (3) SCC 350, the term □directly and substantially in issue qua the words □ncidental and collateral came up for consideration. The Edroos family in Gujarat claimed to be descendants of Hazarat Imam Ali, the soninlaw and cousin of Prophet Muhamed. One of the descendants of the said Hazrat came down to India in 1542 A.D. and founded his Gadi at Ahmedabad, Broach and Surat. The members of the Edroos family were Sajjadanashins or Mutavallis of the wakf throughout. The three Rozas at the three places as well as the villages which were granted not only for the maintenance of these Rozas but also for the benefit of the Waquif's family, constituted the wakf. The holder was buried in the house and his Dargah is situated in this place. There is also a place for reciting prayers. In an earlier litigation in Sayed Abdula Edrus vs. Sayad Zain Sayad Hasan Edrus ILR (1889) 13 Bom. 555, a Division Bench of the Bombay High Court, traced the history of the wakf and held that the custom of primogeniture did not apply to the office of Sajjadanishin or Mutavalli of this wakf. In a later dispute in Saiyad Jaffar El Edroos vs. Saiyad Mahomed El Edroos AIR 1937 Bom. 217 another Division Bench held after construing the royal grants relating to the villages Umrao and Orma that the grants were primarily for the Rozas and Dargas and they clearly constituted □wakf but that the Sajjadanashin or Mutavalli had, however, a right to the surplus income left over after discharge of the legal obligations regarding the wakf. It was thus held that the Sajjadanishin could provide for the needs of the indigent members of the family and this was a pious obligation which was only a moral obligation and not a legal obligation and hence the indigent members of the Edroos family, as a right, could not claim maintenance out of the surplus income. Thereafter, Regular Suit No. 201 of 1928 was filed by three plaintiffs under Section 92 C.P.C. impleading father of Sayed Mohamed BaquirElEdroos in 1928 after obtaining permission on 22.2.1928 from the Collector under Section 92 C.P.C. for filing the suit. The suit was dismissed on 6.10.1931, the first appeal was dismissed but cross objections were allowed on 21.11.1938 and the second appeal to the High Court was withdrawn. In the aforesaid suit, there were eight points

whereof points no. 1 to 7 related to the validity of appointment of the defendant and the nature of the office and the right to the surplus etc. It was held that the appointment of defendant as Sajjadanashin was valid and that the grant of the property was both for the Rozas and for the maintenance, presumably of the Sajjadanashin and his family members. It was also held that the Sajjadanashin had complete power of disposal over the surplus as he was not in the position of an ordinary trustee. It was held that the Sajjadanashin had complete power of disposal over the surplus, hence the plea of plaintiff's complaint about misutilization of the income by Sajjadanashin was rejected. Another issue was framed whether the waqf was a private or a public and it was held that it was a private waqf. The District Court held that from 1746 A.D. onwards, the Sajjadanashin were using the revenue of these villages for their own maintenance and that of the members of their family and other dependents. This finding was consistent with the judgment of the Bombay High Court in Saiyad Jaffar El Edroos (supra) wherein this was held permissible. The District Court in view of the fact that Sajjadanashin was from the family and not a stranger or outside held it a private waqf. Thereafter another matter came before the Gujrat High Court in relation to Ahmedabad Rozas wherein also a Single Judge of Bombay High Court in Alimiya vs. Sayed Mohd. AIR 1968 Guj. 257 rejected a similar plea. This judgment was confirmed by the Division Bench in Sayed Mohd. vs. Alimiya (1972) 13 Guj.LR 285. In the case before the Apex Court in respect to Rozas at all the three places, the Assistant Commissioner in enquiry no. 142 of 1967 passed an order dated 26.7.1968 accepting the preliminary objection of res judicata but the Joint Charity Commissioner, Gujrat in its order dated 17.12.1973, in appeal, did not accept the said plea which was pressed before him only in respect to the Rozas at Broach and Surat. He set aside the order of Assistant Commissioner and remanded the matter for enquiry. The Assistant Judge in Misc. Civil Application No. 32 of 1974 affirmed the order of Joint Commissioner on 3.9.1976 and it was further affirmed by a Division Bench of Gujrat High Court in First Appeal No. 985 of 1976 on 27.7.1985. Aggrieved by the aforesaid order, the appellant, Sajjadanashin Sayed took the matter to the Apex Court and raised the plea of res judicata in respect to Rozas at Broach and Surat. It is in the light of the above facts, the Apex Court considered the matter. In order to see whether the principle of res judicata is attracted, the Apex Court framed an issue as to what is the meaning of □collaterally and incidentally in issue as distinguished from □directly and substantially in issue . In para 11, the Apex Court found that the matter collaterally and incidentally in issue are not ordinarily res judicata and this principle has been well accepted but certain exceptions to this principle have also been accepted. The Court also traced out the law on the subject in England, America, Australia and India. Referring to Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.), the Court observed that the fundamental rule is that a judgment is not conclusive if any matter came collaterally in question or if any matter is incidentally cognizable. The said judgment attained finality since the second appeal filed in the High Court was withdrawn.

