2023 INSC 949

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2023
[Arising out of SLP (C) No. 997 of 2022]

MUMTAZ YARUD DOWLA WAKF … APPELLANT(S)

VERSUS

M/S BADAM BALAKRISHNA
HOTEL PVT. LTD. & ORS. … RESPONDENT(S)

J U D G M E N T

M. M. Sundresh, J.

1. Leave granted.

2. A legal journey adopted by the appellant with periodical stoppages orchestrated in the process at behest of respondent no(s). 1 and 2 brought the *lis* back to the place where it started, forcing it to undertake a fresh guard by the impugned order.

3. This case is a classic example of the unfortunate situation taken note of and lamented by Right Honorable Sir James Colvilbe in **General Manager of the Raj Durbhunga v. Maharajah Coomar Ramaput Sing, 1872 SCC OnLine PC 16,**

> **"These proceedings certainly illustrate what was said by Mr. *Doyne*, and what has been often stated before, that the difficulties of a litigant in *India* begin when he has obtained a Decree…"**

The situation not only continues but has become more prevalent.

FACTUAL BACKGROUND

4. The appellant being the undisputed owner of the suit property executed a registered lease deed in favour of respondent no. 2. Respondent no. 1 concern is being represented by a person who is the son of the individual (since deceased) who represented respondent no. 2. The period of lease was for 33 years. The suit premises was sublet without permission by respondent no(s). 1 and 2.

5. After the expiry of the lease by efflux of time, the appellant issued a legal notice requiring respondent no. 2 to hand over the vacant possession. A reply was given stating that the possession having been handed over only on 25.11.1966, the lease subsists till 24.11.1999. On receipt of the said reply-notice by respondent no. 2 dated 05.06.1999, a second notice was issued by the appellant to which a different response came; that the said registered lease was extended orally for another 33 years. A reference was also made to the arbitration clause available under the original lease deed.

6. The appellant promptly filed a suit in O.S. No. 132 of 1999 before the Wakf Tribunal seeking a decree for ejectment and recovery of possession, along with arrears of rent and damages. After a prolonged litigation and delaying tactics employed at the hands of respondent no(s). 1 and 2, a decree was passed at last on 13.11.2002. The suit was

dismissed against defendant no(s). 3, 4, 5, and 7, while defendant no. 6 was set *ex-parte*. No plea with respect to the jurisdiction of the Wakf Tribunal was raised, while the aborted attempt to raise a defense of oral lease was rightly repelled.

7. Not being satisfied with the decree passed, respondents no(s). 1 and 2 filed a revision petition before the High Court being C.R.P. No. 5863 of 2002. It was dismissed *inter alia* holding that there is no legal basis to continue in occupation after the expiry of the lease.

8. The dilatory tactics adopted by respondent no(s). 1 and 2 continued even thereafter, to the extent that the appellant had to file an execution petition in E.P. No. 29 of 2014 on 18.10.2014. Even during the execution proceedings, respondent no. 2 did not raise the plea of maintainability of the suit. However, after four years during which time also the Court was successfully prevented through a series of applications/objections, obviously at the instance of the respondents, an additional counter was filed raising the plea that the suit as laid and decreed ought not to have been entertained in view of the dictum rendered by this Court in **Faseela M. v. Munnerul Islam Madrasa Committee and Another, (2014) 16 SCC 38** which in turn relied upon the decision rendered in **Ramesh Gobindram (Dead) through LRs. v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726**. The objection raised was not found to be tenable by the Executing Court by dismissing the application filed under Section 47 of the Code of Civil Procedure, 1908 (hereinafter referred to

as "**the Code**"). On a revision, the High Court of Telangana reversed the decision of the Executing Court by placing reliance upon the decision of this Court in **Ramesh Gobindram (*Supra*)**. The said order passed is under challenge in this appeal.

SUBMISSIONS

9. Dr. Abhishek Manu Singhvi and Shri Huzefa Ahmadi, learned senior counsel appearing for the appellant, fervently submitted that there was absolutely no objection raised by the contesting respondents till the stage of the execution petition. The decision rendered in **Ramesh Gobindram (*Supra*)** has been considered and explained by this Court in **Rashid Wali Beg v. Farid Pindari and Others, (2022) 4 SCC 414**. Such an exercise was also undertaken by this Court even on the earlier occasions. By the amendment brought in under the Act 27 of 2013, the basis of the decision in **Ramesh Gobindram (*Supra*)** has been removed. Even assuming that the impugned order is correct, the resultant situation would be that the appellant will have to file a suit before the Wakf Tribunal once again.

10. Supplementing the said submission, Shri K. Parameshwar, learned counsel appearing for respondent no. 8, the Wakf Board, submitted that even prior to the decision rendered in **Ramesh Gobindram (*Supra*)**, there was ample jurisdiction to try all suits pertaining to a Wakf and Wakf property, a fact correctly taken note of in **Rashid Wali Beg (*Supra*)**. Section 83 read with Section 85 of the Wakf Act, 1995

being distinct and independent provisions clothed the Wakf Tribunal with adequate jurisdiction.

11. Shri Shyam Divan, learned senior counsel appearing for the contesting respondents submitted that a plea of nullity can be taken at any stage. As held in **Ramesh Gobindram (*Supra*)**, Sections 6 and 7 of the Act 43 of 1995 do not confer the requisite jurisdiction on the Wakf Tribunal in deciding an issue *qua* an eviction of an individual from a Wakf property. As the impugned order was passed noting the dictum laid by this Court in **Ramesh Gobindram (*Supra*)**, there is no need for interference.

