

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

SECOND APPEAL NO. 557 OF 2014

Union of India through
Deputy Salt Commissioner,
Government of India
Exchange Building, 4th Floor,
Sir Shivagar Ramgulam Marg,
Ballard Estate,
Mumbai – 400 038.

.. Appellant
(Org.Plaintiffs)

Vs.

1. Alark Laxman Desai
(Executors and Trustee of the Will of
Late Shri Narayan Moreshwar Kirtikar)
2. Chiranjivi W/o Nilkanth Anand
3. Manek @ Pushpa W/o
Laxman Gajanan Desai
4. Ashwin Laxman Desai

R/o. Gayatri Mandir, Near CKP Hall,
Kharkar Ali, Thane (West),
Taluka and District Thane.

.. Respondent
(Org.Defendant)

Mr. Anil C. Singh- Additional Solicitor General a/w Mr. Sandesh Patil, Mr. S.R. RajGuru, Dr.G.R.Sharma and Mr. D.P.Singh and Yash Momaya, for the Union of India.

Mr.C.G.Gavnekar a/w Mr.G.S.Hiranandani and Mr.Suhas Deokar, for the Respondent No.1.

*CORAM : N.M.Jamdar, J.
Tuesday, 16 August 2016.*

Oral Judgment :

The Union of India through the Deputy Salt Commissioner, Mumbai, has filed this Appeal. The Union of India challenges the judgment and order dated 31 December 2013 passed by the District Judge, Thane confirming the judgment and order passed by Civil Judge, Senior Division, Thane, dated 1 January 2012. Both the Courts have held that the civil suit filed by the Union of India is not maintainable and have allowed the application filed by the Respondents for rejection of the plaint.

2. The suit property is situated at village Rai Murdhe, taluka and district Thane. It admeasures 14 hectares and 32 Ares. The Respondents use the land for manufacturing salt.

3. The history of statutory enactments governing the ownership of the salt land in this area dates back to two and half centuries. Regulation No.1 of 1799 was enacted constituting a code for the

management of the British territories in the Presidency of Bombay. Regulations were framed in the year 1808 to deal with the allotment of the lands on a fixed rent. The Governor General in Council recognised the right of the occupants by charging a fixed rent. Under the Regulation of the year 1827, the authorities were under mandate to maintain register of title deeds. This regulation dealt with various aspects such as the transfer, mortgage and such other incidental issues regarding the lands. Thereafter Code of 1879 was framed, followed by Record of Rights Act, 1903. After the independence, Maharashtra Land Revenue Code 1966, was brought into force and it is applicable to lands as on today.

4. The license issued for manufacture of salt to the Ganpati Prasad Salt Works of the Respondents ended on 30 June 1983. On 11 July 1983, the Union of India issued a notice to various salt manufacturers, including Respondents to take the land on lease from the Government on certain terms and conditions. The Respondents filed a Writ Petition no.1151 of 1984 challenging the action of the Union of India and for a direction to the Union of India to renew the license in favour of the Respondents and to withdraw the notice dated 11 July 1983. Similar challenge was also raised by various other salt work owners. The Division bench of this Court in writ petition No.2333 of 1983 directed to renew the licenses of the various manufacturers. Following the view taken in Writ Petition No.2333 of 1983, the Writ Petition filed by the Respondent was

partly allowed on 1 April 1992. The Division bench directed the Union of India to renew the license of the Respondent without insisting upon requisitions set out in the notice dated 11 July 1983. The Union of India challenged the order passed in Writ Petition No.1151 of 1984 and the orders passed in companion writ petitions, in the Apex Court. The Apex Court disposed of this group of matters. The Apex Court, in Civil Appeal No.6743 of 1996, in respect of the Respondent, noted that no decision of title has been given by any authority in the case of Respondents and the Respondents were directed to file their claim before the Competent Authority i.e. Collector / District Magistrate as the case may be, within one month. The Competent Authority was directed to issue notice to the Appellant, and after considering the material and affording opportunity of hearing and taking into consideration the legal position, was directed to dispose of the proceedings. Subject to the result of the decision renewal of license was directed. The Apex Court accordingly disposed of the appeal on 25 March 1996.