221. In the light of the above facts and in this context, Supreme Court in Sajjadanashin (supra) in respect of India, affirmed the view of the learned Author Mulla in □C.P.C. as under:

> □. a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter □directly and substantially in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was □directly and

substantially in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls?

One test is that if the issue was "necessary" to be decided for adjudicating on the principle issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a later case. One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwer Singh Vs. Sarwan Singh AIR 1965 SC 948 and Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569).

222. It also referred to two judgments of the Privy Council in Run Bahadur Singh vs. Lucho Koer ILR (1885) 11 Cal 301 and Asrar Ahmed vs. Durgah Committee AIR 1947 PC 1 as well as its earlier decision in Pragdasji Guru Bhagwandasji vs. Ishwarlalbhai Narsibhai 1952 SCR 513 and found that inspite of a specific issue and adverse finding in the earlier suit, the finding was not treated as res judicata as it was purely incidental or auxiliary or collateral to the main issue in each of the three cases and was not necessary for the earlier case nor formed foundation. It also considered Sulochana Amma (supra) and a Madras High Court decision in Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari Air 1965 Mad. 355 in respect whereto it was pointed out that there was a direct conflict. Court, however, found that the said decisions are not contrary to each other but should be understood in the context of the tests referred to above. It held that in Sulochana Amma (supra) it is to be assumed that the tests above referred to were satisfied for holding that the finding as to position was substantially rested on title upon which a finding was felt necessary but in the case before the Madras High Court, it must be assumed that the tests were not satisfied. Supreme Court confirmed the observations of the learned author Mulla in "C.P.C. (supra) and said that it all depend on the facts of each case and whether the finding as to title was treated as necessary for grant of an injunction in an earlier suit and was also substantive basis for grant of injunction or not.

223. Further, Court in Sajjadanashin (supra) quoted following from the "Corpus Juris Secundum (Vol. 50, para 735, p. 229) where a similar aspect in regard to findings on possession and incidental findings on title were dealt with and held, "Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessary involved, the judgment is not conclusive on the question of ownership or title. Court observed that in the case before it there were certain changes in the statutory law with respect to definition of "public waqf" and in view thereof since now the "private waqf" was also included within the definition of "public waqf" in the Act, due to change in subject it held that the earlier decision would not operate as res judicata.

224. In Sharadchandra Ganesh Muley vs. State of Maharashtra and others AIR 1996 SC 61, Explanation IV Section 11A containing doctrine of 'might and ought' and application of doctrine of constructive res judicata came to be considered. Court held that where in respect to land acquisition

proceedings an earlier writ petition was filed without raising a plea which was available at that time, in the second writ petition such plea could not have been taken as the doctrine of 'might and ought' engrafted in Explanation IV to Section 11 of the C.P.C. would come into play and the incumbent would be precluded from raising the controversy once over. The Court held that the doctrine of constructive res judicata shall put an embargo on his right to raise a plea as barred by limitation under Section 11A.