12. In support of the rival contentions, the learned counsel placed reliance upon the following decisions:

- Ramesh Gobindram (Dead) through LRs v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726
- Punjab Wakf Board v. Pritpal Singh & Anr., (2013) SCC Online SC 1345 : Civil Appeal No.8194 of 2013
- Faseela M. v. Muneerul Islam Madrasa Committee and Another, (2014) 16 SCC 38
- Punjab Wakf Board v. Sham Singh Harike & and Another, (2019) 4 SCC 698
- Telangana State Wakf Board & Anr. V. Mohamed Muzafar, (2021) 9 SCC 179

- Kiran Devi v. Bihar State Sunni Wakf Board and Others, (2021) 15 SCC 15
- Rashid Wali Beg v. Farid Pindari and Others, (2022) 4 SCC 414
- Kiran Singh and Others. v. Chaman Paswan and Others, 1955 (1) SCR 117 : AIR 1954 SC 340
- Chandrika Misir and Another v. Bhaiya Lal, (1973) 2 SCC 474
- Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) through His LRs, (1990) 1 SCC 193
- Chiranjilal Shrilal Goenka (Deceased) through LRs. v. Jasjit Singh and Others, (1993) 2 SCC 507
- Sarwan Kumar and Another v. Madan Lal Aggarwal, (2003) 4 SCC 147
- Ashok Leyland Ltd. v. State of T.N. and Another, (2004) 3 SCC 1
- Hindustan Zinc Ltd. (HZL) v. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC
- P.V Nidhish & Ors. v. Kerala State Wakf Board & Anr., (2023) SCC OnLine SC 519 : 2023 (7) SCALE 130.

13. Before dwelling into the merits of this case, we shall first go into the issues of law governing the submissions made.

EXECUTING COURT CANNOT GO BEYOND THE DECREE

14. The legal principle that an Executing Court cannot go beyond the decree stands fortified, subject to the rigor of Section 47 read with Order XXI of the Code. As a

matter of course, an Executing Court is enjoined with the duty to give effect to the decree. Any interference, including on a question involving jurisdiction, should be undertaken very sparsely as a matter of exception. The onus lies heavily on the judgment-debtor to convince the Court that a decree is inexecutable. When an exercise is likely to involve a factual adjudication, it should better be avoided.

15. The conduct of a party assumes significance. If a party is likely to have an undue advantage, despite the availability of an opportunity to raise a plea of lack of jurisdiction at an earlier point of time, it should not be permitted to do so during the execution proceedings. In other words, a plaintiff shall not be made to suffer by the passive act of the defendant in submitting to the jurisdiction. One has to see the consequence while taking note of the huge pendency of the cases before various Courts in the country. There is no gainsaying that but for the adverse decree suffered, a judgment-debtor would not have ventured to raise such a plea. It is clearly a case of an afterthought to suit his convenience. He cannot be allowed to approbate and reprobate. Though we are conscious about the earlier precedents dealing with the stage at which such a plea can be raised, much water has flown under the bridge in terms of the ground reality. **Union of India and Others v. N. Murugesan and Others, (2022) 2 SCC 25,**

> "***Approbate and reprobate***
> **26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the**

concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

27. We would like to quote the following judgments for better appreciation and understanding of the said principle:

27.1.*Nagubai Ammal* v. *B. Shama Rao* [*Nagubai Ammal* v. *B. Shama Rao*, 1956 SCR 451 : AIR 1956 SC 593] : (AIR pp. 601-02, para 23)

> "*23*. But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of *res judicata* or estoppel but on the principle that a person cannot both approbate and reprobate. It is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd.* v. *Hull & Netherlands Steamship Co. Ltd.* [(1921) 2 KB 608 (CA)], and in particular, the observations of Scrutton, LJ., at p. 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.
> Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J. : (*Verschures Creameries Ltd. case* [(1921) 2 KB 608 (CA)] , KB p. 611)
> '… Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act.'

The observations of Scrutton, L.J. on which the appellants rely are as follows : (*Verschures Creameries Ltd. case* [(1921) 2 KB 608 (CA)], KB pp. 611-12)

> '… A plaintiff is not permitted to "approbate and reprobate". The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument : *Ker* v. *Wauchope* [(1819) 1 Bligh PC 1 at p. 21 : 4 ER 1 at p. 8] : *Douglas-Menzies* v. *Umphelby* [1908 AC 224 at p. 232 (PC)] . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.'

It is clear from the above observations that the maxim that a person cannot "approbate and reprobate" is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in *Halsbury's Laws of England*, Vol. XIII, p. 464, para 512:

> 'On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it.'

27.2.*State of Punjab* v. *Dhanjit Singh Sandhu* [(2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)

> "*22*. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide *CIT* v. *MR. P. Firm Muar* [AIR 1965 SC 1216] .)
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> *23*. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide *Maharashtra SRTC* v. *Balwant Regular Motor Service* [AIR 1969 SC 329]). In *R.N. Gosain* v. *Yashpal Dhir* [(1992) 4 SCC 683] this Court has observed as under : (*R.N. Gosain case* [(1992) 4 SCC 683] , SCC pp. 687-88, para 10)
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> > '*10*. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some

advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.'