5. Pursuant to the direction of the Apex Court, the Respondents, on 20 April 1996, filed an application to the Collector, Thane. The application specified that it was filed under Section 20(2) of the Land Revenue Code, 1966. It prayed for a decision that the claim of the Union of India for ownership of Survey no.244 is incorrect and the suit land is in possession of the Respondents since long period of time and accordingly an inquiry be instituted. The Union of India

filed its written statement and contested the claim made by the Respondents. In August 2000, the Union of India moved an Interim Application No.1 of 2000, in the Apex Court for modification of the order dated 25 March 1996. By way of this application, the Union of India sought a modification to substitute the word 'Collector /District Magistrate' to 'Civil Court'. It was the case of the Union of India that Collector cannot decide the issue of title and it is only within the jurisdiction of the Civil Court. The Apex Court summarily rejected this Interim Application on 14 January 2002.

6. In the meanwhile, the Sub-Divisional Officer, to whom powers were delegated, gave a decision in the application filed by the Respondents. The officer, by order dated 15 November 2001, allowed the application filed by the Respondents and declared that the Respondents are the owner having exclusive title over the said land survey no.244 i.e. the suit land.

7. The Union of India thereafter filed Regular Civil Suit No.663 of 2002 on 26 October 2002 in the Court of Civil Judge Senior Division, Thane. The Union of India prayed for a declaration that the order passed by the Sub-Divisional Officer dated 15 November 2001 is illegal and bad in law and for a declaration of ownership in respect of the suit land and sought possession of the suit property and for ancillary reliefs. In this suit, the Respondents moved an

application under Section 9A of the Code of Civil Procedure. The Respondents contended that in view of the direction of the Apex Court dated 1 April 1992, since the issue was referred to the Competent Authority, the Civil Court had no jurisdiction to decide the issue. It was also contended that if the Union of India is aggrieved by the order of the Sub-Divisional Officer, the Union of India could file an appeal under Section 247 of Maharashtra Land Revenue Code, 1966. The Union of India filed its reply. Union of India contended that suit is maintainable in view of Section 20 of the Code and direction of the Apex Court cannot be construed to mean that jurisdiction of the Civil Court is taken away.

8. By order dated 12 October 2004, the learned Civil Judge framed a preliminary issue as regards jurisdiction. The learned Civil Judge heard both sides and held that since the Apex Court had given a specific direction to decide the issue of title by a particular forum i.e. Collector, the Civil Court cannot decide the issue though it has jurisdiction to decide the questions of title. The learned Civil Judge held that in view of the direction issued by the Apex Court under Article 142 of the Constitution of India, the civil court, in the present case, was denuded of the jurisdiction to decide the issue raised by the Union of India in the suit. The learned Civil Judge, by order dated 1 February 2012 allowed the application and rejected the plaint.

9. The Union of India thereafter filed Civil Appeal No.141 of 2012 in the District Court, Thane. The learned District Judge confirmed the conclusion reached by the learned Civil Judge that the suit was not maintainable. The learned District Judge held that the Apex Court had directed that the issue of title is to be decided by the Competent Authority and therefore, Civil Court will have no jurisdiction. It also noted the dismissal of the Interim Application No.1 of 2000 and held that in view of dismissal of the Interim Application, the Union of India cannot contend that the Revenue Authorities are not a proper forum to decide the issue. The learned District Judge by the order dated 31 December 2013 dismissed the Appeal. Thereafter the present Second Appeal is filed.

10. Having heard Mr.Anil Singh, the learned Additional Solicitor General for the Union of India and Mr.C.G.Gavnekar, for the Respondent No.1, the Appeal is admitted on the following question of law : 'Whether both the Courts were right in concluding that the civil court had no jurisdiction to decide the suit filed by the Appellant-Union of India in view of the directions of the Apex Court dated 25 March 1996 and the order dated 14 January 2002?'

11. At the joint request of the learned counsel for the parties, taken up for final disposal forthwith. Mr. Gavnekar, the learned counsel for Respondent No.1 waives service. Printing of paper book is dispensed with as parties have filed their respective compilations.