225. However, the concept of □constructive res judicata is necessary to be dealt with in view of ExplanationIV Section 11 CPC. A Matter, which might and ought to have been made a ground of attack or defence is a, matter which is constructively in issue. The principle underlying ExplanationIV is res judicata not confined to issues which the Courts are actually asked to decide but cover issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them. (State of U.P. vs. Nawab Hussain AIR 1977 SC 1680). The proposition of law expounded, as referred to above, in para 20 is also unexceptional. However,it would apply only where a plea was available at the time of the suit but not availed of. But there is no question of constructive res judicata where there is no adjudication in the earlier proceedings (Kewal Singh vs. Smt. Lajwanti 1980 (1) SCC 290). The effect of ExplanationIV is where a matter has been constructively in issue, it could not from the very nature of the case be heard and decided but will be deemed to have been heard and decided against the parties omitting to allege it except when an admission by the defendant obviates a decision (Sri Gopal vs. Pirthi Singh (1902) ILR 24 Alld. 429 (PC); Government of Province of Bombay vs. Peston Ji Ardeshir Wadia AIR 1949 PC 143).

226. There is an exception to this plea, i.e., where the evidence in support of one ground is such as might be destructive for the other ground, the two grounds need not be set up in the same suit. In Kanhiya Lal vs. Ashraf Khan AIR 1924 Alld. 355, it was observed that a person claiming property on the allegation that it is wakf property and that he is the Manager thereof is not bound to claim the same property in the same suit alternatively in his own rights in the event of its being held that the property was not wakf property. In Madhavan vs. Chathu AIR (38) 1951 Madras 285, a suit to recover possession of properties on a claim that they belong personally to the plaintiff was held not barred by reason of a decision in a previous suit, in which they were claimed as belonging to a Tarwad of which he was a member. Similarly, where the right claimed in the subsequent suit is different from that in the former suit; it is claimed under a different form that in the former suit; it is claimed under a different title, the subsequent suit would not be barred by res-judicata/constructive res judicata.

227. Next is the question about the □same parties or □between parties under whom they or any of them claim . In order to find a person by res judicata it must be shown that he was in some way party to the earlier suit as the judgment binds only parties and privies. A person claiming under a party is known as privy. The ground of privity is property and not personal relations. If the plaintiff in subsequent suit claims independent right over the suit property the principle of res judicata would not apply. If the predecessor in interest was party to the suit/proceeding involving the same property then the decision binds his successor in interest. From the record it must be evident that the party sought to be bound was in some way a party to the suit. A person merely interested in the

litigation cannot be said to be a party to the suit. Such a person is neither to make himself a party nor can be bound by the result of the litigation as held in Jujjuvarapu vs. Pappala, AIR 1969 A.P. 76.

228. Where a person in the subsequent suit claims independent right over the suit property the principle of res judicata would not apply. (Byathaiah (Kum) and others vs. Pentaiah (Kum) and others, 2000(9)SCC191).

229. Similarly, the party must be litigating under the same title. The test is the identity of title in two litigations and not the identity of the actual property involved in two cases as held in Rajalaxmi Dasi vs. Banamali Sen (supra); Ram Gobinda Daw vs. Smt. H. Bhakta Bala Dassi, AIR 1971 SC 664.

230. Same title means same capacity; the test being whether the party litigating is in law the same or a different person. If the same person is a party in different character, the decision in the former suit does not operate as res judicata. Similarly, if the rights claimed are different, the subsequent suit will not be res judicata simply because the property is identical. Title refers not to cause of action but to the interest or capacity of the party suing or being sued.

231. Lastly, but not the least, is the concern with respect to ExplanationVI, i.e., representative suit. It provides that where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and other persons interested in such right, shall, for the purpose of the Section, be deemed to have claimed under the persons so litigating. Explanation VI apparently is not confined to the cases covered by Order 1 Rule 8 C.P.C., but would include any litigation in which, apart from the rule altogether, parties are entitled to represent interested persons other than themselves. It is a kind of exception to the ordinary rule of res-judicata which provide for the former litigation between the same parties or their privies. Even persons, who are not parties in the earlier proceeding, in certain contingencies, may be debarred from bringing a suit subsequently if the conditions contemplated under Explanation VI Section 11 are satisfied. The conditions to attract Explanation VI so as to constitute res judicata, which must exist, are:

a) There must be a right claimed by one or more persons in common for themselves and others not expressly named in the suit,

b) The parties not expressly named in the suit must be interested in such right.

c) The litigation must have been conducted bona fide on behalf of all the parties interested.

d) If the suit is one under Order 1 Rule 8, all the conditions of that Section must have been strictly complied with.

