

(2015) 10 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petitions Nos. 1783, 1788 and 1885 of 2015

Dundoo Ravi Kumar

APPELLANT

Vs

The Special Court under the A.P. Land Grabbing (Prohibition) Act and Others

RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 17A, 17-A
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(w), Order 47 Rule 1, Order 47 Rule 47, Order 47 Rule 5, Order 47 Rule 7
Constitution of India, 1950 — Article 136, 141, 226, 371-D
Suits Valuation Act, 1887 — Section 11
Urban Land (Ceiling and Regulation) Act, 1976 — Section 6
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 206, 209, 331

Citation : (2016) 2 ALT 330

Hon'ble Judges : R. Subhash Reddy and A. Shankar Narayana, JJ.

Bench : Division Bench

Advocate : Challa Sitaramaiah and S. Balchand, for the Appellant

Final Decision : Allowed

Judgement

A. Shankar Narayana, J.

1. Challenging the common order and decretal order dated 16.12.2014 in I.A. Nos. 859, 860 and 888 of 2014, the respondent in L.G.C. No. 10 of 1990 on the file of the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, Special Court) filed these three writ petitions under Article 226 of the Constitution of India.

2. I.A. No. 859 of 2014 was filed seeking amendment of the counter filed in the aforesaid L.G.C.; I.A. No. 860 of 2014 was filed for granting of leave to file document; and I.A. No. 888 of 2014 was filed for recalling R.W.1 for marking the said document. The Special Court, by the aforesaid common order, dismissed all the three petitions. Hence, the instant writ petitions seeking the relief of writ of

certiorari or any other appropriate order or direction and quash the said order and prohibit the Special Court from proceeding with any further enquiry in the aforesaid L.G.C.

3. A brief narration of the proceedings in L.G.C. No. 10 of 1990 requires advertence in adjudicating upon the controversy in the instant writ petitions.

4. The erstwhile State of Andhra Pradesh, represented by the Revenue Divisional Officer, Secunderabad, filed L.G.C. No. 10 of 1990 against the present writ petitioner under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, the Act) alleging that the writ petitioner unauthorisedly occupied an extent of 1692 square yards in Sy.No.43 of Bholakpur village, Secunderabad and constructed a building and requesting the Special Court to evict him and deliver the vacant possession and also award compensation for wrongful possession. The respondent therein (writ petitioner) set up the stand that the said extent originally owned and possessed by one Mirza Mohiuniddin Baig and his name was recorded in the municipal records, later he sold it to one Abdul Gafoor under a registered sale deed dated 30.04.1954, who, in turn, sold it to the father of the writ petitioner under a registered sale deed dated 28.07.1957. It is stated that the writ petitioner constructed the building now existing with the permission of the Municipal Corporation and the Municipal Corporation has been collecting property tax and even non-agricultural assessment was done and amount was collected by the department. It is stated that even Public Works Department took over an area of 344 square yards adjoining the said land on 11.03.1957 Fasli from the original owner for widening the road and the compensation was also paid.

5. The parties entered into trial. The Special Court on merits held that the writ petitioner acquired a valid title basing on the payment of municipal tax, permission granted for construction of building, payment of non-agricultural assessment and the circumstance of payment of compensation by acquiring the land in road widening in Public Works Department and the Special Court has also held that the writ petitioner perfected title by adverse possession.

6. Aggrieved by the said judgment and decree, the State filed a review petition in I.A. No. 1767 of 1994 on 06.12.1994 under Section 17A read with Rule 18 of the Act. The writ petitioner has also filed counter therein after notice. The Special Court having heard both sides, reserved it for orders on 20.02.1995 and dismissed the review petition on 07.03.1995. Thereafter, the State filed W.P. No. 260 of 1998 against the orders in L.G.C. No. 10 of 1990. The State has also filed another writ petition in W.P. No. 2111 of 1998 against the orders in L.G.C. No. 104 of 1990, which orders were passed on 05.10.1994. This Court having heard both sides, allowed the writ petitions setting aside the orders and remanded the matters for re-consideration by formulating the points for determination. Aggrieved by the order of remittance, respondent in L.G.C. preferred S.L.P.(C) No. 24389 of 2009 before the Hon'ble Supreme Court and the same was disposed of leaving open to the respondent in L.G.C. to raise all questions of law

including the question of maintainability.

7. Subsequent thereto, the respondent in the L.G.C. filed I.A. Nos. 859, 860 and 888 of 2014 for amending the counter, for production of document filed before the U.L.C. Authorities, which details are mentioned in the said application, and for recalling himself examined as R.W.1 for marking the said document. The Special Court, having heard the matter, dismissed all the three petitions by a common order and the writ petitioner is driven to this Court by filing the instant writ petitions.

8. Heard Sri Challa Seetharamaiah, learned Senior Counsel, assisted by Sri S. Balchand, learned counsel for the writ petitioner in all these writ petitions, and the learned Advocate General for the State of Telangana, assisted by the learned Government Pleader for Revenue (Assessments, ULC and LGC).

9. Learned counsel for the writ petitioner would submit that the order passed by the Special Court dated 07.03.1995, in review petition I.A. No. 1767 of 1994 even if it confirms, supersedes the order in L.G.C. No. 10 of 1990 dated 05.10.1994, and, therefore, to prohibit the Special Court from proceeding with any further enquiry in the L.G.C. Learned counsel would submit that the order passed by the Special Court in review petition was not challenged by the State and since the order was passed on merits, it replaces the original order by supersession and, therefore, the proceedings in L.G.C. cannot be further continued.