12. On behalf of the Union of India, Mr. Anil Singh - the learned Additional Solicitor General contended : - The only ground on which both the Courts have held against the Union of India that the suit is not maintainable, is the direction of the Apex Court and on no other ground. There is no discussion in the decision of both the Courts regarding section 20 of the Code of 1966 and the implication thereof. Not only section 20 of the Code does not bar jurisdiction of the Civil Court but also it specifically refers to a civil suit for challenging the order passed by the Collector or the orders passed in revision or in appeal. The jurisdiction of the Civil Court cannot be lightly taken away, more particularly in the present case where the remedy of Civil suit is referred in the statute itself. The Apex Court has only indicated that the initial adjudication be done by the Authority under the Act, however has not excluded the remedy of civil suit referred to in Section 20. There is no indication in the decision of the Apex Court as to why the remedy of civil suit provided under Section 20 of the Code be not made available to the Union of India. To be deprived of the right to get the title adjudicated by a civil court, especially in case of Union of India, is a serious issue and grave prejudice will be caused if civil suit is held to be not maintainable at the threshold. Even though the application for modification was rejected by the Apex Court, it was moved only to substitute the word 'Collector' with 'Civil Court' and in the order

rejecting the application there was no indication that the Civil suit will not be maintainable, as referred to under Section 20 of the Code. The only question was whether the adjudication at the first instance should be by Collector or the Civil Court. The order of the Apex Court will have to be read in the context it was passed and the Apex Court in various decisions has indicated the scope and parameters of Article 142, under which the present order was passed. The following decisions will substantiate the legal propositions as above. *A.R.Antulay Vs. R.S.Nayak and another* - ¹ ; *State of Gujarat Vs Maharaj Amarsinghji* - ²; *Nagri Pracharini Sabha Vs Dist.Judge. Varanasi* - ³; *S.C.Bar Association vs. U.O.I* - ⁴; *A.B.Bhaskara Rao vs CBI Vishakapatnam* - ⁵ ; *Sahebgouda Vs Ogeppa and others*⁶.

13. Mr. C.G.Gavnekar the learned counsel for the Respondent, supported the impugned orders contending : The direction issued by the Apex Court that the Collector should conduct the inquiry is specific, and all courts including this Court are bound by the said direction. Under section 13 of the Code of 1966, the Collector is empowered to carry out an inquiry under any law and for such inquiry an elaborate procedure is provided in Chapter XII of the

1 - 1988 2(SCC) 602

2 - 1978 2(SCC) 619

3 - 1991 Supp (2) SCC 36

4 - 1998 4 (SCC) 409

5 - 2011 10(SCC) 259

6 - 2003 6 (SCC) 151

Code. After the direction issued by the Apex Court the Respondent invoked the provisions of the Code and the Collector followed entire gamut as envisaged under Chapter XII and the order impugned was final. The Apex Court was conscious of the fact that the suit could be filed however directed that the inquiry should be done by the Collector under the Code and therefore, filing of a suit by the Union of India is in clear contravention of the direction of the Apex Court. Both the Courts have given effect to the direction of the Apex Court and therefore, have rightly concluded that the suit was not maintainable. Section 20 of the Code is not applicable in respect of the claim made by the Union Government. Land Revenue Code provides machinery only for adjudication of dispute in respect of claim for and against State Government. Under the list II of the seventh schedule of the Constitution of India, subject 'land' is within the domain of the State Government. This position has been made clear by the Apex Court while interpreting Section 37 of the Code of 1879, which provision is *pari materia* with Section 20 of the Maharashtra Land Revenue Code, 1966. Therefore even assuming application is under section 20, the Union of India cannot take advantage of the provisions specified therein. The inquiry conducted under the Code of 1966 is a judicial inquiry. Once the Union of India had sought modification for substituting the word 'Collector' with 'Civil Court' and the same was rejected, the Union of India cannot now advance the very same argument in this Court and

the only option left to the Union of India is to file a curative petition, for which time was taken, but no such curative petition has been filed. This position of law is already laid down by the Apex Court in the case of *Union of India and another vs Mundra Salt & Chemical Industries* –⁷. None of the argument of the Union of India based on Article 142 can be advanced in this Court and they will have to be advanced in the Apex Court, that too only by way of curative petition.