232. The essentials of representative suit vis a vis the principle of res- judicata with reference to Explanation VI Section 11 was considered by Privy Council in Kumaravelu Chettiar and others vs. T.P. Ramaswami Ayyar and others, AIR 1933 PC 183. Prior to the enactment of CPC of 1877 there was no express legislation on the subject of representative suit. In these circumstances, Courts

assumed the task and followed the practice virtually obtained in the Court of Chancery in England. Existence of this practice was demonstrated by referring to a judgment of Madras High Court in Srikanti vs. Indupuram (1866) 3 M.H.C.R. 226. Court emphasized that convenience, where community of interest existed, required that a few out of a large number of persons should, under proper conditions, be allowed to represent the whole body, so that in the result all might be bound by the decree, although only some of the persons concerned were parties named in the record. It observed that absence of any statutory provision on the subject, Courts in India, it would seem, prior to 1877 assumed the task and duty to determine in the particular case whether, without any real injustice to the plaintiffs in the later suit, the decree in the first could properly be regarded as an estoppel against further prosecution by them of the same claim. The first legislation was made vide Section 30 in CPC 1877 which is now found in Order I Rule 8 CPC of 1908. Privy Council held at page 186:

> It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous; they must have the same interest in the suit which, so far as it is representative, must be brought or prosecuted with the permission of the Court. On such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require; while liberty is reserved to any represented person to apply to be made a party to the suit.

233. The Privy Council also approved a Calcutta High Court decision in Baiju Lal vs. Bulak Lal (1897)24Cal385, where Ameer Ali, J. explaining the position under Section 30 said:

> The effect of S. 30 is that unless such permission is obtained by the person suing or defending the suit, his action has no binding effect on the persons he chooses to represent. If the course prescribed by S. 30 is not followed in the first case, the judgment does not bind those whose names are not on the record.

234. In Waqf Khudawand Taala Banam Masjid Mauza Chaul Shahabudinpur vs. Seth Mohan Lal 1956 ALJ 225 a suit for declaration of the property in dispute as a public mosque was filed. It appears that earlier a suit was filed against some Muslims claiming to be the proprietor and notice under Order 1 Rule 8 C.P.C. was also issued to other residents of that locality. Defence taken by Muslims was that property in dispute was a public mosque. The suit was decreed and the defence was not found proved. Thereafter, second suit was filed by Muslim parties of neighbouring village wherein the plea of res judicata was taken. Defending the said objection on behalf of plaintiffs it was contended that in earlier case notice under Order 1 Rule 8 was issued to the residents of Chaul Shahabuddinpur and not of the village to which the plaintiffs belonged which is a neighbouring village. However, the Court upholding the plea of res judicata observed that Explanation VI to Section 11 C.P.C. is attracted in the matter and once in respect of a public right the matter has been adjudicated, the decision is binding on all persons interested in that right and they will be deemed to claim under the persons who litigated in the earlier suit in respect of that public right.

237. In Commissioner of Endowments and others vs. Vittal Rao and others (2005) 4 SCC 120, it was held that even though an issue was not formerly framed but if it was material and essential for the decision of the case in the earlier proceeding and the issue has been decided, it shall operate as res judicata in the subsequent case.

238. In Ishwar Dutt vs. Land Acquisition Collector and Anr., 2005(7)SCC190, Court has discussed the doctrine of □cause of action , □estopple and □issue estopple . It says, if there is an issue between the parties that is decided, the same would operate as res judicata between the same parties in subsequent proceedings.

239. In Ramchandra Dagdu Sonavane (supra), Court observed that a suit for injunction when title is in issue, for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties when the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a resjudicata.

7. He has further relied on the order of this Tribunal dated 13.01.2015 passed in M.A. No. 894/2014 (Goa Foundation & Anr. Vs. Union of India & Ors.). The relevant paras are as under :

> □(e) The issues and controversies raised in the present application had been specifically and materially raised and/or ought to have been raised in previous proceedings (Original Application No. 414 of 2013), which have been finally decided even inter se the parties. The present application, if not an abuse of the process of the Court, is certainly hit by the principles of res judicata and/or constructive res judicata. First of all, different pleas were raised by the applicant, including the impact of cutting of trees and route alignment of the transmission line. Even if the same had not been specifically raised when they ought to have been raised, the presumption would be that such pleas were raised and rejected by the Tribunal. Keeping in view the pendency of the appeal before the Hon'ble Supreme Court, in no event the present application can lie before the Tribunal.