10. Learned counsel also would submit that it is well settled that the decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original decree and to fortify the said submission, he places reliance on the decisions in Sushil Kumar Sen Vs. State of Bihar, , Kanhaiya Lal and others Vs. Baldeo Prasad ILR XXVIII Allahabad 240 , Brijbasi Lal and Others and Piyare Lal Vs. Salig Ram and Others, , Basheshwar Nath Vs. Ram Kishen Das and 54 IC 966 others and Nibaran Chandra Sikdar Vs. Abdul Hakim and Others, . Learned counsel also would submit that the order in W.P. No. 260 of 1998 disposed of by this Court was against the order dated 05.10.1994, which was superseded by the order dated 07.03.1995 in review petition and, therefore, the order dated 05.10.1994 does not exist in the eye of law. In the same context, it is his submission that the fact that it was not brought to the notice of the Court will not make any difference as consent cannot confer jurisdiction. In support of the said submission, the learned counsel placed reliance on the decisions in Chandrika Misir and Another Vs. Bhaiya Lal, , Kiran Singh and Others Vs. Chaman Paswan and Others, , Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , Budhia Swain and Others Vs. Gopinath Deb and Others, , Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , State of Orissa and others Vs. Brundaban Sharma and another 1995 Supp (3) SCC 249.

11. Learned counsel further would submit that in a review petition, three stages

would follow and whatever be the nature of order passed by the Tribunal/Court at the third stage, supersedes the original order and to substantiate it, places reliance on the decisions in *Gour Krishna Sircar and Another Vs. Nilmadhab Saha and Others*, , *Sha Vadilal Hakamchand Vs. Sha Fulchand Umedram* ILR XXX Bombay 56 , *K.N. Mishra Vs. Union of India (UOI) and Others*, , *Maji Mohan Kanwar and Others Vs. The State of Rajasthan and Another*, and *Pakkiri Muhammad Rowther Vs. L. Swaminatha Mudaliar*, .

12. Learned counsel, therefore, submits that in view of the order passed in review petition I.A. No. 1767 of 1994 on 07.03.1995 under Section 17A of the Act, the original order passed in L.G.C. No. 10 of 1990 on 05.10.1994 does not exist, thus, the order in review petition supersedes the order in L.G.C. and, therefore, the Special Court cannot proceed with further proceedings in L.G.C. No. 10 of 1990 and, accordingly, to issue the writ of certiorari.

13. Learned Advocate General, inter alia, would submit that though, the State has not filed any writ petition challenging the order passed in review petition by the Special Court, but the very fact that in the writ petitions preferred by the State against the original order dated 05.10.1994, the respondent in L.G.C. contested the aforementioned writ petitions and even carried the matter to the Hon"ble Supreme Court by S.L.P. No. 24389 of 2009 and the Supreme Court disposed it of leaving it open to him to raise all questions of law including the question of maintainability and pursuant thereto, having filed three applications, in which the instant common order was passed which is now challenged by him, cannot now contend that the proceedings in L.G.C. No. 10 of 1990 cannot be continued.

14. The learned Advocate General also placed reliance on the decision in *Kunhayammed and Others Vs. State of Kerala and Another*, as to what the Hon"ble Supreme Court pronounced about the doctrine of merger and its applicability. He has also placed reliance on the decisions in *Sushil Kumar Sen Vs. State of Bihar*, , *Manohar Nale and Others Vs. Jaipalsing Rajput and Others*, , *DSR Steel (P) Ltd. Vs. State of Rajasthan and Others*, , *Suseel Finance and Leasing Company Vs. M. Lata and Others*--> , *M.N. Haider and Others Vs. Kendriya Vidyalaya Sangathan and Others*--> and *Shanker Motiram Nale Vs. Shirolalsing Gannusing Rajput* (1994) 2 SCC 753.

15. To resolve the controversy in the instant writ petitions, in our view, it is desirable to refer to the amendment sought to be introduced by the writ petitioner in his counter in the said L.G.C. The proposed amendment sought to be introduced by way of addition of paragraph Nos. 15 and 16 in the counter. It is desirable to extract the same, which is thus:

"(15) The respondent states that L.G.C. No.10 of 1990 was dismissed on 05.10.1994 on merits. Thereafter, the applicant-State Government filed review I.A. No.1767 of 1994 under Section 17-A of the Andhra Pradesh Land Grabbing (Prohibition) Act which on contest, was dismissed on 07.03.1995. The