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25. The Supreme Court in *Rajasthan State Industrial Development & Investment Corpn.* v. *Diamond & Gem Development Corpn. Ltd.* [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of *estoppel in pais* (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

27.3.*Rajasthan State Industrial Development & Investment Corpn.* v. *Diamond & Gem Development Corpn. Ltd.* [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] : (SCC pp. 480-81, paras 15-16)

"**I. Approbate *and reprobate***

15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide *Nagubai Ammal* v. *B. Shama Rao* [1956 SCR 451 : AIR 1956 SC 593] , *CIT* v. *V. MR. P. Firm Muar* [AIR 1965 SC 1216] , *Ramesh Chandra Sankla* v. *Vikram Cement* [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , *Pradeep Oil Corpn.* v. *MCD* [(2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712] , *Cauvery Coffee Traders* v. *Hornor Resources (International) Co. Ltd.* [(2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and *V. Chandrasekaran* v. *Administrative Officer* [(2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416].

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of *estoppel in pais* (or equitable estoppel), which is a rule of equity. By this law, a person

> may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."
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> (emphasis supplied)

16. There is a subtle difference when we deal with a case involving *coram non-judice*. The principle governing lack of jurisdiction to a forum may differ from a case where two or more forums deal with the same issue along with the rights and liabilities of the parties. To make the position clear, one has to see as to whether there is any change in the rights and liabilities of the parties by choosing one forum as against the other. As an example, we can take the case of eviction of a tenant. If he is to be evicted only under the Rent Control Act which extends a certain right to the tenant, who cannot be evicted otherwise than under the provisions contained therein, a common law remedy cannot be invoked by way of a suit as against a proceeding before the Rent Controller. In that view of the matter, certainly the question of prejudice would arise. However, in a case involving same rights and liabilities but the question is only with respect to the forum being judicial or quasi-judicial, the issue of jurisdiction would pale into insignificance when it is sought to be raised as a last straw at a very belated stage. Therefore, when the process becomes the same for both parties who undertake the said route willingly, the question of jurisdiction cannot be put against each other after it has attained finality, unless it is demonstrated that the rights of the party who suffered the decree are obliterated.

CHANGE OF FORUM

17. We shall now come to the issue of retrospective application and change of forum. As discussed, when a statute is amended on an issue pertaining to a forum for adjudication, it being procedural takes effect retrospectively. A party to a *lis* does not have any vested right of forum as against action. In the absence of any substantive right being subsumed by a particular forum, one has to give retrospective application. **New India Insurance Co. Ltd. v. Smt. Shanti Misra, Adult, (1975) 2 SCC 840,**

> "5. On the plain language of Sections 110A and 110F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. **a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective.** The expressions "arising out of an accident" occurring in sub-section (1) and "over the area in which the accident occurred", mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in sub-section (3) created an obstacle in the straight application of the well-established principle of law. If the accident had occurred within 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power to condone the delay under the proviso. But if the accident occurred more than 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay under the proviso to sub-section (3), and led others to say that the tribunal will have no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110F of the Act. While

taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110A and 110F was a law relating to the change of forum."

(emphasis supplied)

18. **Hitendra Vishnu Thakur and Others v. State of Maharashtra and Another, (1994) 4 SCC 602,**

"26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(*i*) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.
(*ii*) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.
(*iii*) Every litigant has a vested right in substantive law but no such right exists in procedural law.
(*iv*) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.
(*v*) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

(emphasis supplied)

19. **Neena Aneja and Another v. Jai Prakash Associates Ltd., (2022) 2 SCC 161,**

"58. SEBI argued before this Court that a change of the forum for trial was a matter of mere procedure and would, therefore, be retrospective, there being no express or implied intent either in the 2002 and 2014 Amendments that the amendments were intended to be of prospective effect. J.S. Khehar, J. speaking for the two-Judge Bench of this Court adverted to the decisions inter alia in *New India Assurance* [*New India Assurance Co. Ltd.* v. *Shanti Misra*, (1975) 2 SCC 840] , *Ramesh Kumar Soni* [*Ramesh*

Kumar Soni v. *State of M.P.*, (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340] and *Hitendra Vishnu Thakur* [*Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , and observed in that context : (*Classic Credit case* [*SEBI* v. *Classic Credit Ltd.*, (2018) 13 SCC 1 : (2019) 1 SCC (Cri) 431] , SCC pp. 67-68, para 49)

> "*49.* … In our considered view, the legal position expounded by this Court in a large number of judgments including *New India Assurance Co. Ltd.* v. *Shanti Misra* [(1975) 2 SCC 840] ; *SEBI* v. *Ajay Agarwal* [(2010) 3 SCC 765 : (2010) 2 SCC (Cri) 491] and *Ramesh Kumar Soni* v. *State of M.P.* [(2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340] , is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise. And also, that generally change of "forum" of trial is procedural, and normally following the above proposition, it is presumed to be retrospective in nature unless the amending statute provides otherwise. This determination emerges from the decision of this Court in *Hitendra Vishnu Thakur* v. *State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] ; *Ranbir Yadav* v. *State of Bihar* [(1995) 4 SCC 392 : 1995 SCC (Cri) 728] and *Kamlesh Kumar* v. *State of Jharkhand* [(2013) 15 SCC 460 : (2014) 6 SCC (Cri) 489] , as well as, a number of further judgments noted above."

59. The above observations indicate the clear view of this Court that:

59.1. In the absence of a contrary intent express or implied, procedural amendments are presumed to be retrospective.

59.2. A change in the forum of a trial is a procedural matter.

59.3. Since a change of forum is procedural, a statute which brings about the change is presumed to be retrospective in the absence of a contrary intent.