8. Learned counsel for the appellant has submitted that the above citations as referred by the learned counsel for the respondent no. 4 are not applicable for the reasons that in the matter of PIL Hon'ble the Supreme Court of India has taken the view that if the matter has not been found heard and decided the same cannot be treated as a case decided and the principle of constructive res-

judicata may not be applicable. He has relied the following paragraphs are as follows:-

> □31 The principles of res judicata and constructive res judicata, which Section 111 of the Code of Civil Procedure 1908 embodies, have been applied to the exercise of the writ jurisdiction2, including public interest litigation3. Yet courts have been circumspect in denying relief in matters of grave public importance, on a strict application of procedural rules. In Rural Litigation and Entertainment Kendra v. State of U.P.4, this Court observed:

> □16. The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance □1. Res judicata.--No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
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> [...] Explanation IV.--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
>
> Explanation V.--Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.
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> Kantaru Rajeevaru (Sabrimala Temple Review- 5J) v. Indian Young Lawyers Association, (2020) 2 SCC 1 (Constitution Bench); State of U.P. v. Nawab Hussain, (1977) 2 SCC 806 (three-judge Bench); Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior, (1987) 1 SCC 5 (two-judge Bench) 21 Forward Construction Co. v. Prabhat Mandal (Regd.), (1986) 1 SCC 100 (three-judge Bench) 221989 Supp (1) SCC 504 Forward Construction Co. v. Prabhat Mandal (Regd.), (1986) 1 SCC 100 (three-judge Bench) 1989 Supp (1) SCC 504 is for consideration before the court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata. As we have already pointed out when the order of 12-3-1985, was made, no reference to the Forest (Conservation) Act of 1980 had been done. We are of the view that leaving the question open for examination in future would lead to unnecessary multiplicity of proceedings and would be against the interests of society. It is meet and proper as also in the interest of the parties that the entire question is taken into account at this stage. Kantaru Rajeevaru (Sabrimala Temple Review- 5J) v. Indian Young Lawyers Association, (2020) 2 SCC 1 (Constitution Bench); State of U.P. v. Nawab Hussain, (1977) 2 SCC 806 (three-judge Bench); Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior, (1987) 1 SCC 5 (two-judge Bench) Forward Construction Co. v. Prabhat Mandal (Regd.), (1986) 1 SCC 100 (three-judge Bench) 1989 Supp (1) SCC 504.

He has further relied on the order passed by Hon'ble Supreme Court of India dated 18.11.2021(W.P. No. (C) No. 229/2014 (National Confederation of Officers Association of Central Public Sector

Enterprises and Ors. Union of India & Ors.)

32. In Daryao v. State of U.P.5, a Constitution Bench of this Court has held that orders dismissing writ petitions in limine will not constitute res judicata. The Court noted that while a summary dismissal may be considered as a dismissal on merits, it would be difficult to determine what weighed with the Court without a speaking order. Justice PB Gajendragadkar (as the learned Chief Justice then was), observed:

> ☐26...If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32... (1962) 1 SCR 574

33. In State of Karnataka v. All India Manufacturers Organization6, a three judge Bench has also held that res judicata would be applicable to a public interest litigation if it was bona fide. Justice B N Srikrishna held:

> ☐35. As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised or should have been raised on an earlier occasion by way of a public interest litigation. It cannot be doubted that the petitioner in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy [(1999) 1 KLD 500 :
>
> (2000) 1 Kant LJ 224 (DB)] , as a public interest litigation, could bar the present litigation.

[...]

47. All of these unequivocally show that the issue of excess land (and connected issues) was specifically raised by the Petitioner in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and was also forcefully denied by the State. In fact, the decision in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] , went further with the High Court according its

imprimatur to the land requirements under the FWA amounting to 20,193 acres, which in no small measure, resulted from the State's successful defence that it had provided the □bare minimum of land for the Project calculated by a □scientific method . The judgment also contains copious references to the issue of land (including the acreage), the types of land to be acquired, the land requirement for different aspects of the Project, the scientific techniques involved in identifying the land and road alignment, etc. In these circumstances, it cannot be doubted that Explanation III to Section 11 squarely applies.