respondent states that the order dated 05.10.1994 dismissing L.G.C. therefore stood merged in the order dated 07.03.1995 in review petition. This respondent further states that the order in review petition dated 07.03.1995 has become final as same was not challenged by way of writ petition by the State Government-applicant. The respondent states that the applicant-State Government filed W.P. No.260 of 1998 somewhere at the end of December, 1997 and it was registered and numbered in January, 1998, challenging the order dated 05.10.1994 dismissing L.G.C. No.10 of 1990 and the applicant-State Government obtained interim suspension orders in W.P.M.P. No.294 of 1998 on 27.01.1998. The respondent states that order dismissing the L.G.C. was not executable. However, in the routine manner the application was filed and suspension order was obtained. The respondent further states that in support of the writ petition and the suspension petition one Smt. Sridevasani Allamraju, wife of Sri Bhanu Prakash Allamraju, R.D.O., Hyderabad District filed affidavit and a reading of the same would clearly disclose that there was no mention about the dismissal of the review petition. Further, a reading of the common order passed by the High court in the two writ petitions i.e., W.P. No.260 of 1998 and W.P. No.2111 of 1998 dated 04.06.2009 would also clearly disclose that there is no reference about the dismissal of review petition, in any proceedings in the High Court. The respondent states that in the same proceedings before this Hon"ble court there are two stages one is the disposal and dismissal of the L.G.C. on merits and the other is dismissal of the review petition. This respondent states that since the order in the review petition has become final it would not be now open to the applicant-State Government to re-agitate the matter in the present proceedings after remand though the High Court has remanded the matter as the State Government had suppressed the factum of dismissal of review petition while agitating the matter in the High Court in W.P. No.260 of 1998. The respondent states the principle of res judicata applies also as between the two stages in the same litigation to the extent that having at an early stage decided the matter in one way will not allow and parties to re-agitate the matter again at a subsequent stage of the same proceedings. This respondent further states that according to corpus juris second-um, Volume LVII Pages 1067, 1068 To merge means to sink, or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing or lessor importance by a greater, whereby a lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. The respondent further states that in view of the specific provision i.e., Section 17-A and Rule 18 under the Land Grabbing (Prohibition) Rules available in the statute, the question of an application of any principles laid down by decisions of various Courts under Order 47 Rule 1 C.P.C. to the present set of facts and the proceedings would not arise even though by virtue of dismissal of review petition as not maintainable no appeal is provided in C.P.C. In fact, I may state that against the original order itself only writ petition is maintainable and therefore, against review order also only writ petition could have been filed which the State Government did not file.

The respondent therefore, submits that both on the ground of merger and also principle of res judicata L.G.C. is liable to be dismissed.

(16) The respondent further states that after the advent the Urban Land and Ceiling Regulation Act, a return i.e., statement under sub section (1) of Section 6 of the Urban Land Ceiling and Regulation Act read with Rules 3 and 9 was submitted on or about 13th August, 1976 with a requisite annexures furnishing all the details. The respondent states that in the said return annexure-A which is annexure No. 1 sheet No. 1 to the statement item No. 2 relates to the property covered by the present Municipal No. 1-8-28/29, Minister Road, Secunderabad which property land is presently in dispute in this L.G.C. An acknowledgment and receipt for form No. 1 dated 13.09.1976 assigning and allotting C.C. No.5973 was also issued by the State Government-office of the special officer and competent authority Urban Land Ceiling. The respondent states that the main department of the Government may be revenue and there may be several sub departments. Admittedly, inspection of all the properties including property at Minister Road, Secunderabad of which check measurements were made and note was made and by following necessary procedure, ultimately, orders were passed by the authorities on 03.08.1991 in C.C. No.F1/5971/76 to 5978/76. The respondent states that the State Government has never claimed the said item of the property, as property of the Government and rather accepted the claim that it is a private property. This respondent states that even if there is a title dispute now raised, such a dispute cannot come within the meaning of land grabbing and the provisions of the land grabbing Act cannot be made applicable for deciding the claim of the Government and this Special Court would have no jurisdiction to grant reliefs to the State Government or entertain case or take cognizance of case. In fact, the Government is stopped from making any such claim in the present proceedings. The respondent further states that the Government acts through its officers and therefore, all the acts done by the officers, may be in one department or the other would be binding on the Government. The L.G.C. is therefore, liable to be dismissed."

16. The other two petitions in I.A. Nos. 860 and 888 of 2014 are for receiving the document filed before U.L.C. Authorities and for recalling R.W.1 to mark the said document.

17. The Special Court referred to the points formulated by this Court in paragraph Nos. 25 and 26 in the common order passed in W.P. Nos. 260 and 2111 of 1998 on remand for fresh consideration by the Special Court. Then, in paragraph No. 20, while answering the contention raised by the respondent therein that the proceedings in L.G.C. cannot be continued as the judgment passed in L.G.C. No. 10 of 1990 was merged with the order passed in review petition in I.A. No. 1767 of 1994 and there being no writ petition challenging the review order, observing that when the applicant carried the matter to the High Court by filing writ petition assailing the original order dated 05.10.1994 passed in L.G.C., the respondent resisted the writ petition, but has not taken the plea

that the writ petition was not maintainable since the order on review application remained unchallenged and further observing that no relief has been granted to the applicant in the review application and not even punctuation mark in the original order was modified while dismissing the review application and under the said circumstances, it was impermissible for the respondent to plead that the proceedings in the L.G.C. cannot be continued because of the order passed in the review application remained unchallenged and further observed that the L.G.C. has been pending right from the year 1990 and no suggestion was made to the witnesses examined on behalf of the applicant that the father of the writ petitioner filed declaration before the U.L.C. Authorities showing the application schedule site in his family holding and no reasons whatsoever have been placed on record for not taking such a plea either before the Special Court or in the High Court or before the commencement of the proceedings on remand, held that I.A. No. 859 of 2014 cannot be entertained and consequently, dismissed the other two I.A. Nos. 860 and 888 of 2014. The said finding recorded by the Special Court, more particularly, the finding that it was impermissible for the respondent to plead that the proceedings in the L.G.C. cannot be continued because of the order passed in the review application remained unchallenged, is seriously contested in the instant writ petitions placing reliance on a catena of decisions referred to in the above by the learned counsel for the writ petitioner.