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C.23. *Conclusion on the position of law*

72. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity—a clear position of law has emerged : a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in *New India Assurance* [*New India Assurance Co. Ltd.* v. *Shanti Misra*, (1975) 2 SCC 840] , *Maria Cristina* [*Maria Cristina De Souza Sodder* v. *Amria Zurana Pereira Pinto*, (1979) 1 SCC 92] , *Hitendra Vishnu Thakur* [*Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , *Ramesh Kumar Soni* [*Ramesh Kumar Soni* v. *State of M.P.*, (2013) 14 SCC 696 : (2014) 4 SCC (Cri)

340] and *Sudhir G. Angur* [*Sudhir G. Angur* v. *M. Sanjeev*, (2006) 1 SCC 141] . More recently, this position has been noted in a three-Judge Bench decision of this Court in *Manish Kumar* v. *Union of India* [(2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50] . However, there was a deviation by a two-Judge Bench decision of this Court in *Dhadi Sahu* [*CIT* v. *Dhadi Sahu*, 1994 Supp (1) SCC 257] , which overlooked the decision of a larger three-Judge Bench in *New India Assurance* [*New India Assurance Co. Ltd.* v. *Shanti Misra*, (1975) 2 SCC 840] and of a coordinate two-Judge Bench in *Maria Cristina* [*Maria Cristina De Souza Sodder* v. *Amria Zurana Pereira Pinto*, (1979) 1 SCC 92] . The decision in *Dhadi Sahu* [*CIT* v. *Dhadi Sahu*, 1994 Supp (1) SCC 257] propounded a position that : (*Dhadi Sahu case* [*CIT* v. *Dhadi Sahu*, 1994 Supp (1) SCC 257] , SCC p. 262, para 21)

> "*21. … no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal*."
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> (emphasis supplied)

In taking this view, the two-Judge Bench did not consider binding decisions. *Dhadi Sahu* [*CIT* v. *Dhadi Sahu*, 1994 Supp (1) SCC 257] failed to consider that the saving of pending proceedings in *Mohd. Idris* [*Mohd. Idris* v. *Sat Narain*, (1966) 3 SCR 15 : AIR 1966 SC 1499] and *Manujendra Dutt* [*Manujendra Dutt* v. *Purnedu Prosad Roy Chowdhury*, (1967) 1 SCR 475 : AIR 1967 SC 1419] was a saving of vested rights of the litigants that were being impacted by the repealing Acts therein, and not because a right to forum is accrued once proceedings have been initiated. Thereafter, a line of decisions followed *Dhadi Sahu* [*CIT* v. *Dhadi Sahu*, 1994 Supp (1) SCC 257] , to hold that a litigant has a crystallised right to a forum once proceedings have been initiated. A litigant's vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings, unless a contrary intention appears from the repealing or amending statute."

COURT MUST SATISFY ITSELF AS TO THE EXISTENCE OF JURISDICTION

Section 9 of the Code

> "9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.

> *Explanation I.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
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> *Explanation II.*—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

20. On a proper construction of Section 9 of the Code, it is clear that the court has to *prima facie* satisfy itself as to the existence of the jurisdiction. Such an exercise will avoid putting the parties to unnecessary risk and difficulty. **Vankamamidi Venkata Subba Rao v. Chatlapalli Seetharamaratna Ranganayakamma, (1997) 5 SCC 460**,

> "**15.** This Court in *Vatticherukuru Village Panchayat* v. *Nori Venkatarama Deekshithulu* [1991 Supp (2) SCC 288] after considering the entire case-law, had held that the civil court has no jurisdiction to go into the correctness of the patta granted by the Settlement Authorities. Under Section 9 CPC, the courts shall, subject to the provisions contained therein, have jurisdiction to try all suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil courts would take cognizance of it. Therefore, the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set-up governed by rule of law and jurisdiction of the civil courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded. **However, in the development of civil adjudication of civil disputes, due to pendency of adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of disputes with less expensive but expeditious disposal. It is settled legal position that if a tribunal with limited jurisdiction cannot assume jurisdiction and decide for itself the dispute conclusively, in such a situation, it is the court that is required to decide whether the tribunal with limited jurisdiction has correctly assumed jurisdiction and decided the dispute within its limits. It is also equally settled that when jurisdiction is conferred on a tribunal, the courts examine whether the essential principles of jurisdiction have been followed and decided by the tribunals leaving the decision on merits to the tribunal. It is also an equally settled legal position that where a statute gives finality to the orders of the special tribunal, the civil court's jurisdiction must be held to be excluded, if**