(2006) 4 SCC 683 It is clear that the issue of excess land under the FWA was □directly and substantially in issue in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and hence, the findings recorded therein having reached finality, cannot be reopened in this case.

[...]

50. As we have pointed out, the cause of action, the issues raised, the prayers made, the relief sought in Somashekar Reddy's petition and the findings in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and the claims and arguments in the present petitions were substantially the same. Therefore, it is not possible to accept the contention of the appellants before us that the judgment in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] does not operate as res judicata for the questions raised in the present petitions. (emphasis supplied)

34. While determining the applicability of the principle of res judicata under Section 11 of the Code of Civil Procedure 1908, the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. There is a trend of poorly pleaded public interest litigations being filed instantly following a disclosure in the media, with a conscious intention to obtain a dismissal from the Court and preclude genuine litigants from approaching the Court in public interest. This Court must be alive to the contemporary reality of □ambush Public Interest Litigations and interpret the principles of res judicata or constructive res judicata in a manner which does not debar access to justice. The jurisdiction under Article 32 is a fundamental right in and of itself.

9. Learned counsel for the respondent no. 4 has submitted that the issues raised in the judgment referred by the learned counsel for the appellant relates to the fundamental rights as envisaged under Article 32 of the Constitution of India.

The scope of Article 32 is wide enough and the principles of appeal under National Green Tribunal shall be taken into account within the domain of the provisions of Section 16 of the National Green Tribunal Act, 2010. In the matter of Article 32 the jurisdiction of the Hon'ble Supreme Court of India is wide enough which is not applicable in the matter of the cases or appeals referred under Section 16 of the National Green Tribunal Act.

10. Learned counsel for the appellant has moved an application i.e. I.A. No. 51/2022 with the prayer to pass an interim order to stay the public hearing which was scheduled to be conducted on 20.07.2022 now the application is infructuous. Learned Counsel for the respondent no. 4 has

submitted the there are two projects (1) relating to fertilizer and (2) relating to the cement plant, and the appellant has mixed both the matters and this is abuse of the process of law. It is argued that it is called forum hunting and it is intended to continue till the appellant does not achieve a desired goal. The platform of the Tribunal or the Courts cannot be made a platform to compel the opposite party to pass a desired order. The matter cannot be agitated and to be continued till infinity and it should come at rest. The Hon'ble Supreme Court in Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under:-

> "No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions. Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.
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> In Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr. AIR 1997 SC 1005 the Hon'ble Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.
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> In Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.
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> In Abdul Rahman Vs. Prasoni Bai & Anr., (2003) 1 SCC 488, the Hon'ble Supreme Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law. "It is well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. However, the Apex Court added the words of caution that such a rule must give way where the language of the statute is plain and unambiguous. Similarly, in Collector of Central Excise, Bombay-I & Anr. Vs. M/s. Parle Export (P) Ltd., AIR 1980 SC 644, the Hon'ble Supreme Court observed that the words used in the provision should be understood in the same way in which they have been understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In Indian Metals and Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise, Bhubaneshwar, AIR 1991 SC 1028, the Hon'ble Supreme Court has applied the same rule of interpretation by holding that "contemporanea expositio by the administrative authority is a very useful and relevant guide to the interpretation of the expression used in a statutory instrument. Same view has been taken by the Hon'ble Supreme Court in State of Madhya Pradesh Vs. G.S. Daal and Flour Mills (Supra); and Y.P. Chawla & Ors. Vs. M.P. Tiwari and Anr., AIR 1992 SC 1360. In N. Suresh Nathan & Ors. Vs. Union of India & Ors, 1992 (Suppl) 1 SCC 584; and M.B. Joshi & Ors. Vs. Satish Kumar Pandey & Ors., 1993

(Suppl.) 2 SCC 419, the Apex Court observed that construction in consonance with long-standing practice prevailing in the concerned department is to be preferred. In M/s. J.K. Cotton Spinning & Weaving Mills Ltd. & Anr. Vs. Union of India & Ors., AIR 1988 SC 191, it has been held that the maxim is applicable in construing ancient statute but not to interpret Acts which are comparatively modern and an interpretation should be given to the words used in context of the new facts and situation, if the words are capable of comprehending them. Similar view had been taken by the Apex Court in Senior Electric Inspector & Ors. Vs. Laxminarayan Chopra & Anr., AIR 1962 SC 159.