18. We would like to observe, at the outset, that the challenge in these writ petitions is to the common order passed rejecting the requests for introducing the amendment in the counter, receiving the copy of the document filed before the U.L.C. Authorities and recalling R.W.1 for the purpose of marking the said document on its receipt, but however, the writ petitioner has also sought the request in these writ petitions to prohibit the respondent-State from continuing the proceedings before the Special Court in view of the fact that the order in review petition has replaced the original order and the original order, thus, became non-existent and mere consent of the parties would not confirm jurisdiction on the Special Court to continue the proceedings.

19. Initially, we are inclined to advert to the decisional law on which the learned counsel for the writ petitioner relied on.

"(i) In *Sushil Kumar Sen Vs. State of Bihar*, , a Three-Judge Bench of the Hon'ble Supreme Court, while explaining the effect of allowing an application for review of a decree, held in paragraph Nos. 2 and 3, thus:

"2. It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one (see *Nibaran Chandra Sikdar Vs. Abdul Hakim and Others*, , *Kanhaiya Lal v. Baldeo Prasad* (ILR (1906) 28 All 240), *Brijbasi Lal and Others and Piyare Lal Vs. Salig Ram and Others*, and *Pyari Mohan Kundu Vs. Kalu Khan and Others*,

3. The respondent did not file any appeal from the decree dated August 18, 1961 awarding compensation for the land acquired at the rate of Rs.200 per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated August 18, 1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated September 26, 1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on August 18, 1961 awarding compensation for the land at the rate of Rs. 200 per katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again."

(ii) In *Kanhaiya Lals* case ILR XXVIII Allahabad 240 (supra), while explaining the effect of order on review, Their Lordships held thus:

"A preliminary objection has been raised to the hearing of this appeal on the ground that the decree appealed against is non-existent. The decree against which the appeal is preferred is dated the 16th of December, 1902. An application for review of judgment was made on the 13th February, 1903, and on the 29th of August, 1903, the application for review of judgment was heard and the decree was modified in important particulars and a new decree passed. By this decree the old decree of the 16th December, 1902, was entirely superseded. The respondent appeal was preferred on the 18th April, 1903, pending the disposal of the application for review. It is admitted that the application for review and the order passed thereon could not be treated as having been made under Section 206, inasmuch as it was not an application to bring the decree into conformity with the judgment or to amend a clerical error. Consequently the order passed on review amounted to a new decree, superseding, as we have said, the old decree. Under these circumstances the decree against which the present appeal has been preferred does not exist, and the appeal cannot be heard. The same question came before a bench of this Court in the case of *Kuar Sen v. Ganga Ram* (Weekly Notes, 1890, p. 144). Edge, C.J. and Young, J., there decided that a preliminary objection similar to the one now raised was fatal to the hearing of the appeal. We dismiss the appeal. Under the circumstances we say nothing as to costs."

(iii) In *Brijbasi Lal and Others and Piyare Lal Vs. Salig Ram and Others*, , Their Lordships while observing that the order for review supersedes the original decree, held thus:

"In the case before us what has really happened is that the Subordinate Judge, who had jurisdiction to review his judgment, proceeded to review it and in

reviewing it passed an order which does not commend itself to the appellants. That order may be right or wrong, but there was jurisdiction in the Subordinate Judge. There are two cases which are exactly in point, namely, Kuar Sen v. Ganga Ram (Weekly Notes, 1890, p. 144) and Kanhaiya Lal v. Baldeo Prasad ((1905) I.L.R., 28 All, 240). We cannot find that these cases have ever been questioned, and we agree with what was held in them that the order for review under such circumstances superseded the original decree."

(iv) In *Bashesar Nath*s case 54 IC 966 (supra), while stating that the decree appealed from no longer exists, Their Lordships held thus:

"*Bashesar Nath* filed an appeal to this Court on the 5th of March, 1915. It appears, however, that prior to the filing of this appeal *Ram Kishen* had on the 28th January 1915 filed an application for review in the lower Court, and this application was accepted and the decree was set aside by order of the 6th May 1915, the Court at the same time ordering a further inquiry to be made in the case. As the decree appealed from no longer exists, we are clearly of opinion that the appeal cannot be heard. This view is supported by *Kanhaiya Lal v. Baldeo Prasad* (28 A.240; A.W.N. (1905) 265). That case is on all fours with the present one and it was held that the order for review superseded the original decree, the decree under appeal had ceased to exist and the appeal could not be heard. This was followed in *Brijbasi Lal and Others and Piyare Lal Vs. Salig Ram and Others*, . We see no reason to differ from these authorities and we hold that the present appeal cannot be heard and we accordingly dismiss it but leave the parties to bear their own costs in this Court."

(v) In *Nibaran Chandra Sikdar Vs. Abdul Hakim and Others*, , the Calcutta High Court held that the effect of allowing an application for review is to vacate the decree originally passed and the decree that is subsequently made on the review, even if it does not modify the decree originally passed, is a new decree superseding the original decree.