> **there is adequate remedy to do what the civil court would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Where there is an express bar of jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the enquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability and provides procedure for the determination of the right or liability and further lays down that all questions about the said right or liability shall be determined by the tribunal so constituted and whether remedies are normally associated with the action in civil courts or prescribed by the statutes or not. Therefore, each case requires examination whether the statute provides right and remedies and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil court in respect thereof.** After the advent of independence, land reforms was one of the policies of the Government abolishing feudal system of land tenures and conferment of the ryotwari patta on the tiller of the soil. Thereby, the land reform laws extinguish pre-existing rights and create new rights under the Act. The Act confers jurisdiction on the tribunals in matters relating thereto and hierarchy of appeals/revisions are provided thereunder giving finality to the orders passed thereunder. Thereby, by necessary implication, the jurisdiction of the civil court to take cognizance of the suits of civil nature covered under the land reform laws stands excluded giving not only finality to the decisions of the tribunal but also ensuring expeditious, inexpensive and simple procedure for disposal of the matters by the tribunal and make the ryotwari patta granted to the tiller of the soil conclusive. Under the normal course of civil procedure, the jurisdiction of the trial of the civil suits in relation to the matters covered under the Acts being time-consuming and tardy the lack of financial support or otherwise incapacity in defending or working the rights in the civil courts and by hierarchy of appeals defeat justice. Obviously, therefore, the civil suits by necessary implication stand excluded unless the fundamental principles of procedure are not followed by the tribunals constituted under the land reform laws. In this case, the Act concerned extinguishes the pre-existing right, creates new rights under the Act and requires tribunals to enquire into the rival claims and a form of appeal has been provided against the order of the primary authority. Thereby the right and remedy made conclusive under the Act are given finality by the orders passed under the Act. Thereby, by necessary implication, the jurisdiction of the civil court stands excluded."

(emphasis supplied)

21. Every case is a journey towards truth. A procedural law, as repeatedly settled by this Court, is a handmaid of justice. There is an inherent sense of equity and fair play in

the proceedings of the Court. When a *lis* is entertained it is the paramount duty of the Court to check on itself and satisfy the existence of jurisdiction, despite being not raised by the parties. Such an exercise would not only prevent injustice but will also take care of a party taking advantage of its own wrong. It has to apply the principle of *nullus commodum capere potest de injuria sua propria* (no man can take advantage of his own wrong) in order to prevent any miscarriage of justice. When the court is satisfied that one party to the dispute is manipulating the process to perpetuate illegality and to the detriment of the other, it should go beyond the procedural entrapment by rendering correct justice. **Ashok Kapil v. Sana Ullah, (1996) 6 SCC 342,**

> "**7.** If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. **But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim "*Nullus commodum capere potest de injuria sua propria*" (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.**"
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> (emphasis supplied)

22. **Eureka Forbes Ltd. v. Allahabad Bank, (2010) 6 SCC 193,**

> **"66. The maxim *nullus commodum capere potest de injuria sua propria* has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations.** In the present case Respondents 2 and 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon Respondents 2 and 3 and in any case on the appellant. The Bench of this Court in *Ashok Kapil* v. *Sana Ullah* [(1996) 6 SCC 342] referred to rule of mischief and while explaining the word "building", held as under: (SCC p. 346, para 11)
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> > "*11. Stroud's Judicial Dictionary* (Vol. I of the 5th Edn.) states that 'what is a building must always be a question of degree and circumstances'. Quoting

> from *Victoria City Corpn.* v. *Bishop of Vancouver Island* [(1921) 2 AC 384 (PC)] (AC at p. 390), the celebrated lexicographer commented that 'the ordinary and natural meaning of the word "building" includes the fabric and the ground on which it stands'. In *Black's Law Dictionary* (5th Edn.) the meaning of 'building' is given as 'A structure or edifice enclosing a space within its walls, and usually, *but not necessarily*, covered with a roof'. (emphasis in original). The said description is a recognition of the fact that roof is not a necessary and indispensable adjunct for a building because there can be roofless buildings. So a building, even after losing the roof, can continue to be a building in its general meaning. Taking recourse to such general meaning in the present context would help to prevent a mischief."
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> (emphasis supplied)

23. The mandatory duty of the Court in confirming its own jurisdiction has been taken note of and dealt with succinctly by Griffith, C.J. in **Federated Engine Drivers and Firemen's Association of Australasia v Broken Hill Proprietary Co. Ltd., (1911) 12 CLR 398,**

> "If they exist, it is quite immaterial to inquire by what route the President arrived at a right conclusion. If they do not, it is equally unimportant to inquire how he fell into error. In such a matter this Court is not a Court of Appeal from him.
>
> **But the first duty of every judicial officer is to satisfy himself that he has jurisdiction, if only to avoid putting the parties to unnecessary risk and expense.** In this respect a grave responsibility rests upon the President, whose jurisdiction is limited both by the Constitution and the Act. This responsibility is not diminished by tbe possibility that he may be misled by imperfect or erroneous information. The mode of satisfying himself may vary in different cases. In most cases that come before an ordinary Court of law it is not necessary to make any inquiry."
>
> (emphasis supplied)

24. The aforesaid principle of law has been quoted with approval by the New South Wales Court of Appeal (Australia) *in* **Zhang v. Zemin (2010) 79 NSWLR 513,**

> "**37. A further, alternative, reason for rejecting the appellant's contentions is that there is a long line of authority that a court must satisfy itself that it has jurisdiction, whether or not a jurisdictional issue is raised by a party.**

38. As Mr H Burmester QC, who appeared for the Attorney, submitted, the Court would have had to address this issue even if the Attorney had not intervened and even without the application for default judgment.

39. The determination of whether or not it has jurisdiction has been described as the "first duty" of a court. (See Federated Engine Drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd (1911) 12 CLR 398 at 415 per Griffith CJ.) That case involved a legislative scheme providing for a jurisdictional fact. As Isaacs J said in that context at 454:

> **"What [the court] has to do at the outset is to satisfy its mind that it is not overstepping the bounds which Parliament has laid down for it."**

40. To similar effect are the observations of Barton J when he said at 428:

> **"Where the jurisdiction is disputed, adequate and careful inquiry is still the duty of the superior Court. On the other hand, where the jurisdiction is not contested by the party defending, very slight inquiry may be adequate, and many cases will to the mind of the tribunal be so plainly within its competence that it will rightly forego inquiry unless the objection is taken, and the objector tenders proof of facts in its support."**

41. The observations of Griffith CJ and Barton J in Federated Engine Drivers supra, were applied by Fullagar J in *The King v Blakeley*; *Ex parte The Association of Architects, Engineers, Surveyors and Draughtsmen of Australia* (1950) 82 CLR 54 at 90-91, where his Honour accepted of the language of "duty".