In Desh Bandhu Gupta & Co. & Ors Vs. Delhi Stock Exchange Association Ltd., AIR 1979 SC 1049, the Apex Court observed that the principle of contemporenea expositio, i.e. interpreting a document by reference to the exposition it has received from Competent Authority can be invoked though the same will not always be decisive of the question of construction. The administrative construction, i.e. the contemporaneous construction placed by administrative or executive officers responsible for execution of the Act/Rules etc. generally should be clearly wrong before it is over-turned. Such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight and is highly persuasive. However, it may be disregarded for cogent reasons. In a clear case of error the Court should, without hesitation refuse to follow such construction for the reason that □wrong practice does not make the law. (Vide Municipal Corporation for City of Pune & Anr. Vs. Bharat Forge Co. Ltd. & Ors., AIR 1996 SC 2856). In D. Stephen Joseph Vs. Union of India & Ors., (1997) 4 SCC 753, the Hon'ble Supreme Court has held that □past practice should not be upset provided such practice conforms to the rules but must be ignored if it is found to be de hors the rules.

However, in Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr., AIR 2003 SC 3502, the Apex Court held that □the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter .

Therefore, □contemporanea exposito by the State instrumentality is very useful and relevant for providing guidance to interpretation of expression used in the Rules. The administrative construction placed by the executive officers, responsible for execution of rules should be accepted and does not warrant over-turning unless found not in conformity of the Rules. □When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. (Vide The Ramjas Foundation & Ors. Vs. Union of India & Ors., AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & Ors., (1994) 6 SCC 620). Thus, who seeks equity must do equity. The legal maxim □Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem ,

means that it is a law of nature that one should not be enriched by the loss or injury to another. In Nooruddin Vs. (Dr.) K.L. Anand (1995) 1 SCC 242, the Hon'ble Supreme Court observed as under:

□.....Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice. Similarly, in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors., AIR 1997 SC 1236, the Hon'ble Apex Court observed as under:-

□The power under Art. 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point..... The interest of justice and public interest coalesce. They are very often one and the same. ..... The Courts have to weight the public interest vis-à-vis the private interest while exercising the power under Art. 226..... indeed any of their discretionary powers.

(Emphasis added) In Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under:-

□No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy, access to justice should not be misused as a licence to file misconceived and frivolous petitions. Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.

In M/s. Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr., AIR 1970 SC 898; State of Haryana Vs. Karnal Distillery, AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. In Agriculture & Process Food Products Vs. Oswal Agro Furane & Ors., AIR 1996 SC 1947, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make □full and true disclosure of facts . While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in King Vs. General Commissioner, (1917) 1 KB 486, wherein it has been observed as under:-

□Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not filed and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits..... In Abdul Rahman Vs. Prasony Bai & Anr., AIR

> 2003 SC 718; and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors., (2004) 7 SCC 166, the Hon'ble Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the suppressed fact must be material one in the sense that had it not been suppressed, it would have led any fact on the on the merit of the case.

11. In view of the above, we are of the view that the Environmental Clearance was subject matter of Appeal No. 01/2021 and the Environmental Clearance dated 05.01.2021 for setting a Ammonium Phosphate Fertiliser is matter in issue in present case and all issues which were raised before this Tribunal in the present appeal were raised and heard by the Tribunal and have been decided.

We are of the view that the matter was directly and substantially in issue in the appeal referred above and the Court/Tribunal have been a court competent to try the suit/appeal and the issues raised before this Tribunal in the present appeal was directly and substantially an issue and have been finally heard and decided thus the present appeal is barred by the principle of res judicata.

Accordingly, Appeal No. 13/2022 alongwith I.A. No. 51/2022 are not maintainable and dismissed.

Sheo Kumar Singh, JM Arun Kumar Verma, EM 29th July, 2022 Appeal No. 13/2022(CZ) PN