14. I have considered the rival contentions. The short question of law that arises is whether both the Courts were right in holding that the Civil suit filed by the Union of India was not maintainable in view of the directions of the Apex Court.

15. The enquiry to decide the question has to start by adverting to the basic premise that a civil court has jurisdiction to decide suits of civil nature, unless it is barred. The Apex Court in the case of *Dhulabai V. State of M.P. and other* - ⁸, has analysed the various aspects concerning the jurisdiction of a Civil Court. It was held that where a statute gives finality to the orders of the special tribunals, the Civil Court's jurisdiction must be held to be excluded if there is an adequate remedy to do what the Civil Courts would normally do in a civil suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied

⁷ - (2001) 1 Supreme Court Cases 222

⁸ - AIR 1969 Supreme Court 78

with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Where there is an express bar to 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.

16. Every litigant who has a cause of civil nature, has a right to institute a suit in the Civil Court, unless its cognizance is expressly or impliedly barred. It is also well settled that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred when the statute is silent about a remedy of a civil suit and the exclusion must be express or in a given case, implied. Even in the cases where an enactment bars institution of civil suits, civil suit can be filed in certain situations, such as on the allegations of fraud, the action being void or patently without jurisdiction.

17. Before proceeding further, it will be appropriate to reproduce the order passed by the Apex Court on 25 March 1996 in its entirety.

'Leave granted.

We have heard the learned counsel on both sides.

In the appeal arising out of SLP () No.15356/92 dated February 26, 1996, the Division Bench of the High Court in W.P. 2333/1983 by order dated July 29, 1991

directed that the Union of India cannot insist upon the respondents conceding to the title of the Government. It directed the Union of India to renew the licence without insisting upon conceding the title of the Union of India. In the appeal, this Court had held that for obtaining licence/renewal, title to the property or a lease from the owner is a pre-condition. In that case, the Deputy Collector had held that the respondent had title to the property and appeal thereon was pending. Accordingly this Court had directed the Union of India to grant renewal of the licence pending decision on title.

In these cases, admittedly, no decision on title has yet been given by any authority. The respondents are directed to file their claims before the competent authority (Collector / District Magistrate, as the case may be) within one month from to day either as an owner or a lessee from the owner. The competent authority is directed to issue notice to the Central Government and after considering the material and affording an opportunity of hearing and after taking into consideration the law on vesting, dispose of all those applications on title. Subject to the result therein, the licences under the Salt Act would be issued/renewed. Pending decision, the Union of India are directed to grant renewal. The authority is directed to dispose of those matters within a period of six months from the date of the receipt of the copy of the order.

The appeals are accordingly disposed of. No costs.'

18. Pursuant to the direction the Respondent approached the Competent Authority. This adjudication could come before the Competent Authority, the Collector, under Section 20 of the code, and as per Mr.Gavnekar under Section 13 of the Code read with

procedure under Chapter XII. According to Mr. Gavnekar, the proceedings were under Chapter XII which provides for an appeal under the Code, while it is the case of Mr. Singh that the proceedings were under Section 20 of the Code. The Apex Court in the direction did not specify any particular provision of the Code. To find out which provision was invoked by the Respondents and under which provision the proceedings were continued, one would have to turn to the pleadings of the parties and their understanding of the matter.

19. Section 20 of the Code is reproduced for ready reference as under -

'20. Title of State in all lands, public roads, etc. which are not property of others.

(1) All public roads, lanes and paths, the bridges, ditches, dikes and fences on, or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, tanks and all canals and watercourses, and all standing and flowing water, and all lands wherever situated, which are not the property of persons legally capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of the State Government and it shall be lawful for the Collector, subject to the order of the Commissioner, to dispose of

them in such manner as may be prescribed by the State Government in this behalf, subject always to the rights of way, and all other rights or the public or of individuals legally subsisting.

Explanation. In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been give, to pass an order deciding the claim.

(3) An order passed by the Collector or survey officer under sub-section (1) or sub-section (2) shall be subject to one appeal and revision in accordance with the provisions of this Code.

(4) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (1) or sub-section (2) or , if appeal has been made against such order within the period of limitation, then from the date of any order passed by the appellate authority, shall be dismissed (though limitation has been not set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

(5) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the State Government.'