(vi) In the context that consent cannot confer jurisdiction, in *Chandrika Misir and Another Vs. Bhaiya Lal*, , the Hon'ble Supreme Court while dealing with the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1951 (1 of 1951), referred to relevant fact-situation in paragraph No. 6 thus:

"But the unfortunate part of the whole case is that the Civil Court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdiction had not been raised by the defendant in the Trial Court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr. Yogheshwar Prasad, even in execution proceedings on the ground that the decree was a nullity. If one reads Sections 209 and 331 of the U.P. Act No. 1 of 1951 together one finds that a suit like the one before us has to be filed before a Special Court created under the Act within a period of limitation specially prescribed under the rules made under the Act and the jurisdiction of the ordinary civil Courts is absolutely barred."

and held in paragraph No. 9 thus:

"It is unfortunate that this position in law was not noticed in the several Courts through which this litigation has passed, not even by the High Court which had specifically come to the conclusion that the period of limitation was the one laid down by the rules under U.P. Act No. 1 of 1951. Since the Civil Court which entertained the suit suffered from an inherent lack of jurisdiction, the present appeal filed by the plaintiffs will have to be dismissed."

(vii) In *Kiran Singh and Others Vs. Chaman Paswan and Others*, , it is held in paragraph No. 6 thus:

"The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non-judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position."

(viii) In *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, , the Hon"ble Supreme Court held in paragraph No. 24 thus:

"As against the above, Shri Vepa Sarathy, appearing for the respective first respondents in C. A. 2826 of 1977 and in C.A. 278 of 1978 submitted that when his client filed a writ petition (No. 58908 of 1976) under Article 226 of the Constitution in the High Court for impugning the order of his compulsory retirement passed by the Chief Justice, he had served, in accordance with Rule 5 of the Andhra Pradesh High Court (Original Side) Rules, notice on the Chief Justice and the Government Pleader, and, in consequence, at the preliminary hearing of the writ petition before the Division Bench the Government Pleader appeared on behalf of all the respondents including the Chief Justice, and raised a preliminary objection that the writ petition was not maintainable in view of Cl.6 of the Andhra Pradesh Administrative Tribunal Order made by the President under Article 371-D which had taken away that jurisdiction of the High Court and vested the same in the Administrative Tribunal. This objection was accepted by the High Court, and as a result, the writ petition was dismissed in limine. In these circumstances - proceeds the argument - the appellant is now precluded on principles of res judicata and estoppel from taking up the position, that the

Tribunal's order is without jurisdiction. But, when Shri Sarathy's attention was invited to the fact that no. notice was actually served on the Chief Justice and that the Government Pleader who had raised this objection, had not been instructed by the Chief Justice on their behalf, the counsel did not pursue this contention further. Moreover, this is a pure question of law depending upon the interpretation of Article 371-D . If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case."

(ix) In *Budhia Swain and Others Vs. Gopinath Deb and Others*, , the Hon"ble Supreme Court while dealing with Orissa Estates Abolition Act, 1951, held in paragraph No. 9 thus:

"A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In *Seth Hiralal Patni Vs. Sri Kali Nath*, , it was held :-

.. The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.

(x) In *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, , the Constitutional Bench of Hon"ble Supreme Court held in paragraph No. 334 thus:

"Opinions may differ as to when it can be said that in the "public law" domain, the entire proceeding before the appropriate authority is illegal and without jurisdiction or the defect or infirmity in the order goes to the root of the matter and makes it in law invalid or void (Referred to in *Illuri Subbayya Chetty*'s case and approved in *Dulabhai* case). The matter may have to be considered in the light of the provisions of the particular statute in question and the fact situation obtaining, in each case. It is difficult to visualise all situations hypothetically and provide an answer. Be that as it may, the question that frequently arises for consideration, is, in what situation/cases the non-compliance or error or mistake, committed by the statutory authority or Tribunal, makes the decision rendered ultra-vires or a nullity or one without jurisdiction? If the decision is without jurisdiction, notwithstanding the provisions for obtaining reliefs contained in the Act and the "ouster clauses", the jurisdiction of the ordinary court is not

excluded. So, the matter assumes significance. Since the landmark decision in *Anisminic Ltd. Vs. Foreign compensation commission* [, 1969 (2) AC 147 : 1969 (1) All ER 208 (H.L.)] , the legal world seems to have accepted that any "jurisdictional error" as understood in the liberal or modern approach, laid down therein, makes a decision ultra vires or a nullity or without jurisdiction and the "ouster clauses", are construed restrictively, and such provisions whatever their stringent language be, have been held, not to prevent challenge on the ground that the decision is ultra vires and being a complete nullity, it is not a decision within the meaning of the Act. The concept of jurisdiction has acquired "new dimensions". The original or pure theory of jurisdiction means, "the authority to decide", and it is determinable at the commencement, and not at the conclusion of the inquiry. The said approach has been given a go bye in *Anisminic* case, as we shall see from the discussion hereinafter [see De Smith, Woolf and Jowell] - *Judicial Review of administrative Action* (1995 edn.) p. 238; Halsbury's *Laws of England* (4th edn.) p.114 - para 67 - foot note (9)]. As Sir William Wade observes in his book, *Administrative Law* (7th edn.), 1994, at p. 299, "The tribunal must not only have jurisdiction at the outset, but must retain it unimpaired until it has discharged its task". The decision in *Anisminic* case has been cited with approval in a number of cases by this Court: Citation of few such cases; *Union of India (UOI) Vs. Tarachand Gupta and Bros*, , *A.R. Antulay Vs. R.S. Nayak and Another*, , *R.B. Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission (It and Wt) and Another*, , *N. Parthasarathy Vs. Controller of Capital Issues and Another*, , *Associated Engineering Co. Vs. Government of Andhra Pradesh and another*, , *Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others*, . Delivering the judgment of a two-member Bench in *Shri M.L. Sethi Vs. Shri R.P. Kapur, Methew, J.* in paragraphs 10 and 11 of the judgment explained the legal position after *Anisminic* case to the following effect:

The word "jurisdiction" is a verbal cast of many colours. Jurisdiction originally seems to have had the meaning which Lord Baid ascribed to it in *Anisminic Ltd. v. Foreign Compensation Commission* , (1969) 2 AC 147 , namely, the entitlement "to enter upon the enquiry in question". If there was an entitlement to enter upon an inquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Denman in *R. v. Bolton*, [1841] 1 QB 66."

(xi) In *Brundaban Sharmas* case 1995 Supp (3) SCC 249 (supra), in the context of a non est order, which is a void order and does not confer any title, it was held in paragraph No. 18 thus:

"Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did pass. But its authenticity and correctness was shrouded with suspicious features. The records

of the Tehsildar were destroyed. Who is to get the benefit? Who was responsible for it. The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. a non est order is a void order and it confers no title and its validity can be questioned or its invalidity be set up in any proceeding or at any stage."

(xii) In the context of at what stage, the order passed by the Tribunal/Court in a review petition would supersede the original order, in *Gour Krishna Sircar and Another Vs. Nilmadhab Saha and Others*, it was held thus:

"The procedure adopted in the lower Appellate Court seems to indicate that the various stages through which an application for review may pass was, perhaps, not - clearly appreciated. The matter commences, ordinarily, as is clear from Order 47 of the Civil Procedure Code, with an ex parte, application. The Court then may either reject the application at once or may grant a Rule calling on the other, side to show cause why the review should not be granted. In the second stage, the Rule may either be admitted or rejected, and it is obvious that the hearing of this Rule may involve to some extent an investigation into the merits. If the Rule is discharged, then the case ends. If, on the other hand, the Rule is made absolute, then the third stage is reached; the case is re-heard on the merits and may result in a repetition of the former decree or in some variation of it. Though, in one aspect, the result is the same, whether: the Rule be discharged or on the re-hearing the original decree be repeated, in law there is a material difference, for, in the latter case, the whole matter having been re-opened, there is a fresh decree; in the former case, the parties are relegated to and still rest on the old decree. Consequently, the order appropriate to a discharge of the Rule is the rejection of the application; an order so made terminates the second stage of the proceedings, and there is no third stage for the re-hearing of the case. This analysis of the successive stages of a proceeding for review of judgment, which, was given by Sir Lawrence Jenkins, C.J. in *Vadilal v. Fulchand* 30 B. 56 : 7 Bom. L.R. 664 and was adopted by Sir Henry Richards, C.J., in *Nanhe v. Mangat Rai*, 20 Ind. Cas. 647 is of fundamental importance. The failure to recognise the distinction between the second and third stages has, as appears from the cases in the books, led to the embarrassment of litigants in many instances."

(xiii) In *Sha Vadilal Hakamchands* case ILR XXX Bombay 56 (supra), explaining three stages of procedure involved in a review petition, Their Lordships held thus:

"A petition of review involves three stages of procedure. The first stage commences ordinarily with ex parte application under section 623 of the Civil Procedure Code. The Court may then either reject the application at once, or may grant a rule calling on the other side to show cause why the review should not be granted. In the second stage the rule may either be admitted or rejected

and the hearing of the rule may involve to some extent an investigation into the merits. If the rule is discharged then the case ends. If, on the other hand, the rule is made absolute, then the third stage is reached. The case is re- heard on the merits and may result in a repetition of the former decree or some variation of it. Though in one aspect the result is the same whether the rule be discharged or on the re-hearing the original decree be repeated, in law there is a material difference, for in the latter case, the whole matter having been re-opened, there is a fresh decree. In the former case the parties are relegated to, and still rest, on the old decree."

(xiv) In K.N. Mishra's case AIR 2003 Calcutta 307 (FB) (supra), the Full Bench of the Calcutta High Court held in paragraph No. 48 thus:

"Order 47 provides three stages for dealing with review. A review commences as is clear from Order 47 CPC with an ex parte application. The Court, then may either reject the application at once or may issue a rule calling on the other side to show-cause why the review should not be granted. This is the first stage. The second stage begins with the admission of the review application. This is followed by hearing the cause shown by the other side and the application. This hearing necessitates to some extent an investigation into the merits. If the rule is discharged, the case ends. The Chapter for review is closed at the second stage. If the rule is made absolute "then the procedure reaches the third stage. This is done under Rule 4. Then the case is re-heard on merits under Rule 8. Upon such hearing on merit, it may result in a repetition of the former decree or order or in some variation of it. Though, the result may be same whether the rule is discharged or on rehearing, the original decree is repeated, but in law, there is a material difference. In the latter case, the matter having been reopened, there is a fresh decree. In the former case, the parties are relegated to and still rest on the old decree. This distinction is of fundamental importance as was held in *Vadilal v. Fulchand* ILR1905 30 Bom 56 and *Nanhe v. Mangat Rai* , (1913) 20 IC 647 . The failure to recognize this distinction between the second and third stage led to the embarrassment of litigants in many instances, specially in the class of cases contemplated in Order 47 Rule 5 . The distinction is apparent and simple. From the scheme of Order 47 , it appears that after the first stage, if the review travels to the second stage, the review part is complete on the termination of the second stage. Inasmuch as either the review is rejected or granted. Once it is granted, the earlier order stands recalled and the suit or the appeal revives and the matter is re-heard in the third stage. This re-hearing is of the suit or appeal so revived and is something distinct from review. Order granting review under Rule 4 is appealable under Order 43 Rule 1(w) but rejection thereunder is not. The order passed upon re-hearing under Rule 8 is distinct and different from those under Rule 4. An order under Rule 3 is a decree or order passed in the original suit or appeal. It is subject to appeal under Section 96 or 100 or 104 CPC or under the Letters Patent or such other law as the case may be. It is not an order on the application for review. It assumes a complexion altogether different from an order of review. Once the order under review is recalled and the matter

is directed to be re-heard, it is no more a review subject, to Order 47 Rule 5 . Inasmuch as at the re-hearing, the case is reopened either wholly or in part and it is re-heard afresh. Even if after the third stage, the old decree or order is repeated, even then it would be a fresh order or decree passed in the suit or appeal after re-hearing. When the application for review is granted, the original decree or order is law stands vacated and the suit or the appeal stands revived. Once the suit or appeal stands revived, it cannot come within the scope of Order 47 Rule 5 . This is more so from the scheme of the procedure laid down in Order 47 ."

(xv) In *Maji Mohan Kanwar and Others Vs. The State of Rajasthan and Another*, , it was held in paragraph No. 5 thus:

"It is clear from the said scheme of Order 47 C. P. C. that it provides three stages for hearing, after a review application is filed The first stage comes when the application for grant of review is placed before the Judge or Judges under Rule 4, Sub-rule (1). At that stage, if it appears to the Court that there is not sufficient ground for a review, it should reject the application. If, on the other hand, the Court is satisfied that one or more of the grounds detailed in Rule 1 is made out prima facie, it should order notice to be issued to the opposite party to enable him to appear and be heard in support of the decree or order whose review is applied for. Thus, the first one is an ex parte stage because the opposite party is not present before the Court at that time. The next stage is reached when the same application (for grant of review) is placed for hearing before the Judge or Judges. At this stage, if the Court comes to the conclusion that the application for review should be granted, it should grant it under Sub-rule (2) of Rule 4. If, however, it is of opinion after hearing the opposite party that the application is not covered by Rule 1, it should be rejected. If the Rule is discharged, the matter ends there. If, on the other hand, the rule is made absolute, then the third stage is reached. This stage is arrived under Rule 8 after the original case is registered and the Court rehears it on merits. After rehearing, it may either result in repetition, or in reversal or in variation, of the former decree or order. In either case, since the whole matter is reheard, there is a fresh decree or order. The view which we have expressed stands fortified by the following observations made by Sir Lawrence B. Jenkins, Chief Justice of the Bombay High Court, sitting with another learned Judge in *Sha Vadilal Hakamchand v. Sha Fnlchand Umedram*, ILR (1906)30 Bom 56."

(xvi) In *Pakkiri Muhammad Rowthers* case AIR 1938 Madras 573 (supra), it was held thus:

"Before proceeding further, we may mention the relevant dates: (1) the lower appellate Court's decree was passed on 7th August, 1930; (2) the review application was made on 12th September, 1930; (3) the second appeal was filed on 9th January, 1931; and (4) the order on the review petition was passed on 14th November, 1931. We may at the outset refer to the valuable observations of Jenkins, C.J., as to the three stages of a review application. The first is the ex

parte stage when the Court may either reject the application at once or may grant a rule calling the other side to show cause why review should not be granted. In the second stage the rule may either be admitted or rejected. If the rule is discharged, the case ends then and there; if on the other hand the rule is made absolute, then the third stage is reached. The case is then neared on the merits and may result in a repetition of the former decree or in some variation of it. In either case, the whole matter having been re- opened, there is a fresh decree *Vadilal v. Fulchand* I.L.R.(1905) 30 Bom. 56 . This analysis by Jenkins, C.J., of the three successive stages is of fundamental importance, as observed by Gour Krishna Sircar and Another Vs. Nilmadhab Saha and Others, ."

20. (i) On the other hand, the Hon"ble Supreme Court in *Sushil Kumar Sen Vs. State of Bihar*, , relied on by the learned Advocate General, in the context of effect of allowing an application in review of decree referring to fact-situation occurring in that case held thus:

"The effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. *Nibaran Chandra Sikdar Vs. Abdul Hakim and Others*, ; *Kanhaiya Lal v. Baldeo Prasad*, ILR (1906) 28 All 240 ; *Brijbasi Lal and Others and Piyare Lal Vs. Salig Ram and Others*, and *Pyari Mohan Kundu Vs. Kalu Khan and Others*, , relied on. The respondent did not file any appeal from the decree dated August 18, 1961 awarding compensation for the land acquired at the rate of Rs.200 per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated August 18, 1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated September 26, 1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on August 18, 1961 awarding compensation for the land at the rate of Rs.200 per katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again. Hence, the High Court should have allowed the cross appeal, and dismissed the appeal, which was, and could only be against the decree passed on September 26, 1961 after the review. The result is that the decree of August 18, 1961 is restored."