42. In *Cockle* v *Isaksen* (1957) 99 CLR 155, neither party wished to challenge the jurisdiction of the High Court to hear a particular appeal. However, the Court permitted the Commonwealth to intervene to argue the issue of validity, without, in that case, becoming a party…"

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44. The observations of Barton J in *Federated Engine Drivers*, quoted at [40] above, indicate that it is not essential for an issue of jurisdiction to be raised by a party to proceedings. That matter had earlier been determined by the High Court in the course of a preliminary application in *Federated Amalgamated Government Railway and Tramway Service Association v The NSW Railway Traffic Employees' Association* (1906) 4 CLR 488. Objection had been taken to a point being raised by an intervenor concerning the validity of the statute, on the basis that such a point should not be raised except in litigation between parties, where it is necessary to determine the issue of validity. Griffith CJ, with whom Barton and O'Connor JJ agreed, said at 495:

> **"A point of jurisdiction, when it is seriously raised or, if it suggests itself to the Court without being taken by a party, cannot properly be disregarded**."

(emphasis supplied)

25. Having dealt with the aforesaid principle and making it applicable to the Courts in India, we are inclined to hold that any failure on the part of the Court to do so would draw the legal maxim "*actus curiae neminem gravabit'* (no one shall be prejudiced by an act of Court). As a consequence, in a case where a Court has failed to check its jurisdiction and a plea has been raised subsequently and that too after receiving an adverse verdict, the forum shall not be declared as the one having lack of jurisdiction, especially when there is no apparent injury otherwise to the rights conferred under a particular statute. **Indore Development Authority v. Manoharlal and Others, (2020) 8 SCC 129,**

> "**320.** The maxim *actus curiae neminem gravabit* is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted *commodum ex injuria sua nemo habere debet*, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In *Mrutunjay Pani* v. *Narmada Bala Sasmal* [AIR 1961 SC 1353] , this Court observed that : (AIR p. 1355, para 5)
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> > "*5.* … The same principle is comprised in the Latin maxim *commodum ex injuria sua nemo habere debet*, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."
>
> xxxxx
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> **324.** In *Mahadeo Savlaram Shelke* v. *Pune Municipal Corpn.* [(1995) 3 SCC 33] , it has been observed that the Court can under its inherent jurisdiction *ex debito justitiae* has a duty to mitigate the damage suffered by the defendants by the act of the court. Such action is necessary to put a check on abuse of process of the court. In *Amarjeet Singh* v. *Devi Ratan* [(2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108], and *Ram Krishna Verma* [*Ram Krishna Verma* v. *State of U.P.*, (1992) 2 SCC 620] , it was observed that no person can suffer from the act of court and unfair advantage of

the interim order must be neutralised. In *Amarjeet Singh* [*Amarjeet Singh* v. *Devi Ratan*, (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108] , this Court observed : (SCC pp. 422-23, paras 17-18)

> "*17.* No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the case, and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation, the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. (Vide *Shiv Shankar* v. *U.P. SRTC* [1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018] , *GTC Industries Ltd.* v. *Union of India* [(1998) 3 SCC 376] and *Jaipur Municipal Corpn.* v. *C.L. Mishra* [(2005) 8 SCC 423]).
>
> *18.* In *Ram Krishna Verma* v. *State of U.P.* [(1992) 2 SCC 620] , this Court examined a similar issue while placing reliance upon its earlier judgment in *Grindlays Bank Ltd.* v. *CIT* [(1980) 2 SCC 191 : 1980 SCC (Tax) 230] and held that no person can suffer from the act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised."

325. In *Karnataka Rare Earth* v. *Deptt. of Mines & Geology* [(2004) 2 SCC 783] , this Court observed that maxim *actus curiae neminem gravabit* requires that the party should be placed in the same position but for the court's order which is ultimately found to be not sustainable which has resulted in one party gaining advantage which otherwise would not have earned and the other party has suffered but for the orders of the court. The successful party can demand the delivery of benefit earned by the other party, or make restitution for what it has lost. This Court observed : (SCC pp. 790-91, paras 10-11)

> "*10.* In … the doctrine of *actus curiae neminem gravabit* and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution that is attracted. *When on account of an act of the party, persuading the court to pass*

an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered, but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand : (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost.

11. In the facts of this case, in spite of the judgment [*Karnataka Rare Earth* v. *Department of Mines & Geology*, WPs No.. 4030-4031 of 1997, order dated 1-12-1998 (KAR)] of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-section (5) of Section 21. As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. *The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders*. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay the price more than what they have realised from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable."

(emphasis in the original)

326. In *A.R. Antulay* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , this Court observed that it is a settled principle that an act of the court shall prejudice no man. This maxim *actus curiae neminem gravabit* is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. No man can be denied his rights. In India, a delay occurs due to procedural wrangles. In *A.R. Antulay* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372], this Court observed : (SCC p. 687, para 102)

"*102*. This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in *Montreal Street Railway Co.* v. *Normandin* [1917 AC 170 (PC)] (sic) stated:

> 'All rules of court are nothing but provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose.'