20. When the Respondent filed an application on 20 April 1996, in the title of the application the Respondent stated that the application is filed under Section 20(2) of the Code. In the body of the application, the Applicant stated that the Applicant has filed the application under Section 20(2) of the Code and inquiry be started under the clause 20(2). In the title of the operative order the Sub-Divisional Officer specified the scope of the inquiry as under Section 20(2). Even in the body of the order passed by the Sub-Divisional Officer, he has referred to Section 20. When the suit was filed by the Union of India, the Union of India has stated that the inquiry was conducted under Section 20 of the Code and referred to the period of limitation as one year under section 20(4) of the Code. When the Respondent moved an application under Section 9A of the Code of Civil Procedure, Respondent stated that the application was filed under Section 20(2) of the Code and referred to order of the Sub-Divisional Officer as having been passed under Section 20. It was then stated that the only option is to file an appeal under Section 247 of the Code. Both the Courts proceeded to consider the order passed by the Sub-Divisional Officer as one passed under Section 20(2) of the Code. Therefore, it is clear that the Respondent invoked provisions of Section 20(2) of the Code and the Sub-Divisional Officer passed an order therein. The argument advanced by Mr. Gavnekar that it was under Section 13 read with Chapter XII

that the proceedings before Sub-Divisional Officer were conducted, cannot be accepted.

21. In the backdrop of the importance of the remedy of a civil suit, and the scheme of section 20 of the code, the order passed by the Apex Court will have to be carefully considered. It needs to be ascertained whether the Apex Court has taken away right of the Union of India to institute a Civil suit, reference to which is made in sub-section (4) of Section 20, in respect of challenge to the original, appellate or revisional orders.

22. The section 20 of the Code deals with title of the State to all lands, public roads, which are not property of others. Sub-section (1) states that all public roads, lanes and paths, bridges, ditches, dikes and the category specified therein which are not property of the persons legally capable of holding property and except so far as the rights of such person may be established the rights in or over of the categories mentioned and sub-section (1), will vest in the State Government and it shall be lawful for the Collector, subject to the order of Commissioner to dispose of the said property. Sub-section (2) makes it lawful for the Collector resolve a dispute when a property is claimed on or behalf of the Government or by any person as against the Government and to hold a formal inquiry and pass an order. Sub-section (3) lays down that the order passed by the

Collector under sub-section (1) will be subject to one appeal and revision. Sub-section (4) deals with a civil suit instituted in Civil Court challenging the orders passed under sub-section (1) and (2) and provides for period of limitation. Therefore, not only the section 20 of the Code does not exclude institution of a suit to challenge an order passed by the Collector *i.e.* the original authority, the appellate or revisional authority, but specifically makes a reference to the same. Therefore, the present case is one where the statute provides for adjudication and makes a specific a reference to a civil suit to challenge the orders passed.

23. The direction is issued by the Apex court on 25 March 1996 was under article 142 of the Constitution of India. The parameters of Article 142 came up for consideration before the Apex Court in the case of *Supreme Court Bar Association vs. Union of India* – ⁹. In this case a reference was made by two-judge bench to a larger bench to consider a issue whether the Apex Court, while dealing with contempt proceedings exercising power under Article 129 of Constitution or under Article 129 read with Article 142 of Constitution can debar practicing advocate from carrying on his profession as an advocate. The Apex Court held that the powers under Article 142 are complimentary to those powers, which are specifically conferred by various statutes though are not limited by a statute. It was laid down that powers conferred by Article 142

9 - 1998(4) SCC 409

cannot be construed as powers, which authorises the Court to ignore substantive rights of a litigant while dealing with the cause pending before it. It was held that the power cannot be used to supplant substantive law applicable to a case. The Apex Court laid down that Article 142 even with the width of its amplitude, cannot be used to build a new edifice by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The Apex Court took review of earlier decisions and reconciled the position by holding that though orders passed under Article 142 are of wide amplitude, the substantive rights of a party should also be kept in mind.