(ii) In *Kunhayammed and Others Vs. State of Kerala and Another*, relied on by the learned Advocate General in the context of doctrine of merger, the Hon"ble Supreme Court held in paragraph No. 44 thus:

"To sum up our conclusions are :-

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject- matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of

High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C."

(iii) In *DSR Steel (P) Ltd. Vs. State of Rajasthan and Others*, , the Hon"ble Supreme Court held thus:

"Different situations may arise in relation to review petitions filed before a Court or Tribunal. One of the situations could be where the review application is allowed, the decree or order passed by the Court or Tribunal is vacated and the appeal/proceedings in which the same is made are re- heard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the Court hearing the review petition. The second situation that one can conceive of is where a Court or Tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review reversed or modified. Such an order shall then be a composite order whereby the Court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for purposes of a further appeal, if any, maintainable under law. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

(iv) In *Suseel Finance and Leasing Company Vs. M. Lata and Others*--> , it was held by the Hon"ble Supreme Court that appeal against High Courts order rejecting the review petition is not maintainable.

(v) In *M.N. Haider and Others Vs. Kendriya Vidyalaya Sangathan and Others*--> , the same principle was reiterated as held in *Suseel Finance and Leasing Company Vs. M. Lata and Others*--> .

(vi) In *Shanker Motiram Nale's case* (1994) 2 SCC 753 (supra), the Hon"ble Supreme Court held thus:

"This appeal is obviously incompetent. It is against an order of a Division Bench

of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal. No costs. I.A. No. 1/93 (Application for substitution)."

21. The learned Senior Counsel for the writ petitioner invited us to formulate a question for consideration as to whether the order passed by the Tribunal on 07.03.1995 on review in I.A. No. 1767 of 1994 even it confirms, supersedes the order in L.G.C. No. 10 of 1990 dated 05.10.1994. With due respects to his submission, we do not think to do so at this stage. These writ petitions are filed challenging the dismissal of I.A. Nos. 859, 860 and 888 of 2014. These applications were filed by the writ petitioner pursuant to the order of the Hon'ble Supreme Court dated 09.10.2009 in S.L.P.(C) No. 24389 of 2009. The Hon'ble Supreme Court while disposing of the said S.L.P., granted liberty to the petitioner to agitate all questions of law available to him including the question of maintainability in law before the Special Court. Learned counsel for the petitioner has no doubt submitted that since the question of law is involved, though, no amendment is introduced in the counter, still, this Court under Article 226 of the Constitution of India can deliberate on the issue agitated and to dispose of the writ petition without further subjecting the writ petitioner to submit himself to the Special Court. With due regards to his submission, we are of the opinion when the order of the Hon'ble Supreme Court expresses that the petitioner would be at liberty to agitate all questions of law available to him in law including the question of maintainability before the Special Court, with respect we opine that we would have to oblige the same, and, therefore, we are not inclined to express anything on the submissions touching the order passed in the review petition by the Special Court, which replaces the original order in the L.G.C. by supersession and the decisions relied on the main issue as well as the ancillary issue touching the stages in the review petition. It is no doubt true, the Special Court has considered the submission of the writ petitioner as respondent before it, touching the said issue and made an observation referred to herein before, but that would not, in any way, preclude the Special Court in deciding the maintainability after the counter is amended by addition of paragraph Nos. 15 and 16 and in the light of the authorities submitted by the learned counsel for the writ petitioner herein and the learned Advocate General for the respondent-State on being agitated before it (Special Court).

22. Turning to the question as to whether the orders can be maintained or liable to be set aside, we are of the view, that the amendment sought to be introduced is on account of changed events subsequent to passing of original order in L.G.C. and more particularly, when the Hon'ble Supreme Court has given liberty to agitate the questions of law including the maintainability available to the petitioner herein, the Special Court ought not to have refused to accede to the said amendment and dismissed the petition. Therefore, we are inclined to set aside the order passed by the Special Court dated 16.12.2014 in I.A. Nos. 859,

860 and 888 of 2014, and to allow the said petitions for introducing the amendment by addition of paragraph Nos. 15 and 16 in the counter filed in the L.G.C.

23. Adverting to the other two petitions, in which the relief of receiving the document and marking it by recalling R.W.1, are concerned, it is no doubt true, the said document was available when L.G.C. was originally pending, but still, in view of the liberty granted by the Hon"ble Supreme Court, we are of the view that it would be just and reasonable to allow both the applications by setting aside the orders passed by the Special Court.

24. Accordingly, all these three writ petitions are allowed granting the reliefs in setting aside the common order under challenge passed by the Special Court in I.A. Nos. 859, 860 and 888 of 2014, and consequently, allowing all the three interlocutory applications. Thus, we confine the reliefs to that extent alone. There shall be no order as to costs.

25. We would like to observe that the Special Court would dispose of the L.G.C. uninfluenced by the observations made herein, if any, and also uninfluenced by its own observation made in the common order under challenge.

26. As a sequel thereto, miscellaneous petitions, if any pending in the instant writ petitions, shall stand closed.