This Court in *State of Gujarat* v. *Ramprakash P. Puri* [(1969) 3 SCC 156 : 1970 SCC (Cri) 29] , reiterated the position by saying : (SCC p. 159, para 5)

> '*5.* … Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause.'

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on principle, as indicated in *Alexander Rodger case* [*Alexander Rodger* v. *Comptoir D'Escompte De Paris*, (1969-71) LR 3 PC 465 : 17 ER 120] . I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan, J. speaking for a four-Judge Bench in *Keshardeo Chamria* v. *Radha Kissen Chamria* [(1952) 2 SCC 329 : 1953 SCR 136 : AIR 1953 SC 23] , SCR p. 153 stated : (AIR p. 28, para 21)

> '*21.* … The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors.' "

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328. Reliance was placed on *Neeraj Kumar Sainy* v. *State of U.P.* [(2017) 14 SCC 136 : 8 SCEC 454] There, this Court observed that no one should suffer any prejudice because of the act of the court; the legal maxim cannot operate in a vacuum. It has to get the sustenance from the facts. As the appellants resigned to their fate and woke up to have control over the events forgetting that the law does not assist the non-vigilant. One cannot indulge in the luxury of lethargy, possibly nurturing the feeling that forgetting is a virtue. If such is the conduct, it is not permissible to take shelter under the maxim *actus* curiae *neminem gravabit*. There is no dispute with the aforesaid principle. Party has to be vigilant about the right, but the ratio cannot be applied. In the opinion, the ratio in the decision cannot be applied for the purpose of interpretation of Section 24(2)."

26. When a specialized forum is made available under a statute, a civil court should normally entertain a dispute which would otherwise not be amenable before the said

forum. Therefore, rights and liabilities of the parties arising from an enactment ought to be adjudicated upon in tune with the mechanism provided thereunder. The reason being that the provisions of the enactment ought to be given effect to through such forums and therefore to the exclusion of a civil court whose jurisdiction is otherwise to be inferred. J. Willes in **Wolverhampton New Waterworks Co. v. Hawkesford [1859] 6 C.B. (NS) 336**,

> "One is where there was a liability existing at common law, and that liability is affirmed by a Statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the Statute contains words which expressly or by necessary implication exclude the common law remedy the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the Statute gives the right to sue merely, but provides, no particular form of remedy: there, the party can only proceed by action at common law. **But there is a third class, *viz*., where a liability not existing at common law is created by a Statute which at the same time gives a special and particular remedy for enforcing it ..... The remedy provided by the Statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class.**"

(emphasis supplied)

27. As a principle of law, the powers of the civil court, being plenary in nature, the onus lies on the party who contends that it lacks jurisdiction. However, this does not take away the duty of the civil court to check its own jurisdiction, more so when a specialized forum has come into being as a creature of a statute. Of course, there may be certain exceptions when fundamental principles governing common law, including the one pertaining to the principle of natural justice, stand violated. To deal with the said issue one has to take into consideration the objective behind the

enactment, along with the provisions contained thereunder. **Dhulabhai etc. v. State of Madhya Pradesh and Another, (1968) 3 SCR 662 : AIR 1969 SC 78,**

> "32. Neither of the two cases of Firm of Illuri Subayya, 1964-1 SCR 752 = (AIR 1964 SC 322) or Kamla Mills, 1966 1 SCR 64 = (AIR 1965 SC 1942) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:
>
> **(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.**
> **(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.**
> **Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.**
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> xxxxx
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> **(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply**."
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> (emphasis supplied)

The aforesaid decision of the Constitution Bench of this Court is also followed in a catena of judgments including the one in **M. Hariharasudhan v. R. Karmegam, (2019) 10 SCC 94.**

EFFECT OF REMOVING THE BASIS OF JUDGMENT

28. On the question of the effect of removal of the basis of the judgment, once again, the distinction between a procedural and substantial law has to be kept in mind. An adjudicating forum being a product of a procedural right has to come under retrospective operation when an amendment is introduced to cure a defect which paved the way for a decision of the Court in holding otherwise. **Madras Bar Association v. Union of India and Another, (2022) 12 SCC 455,**

> **"*50*. The permissibility of a legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:**
>
> ***50.1*. The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. (*Lohia Machines Ltd.* v. *Union of India* [*Lohia Machines Ltd.* v. *Union of India*, (1985) 2 SCC 197 : 1985 SCC (Tax) 245]).**
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> ***50.2*. The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.**
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> *50.3*. Nullification of mandamus by an enactment would be impermissible legislative exercise (see *S.R. Bhagwat* v. *State of Mysore* [(1995) 6 SCC 16 : 1995 SCC (L&S) 1334]). Even interim directions cannot be reversed by a legislative veto (see *Cauvery Water Disputes Tribunal* [*Cauvery Water Disputes Tribunal, In re*, 1993 Supp (1) SCC 96 (2)]) and *Medical Council of India* v. *State of Kerala* [(2019) 13 SCC 185] .
>
> *50.4*. Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."
>
> (emphasis supplied)

RASHID WALI BEG (*SUPRA*)