24. Similar issue arose before bench of the Apex Court in the case of *A.B.Bhaskara Rao vs. CBI Vishakapatnam* - ¹⁰, wherein the learned judges took note of the earlier decisions and held that - The order passed under Article 142 of the Constitution to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but also cannot even be inconsistent with the substantive provisions of the relevant Statute. It was held that under Article 142 of the Constitution, the Apex Court generally does not pass an order in contravention of or ignoring the statutory provisions. The Apex Court observed that the power under Article 142 of the Constitution is a constitutional power and not restricted by statutory enactments. However, the

10 - 2011 (10) SCC 259

Court would not pass any order under Article 142, which would amount to supplant the substantive law applicable, or ignoring statutory provisions dealing with the subject. In other words, acting under Article 142, the Apex Court cannot pass an order or grant relief, which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case. It was also laid down that the powers under Article 142 are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in statute dealing expressly with the subject.

25. In the case of *Prem Chand Garg v. Excise Commissioner, U.P.* - ¹¹ the Constitution bench held that the wide powers which are given to the Apex Court to do complete justice between the parties can be exercised in various contingencies and while exercising these and similar powers the Apex Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

26. It is crucial to keep in mind the distinction between the position that a civil suit can be filed *instead of* the original adjudication by the Collector and that a civil suit can be filed *to challenge* the order of the original, appellate and revisional authorities, and claim title. The order of the Apex court will have to

11 - AIR 1963 SC 996

be therefore read carefully to ascertain whether it indicates that Apex Court was satisfied that a departure from statutory provisions was necessary and whether it is expressly held that the remedy of civil suit referred to under section 20(4) should not be made available to the Union of India.

27. The inquiry therefore, in this Appeal would be whether the Apex Court, in the order dated 25 March 1996 adverted to the issue of availability of the civil suit to challenge the orders of the Collector and specifically came to the conclusion that in order to do complete justice between the parties, the litigation must end at the stage of order of the Collector and no further civil suit as contemplated under sub-clause (4) of Section 20 should be filed by the Union of India. A civil suit is maintainable unless shown otherwise and there is a right vested in a person to institute a civil suit, strengthened in the present case by reference to it in the enactment itself. Therefore, while construing the order passed by the Apex Court as a mandate to exclude jurisdiction of the Civil Court at all stages, the observations of the Apex Court in the case of *Prem Chand Garg* that such direction would be issued if the Court is satisfied that a departure is necessary to do complete justice, will have to be kept in mind. In my respectful opinion, the direction as well as the attending circumstances will have to be taken into consideration, to understand the impact of the direction to conclude

whether the Apex Court, under Article 142 of the Constitution of India categorically directed that remedy of civil suit will not be available the Union of India.

28. The order dated 25 March 1996 would show that the Apex Court noted that no decision on title is given, and thereafter proceeded to direct the Respondents to file their claim before the Competent Authority and the Competent Authority was directed to decide the issue and subject to the decision, directions were given to grant the renewal. There is no reference to any section of the Code and it was directed that the Competent Authority would decide the issue. There is no mandate as to what is to be done by the parties after the decision is taken by the Collector, pursuant to the direction. There is also no direction that the remedy from the order of the Competent Authority, would be barred. The Apex Court has also not specified that the order of the Competent Authority shall be final and all other remedies of the parties in respect of the order passed by the Competent Authority giving the first decision stand excluded. It is not indicated that against the order of the original authority under Section 20(2) a civil suit cannot be filed nor it is indicated that an appeal under the Code against the order of the Competent Authority cannot be filed. In my respectful reading of the order of the Apex Court, the Apex Court has specified the original authority that would take decision in the issue, but has not closed the issue, as regards the further action to be taken by the parties after the

Competent Authority takes a decision.

29. Heavy reliance was placed by Mr. Gavnekar on rejection by the Apex Court on the application for modification moved by the Union of India. This application was moved prior to the order being passed by the Sub-Divisional Officer. What the Union of India wanted was to substitute the word 'Collector' with 'Civil Court'. The application was to substitute the original decision making authority from 'Collector' to 'Civil Court'. The Union of India wanted not the Sub-Divisional Officer to decide the issue at the first instance but the Civil Court. The Apex Court summarily rejected this application. Even while rejecting this application there is no indication as to what would be the rights of the Union of India after the order of the Sub-Divisional Officer, if it was against the Union of India. There is no indication that after the order of the Sub-Divisional Officer, all remedies stand closed. As held in the case of *Prem Chand Garg* by the Constitution bench, if the Apex court wanted to take away this substantive right of the Union of India, there would be an express indication in the order.

30. The argument of Mr. Gavnekar that the law laid by the Apex Court is binding on all the Courts, including the Collector under Article 141 of the Constitution of India is concerned, there cannot possibly any dispute. In the present case the direction issued by the Apex Court is under Article 142 of the Constitution of India. Both

the parties have argued in the courts below that the direction is under Article 142.

31. It was then contended by Mr. Gavnekar, that even assuming Section 20 is applicable, the Union of India has not exhausted the remedies under the Code. Firstly, it has to be noted that both the Courts have held that they have no jurisdiction only on the ground of direction of Apex Court, even though both the Courts have indicated that generally Civil Court will have jurisdiction in such matters. Whether jurisdiction of the Civil Court is barred in view of availability of alternate remedy is another angle of the controversy, which is not even argued or decided by both the Courts. Whether the Code provides for an adequate remedy to infer exclusion of the jurisdiction of the Civil Court will entail a detailed inquiry including the examination of the averments in the plaint. As rightly contended by Mr. Singh, this not being the ground for rejection of the plaint, and having never been argued cannot be advanced in this Second Appeal. It was then contended by Mr. Gavnekar that Union of India cannot take recourse to Section 20 of the Code as the 'Government' referred in Section 20 can only be a State Government. It is the Respondents who have invoked the provisions of Section 20 of the Code and the Sub-Divisional Officer has given a finding in favour of the Respondents. If the argument of Mr. Gavnekar is accepted, it would mean that the order passed by the Sub-Divisional Officer itself was without jurisdiction. Such

argument was not advanced before both the Courts. Reliance was placed for this purpose by Mr. Gavnekar, on the case of *Union of India Vs Mundra Salt & Chemical* –¹², therefore does not arise.

32. To reiterate, the only issue at hand is, whether the suit is to be dismissed at the threshold being barred by the orders passed by the Apex Court on 25 March 1996 and 14 January 2002. Whether the Union of India will succeed in the suit on merits is another matter altogether. Even if it is held that the suit is maintainable the Respondent can always argue that the Union of India has no right in the property, which is vested in the State Government. This being the issue on merits of the matter and not being laid as a foundation for challenge to jurisdiction, can always be taken in the suit when it is taken up for consideration on merits. So can all such arguments, which are available to the parties in law and on facts.

33. As regards the contention of Mr. Gavnekar that the only way the Union of India can get out of the situation is by filing a curative petition and for which time was taken, Mr. Singh submitted that a conscious decision has been taken after seeking an opinion not to file a curative petition as it is not necessary, and time was only taken to consider the position and not to file a curative petition.

34. Though it is not relevant for adjudication of this appeal, it is informed that by a subsequent change in policy, the methodology of

licensing itself no longer exists. The pendency of the suit will not affect or postpone the grant of license to the Respondents. The issue left in the suit is the adjudication of rival contentions as regards title.

35. To summarize, the Apex Court directed the parties to approach the Competent Authority under the Code for adjudication of their grievance. The Respondent approached the Competent Authority under Section 20(2) of the Code. The order passed by the Apex Court did not foreclose the right of the parties after the order is passed by the Competent Authority, as available in law. Section 20(4) itself refers to filing of a suit to challenge orders passed under Section 20.

36. In the circumstances, the question of law as framed will have to be answered in favour of the Union of India. The Second Appeal will have to be allowed. Accordingly, the impugned judgment and order dated 31 December 2013 passed by the District Judge, Thane and the judgment and order passed by Civil Judge Senior Division Thane, dated 1 January 2012, are quashed and set aside. The Civil Suit bearing No.663 of 2002 stands restored to file.

37. The learned counsel for the Respondent seeks time. In view of this request, the parties shall appear before the learned Civil Judge, Senior Division Thane on 16 November 2016.

38. Considering the fact that the suit is of the year 2002, the

learned Civil Judge will it give priority it deserves for expeditious disposal.

(N.M.Jamdar, J.)