29. This Court has taken note of the earlier decision rendered in **Ramesh Gobindram (*Supra*)** and held that after the amendment made by the Act 27 of 2013, the basis of the said decision is correctly removed. It was further held that there are sufficient provisions even otherwise to maintain a suit for eviction over a Wakf property. While giving our imprimatur to the decision in **Rashid Wali Beg (*Supra*)**, which in fact took into consideration the decisions subsequent to **Ramesh Gobindram (*Supra*)**, we do not wish to elaborate much except quoting the following paragraphs,

> "**45. Interestingly, the basis of the decision in *Ramesh Gobindram* [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, Ramesh Gobindram (Supra) sought to address the question whether a Waqf Tribunal was competent to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, Section 83(1) was amended by Act 27 of 2013 to include the words, "*eviction of tenant or determination of rights and obligations of the lessor and lessee of such property*".**
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> xxxxx
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> **47. The upshot of the above discussion is that the basis of *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] now stands removed through Amendment Act 27 of 2013.** In fact, when *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was decided, Sections 6(1) and 7(1) enabled only three categories of persons to approach the Waqf Tribunal for relief. They are, (*i*) the Board; (*ii*) the mutawalli of the waqf; or (*iii*) any person interested therein. However, the Explanation under Section 6(1) clarified that the expression "*any person interested therein*" shall include every person, who, though not interested in the waqf, is interested in the property. But by Act 27 of 2013 the words, "*any person interested*" were substituted by the words, "*any person aggrieved*", meaning thereby that even a non-Muslim is entitled to invoke the jurisdiction of the Tribunal. Due to the substitution of the words "*any person aggrieved*", Act 27 of 2013 has deleted the Explanation under 6(1). This amendment has also addressed the concern expressed in *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] (in para 21 of the SCC report) whether a non-Muslim could be put to jeopardy by the bar of jurisdiction, merely because the property is included in the list of waqfs. We must point out at this stage that the Explanation

under sub-section (1) of Section 6, as it stood at the time when *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was decided, already took care of this contingency, but was omitted to be brought to the notice of this Court.

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64. We have already seen that it is not as though there was no provision in the Waqf Act conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of Section 83 into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. After Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal. Though the proceedings out of which the present appeal arises, were instituted before the Amendment Act, the words "*any dispute, question or other matter relating to a waqf or waqf property*" are sufficient to cover any dispute, question or other matter relating to a waqf property. This is why *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was sought to be distinguished both in *Anis Fatma Begum* [*W.B. Wakf Board* v. *Anis Fatma Begum*, (2010) 14 SCC 588 : (2012) 1 SCC (Civ) 773] and *Pritpal Singh* [*Punjab Wakf Board* v. *Pritpal Singh*, 2013 SCC OnLine SC 1345] and such distinction was taken note of in *Akkode Jumayath Palli Paripalana Committee* [*Akkode Jumayath Palli Paripalana Committee* v. *P.V. Ibrahim Haji*, (2014) 16 SCC 65 : (2015) 3 SCC (Civ) 446] . Additionally, this Court in *Kiran Devi* [*Kiran Devi* v. *Bihar State Sunni Wakf Board*, (2021) 15 SCC 15 : 2021 SCC OnLine SC 280] , refused to apply the ratio of *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] , on the ground that the suit was originally instituted before the civil court, but was later transferred to the Waqf Tribunal and that after allowing the order of transfer to attain finality, it was not open to them to resurrect the issue through *Ramesh Gobindram* [*Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553].

65. It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter *(i)* relating to a waqf; and *(ii)* relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1)."

(emphasis supplied)

30. On a proper analysis of the said decision, we have no hesitation in holding that the Wakf Tribunal has got sufficient jurisdiction to try every suit pertaining to either a

Wakf or a Wakf property, notwithstanding the nature of relief concerned, except as mandated under the statute.

31. We would like to consider one more issue by drawing a distinction between institution and adjudication. Institution of a suit before a forum where an adjudication process is the same as the other, insofar as the rights and liabilities are concerned, has got no relevancy when subsequently either an act or amendment has been brought forth conferring the jurisdiction to some other forum. In other words, the issue for consideration is the forum to adjudicate. This principle is subject to the rider that it may not have an application when there is already a decree where a party has not raised the issue of jurisdiction at any point before.

ON FACTS

32. The High Court while passing the impugned order, unfortunately did not have the benefit of the decision rendered in **Rashid Wali Beg (*Supra*)**. Even otherwise, as per the amendment by way of the Act 27 of 2013, the jurisdiction now lies with the Wakf Tribunal. Respondent no(s). 1 and 2 have continuously put spokes on the wheels of justice as protracted proceedings have helped them to be in possession for over two decades, notwithstanding the expiry of the lease way back in the year 1999. We do not wish to say much on the conduct of respondents no(s). 1 and 2 as the facts narrated speak for themselves. The Act 27 of 2013 is certainly a procedural amendment and therefore, has to be applied retrospectively in the context of change

of forum and jurisdictional provisions. As stated, we are in respectful agreement with the decision rendered in **Rashid Wali Beg (*Supra*)**. The amendment has been brought forth in order to get over the interpretation given in **Ramesh Gobindram (*Supra*)**. Therefore, we have no hesitation in setting aside the order impugned passed by the High Court in C.R.P. No. 1264 of 2021 dated 23.11.2021, by restoring the one passed by the Executing Court, i.e. the Court of the III-Additional Chief Judge, City Civil Court at Hyderabad in E.P. No. 29 of 2014 dated 10.08.2021. The appeal stands allowed. No costs.

……..J.
(M. M. SUNDRESH)

……..J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
OCTOBER 20, 2023