IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 613 of 2009

Sao Jose De Areal Villagers Union
Sao Jose De Areal Village
Salcete, Goa.

Represented by

1. Salvador Fernandes (president of petitioner)
   H.NO.302/B Pulamoll,
   Sao Jos De Areal,
   Salcete, Goa

2. Peter Viegas,
   806 Mugalli,
   Sao Jose De Areal,
   Salcete, Goa

3. Nelson Mascarenhas,
   Oilem Moll, H.NO.86,
   Salcete, Goa.

4. Diogino C. Fernandes,
   Oile Holl, H.NO.64/A
   Salcete, Goa. .... Petitioners

V e r s u s

1. The State of Goa,
   by Chief Secretary
   The Secretariat,
   Porvorim, Bardez, Goa.

2. District Collector of North Goa,
   Collectorate Building,
   Panaji, 403 001.

3. District Collector of South Goa,
   Collectorate Building,
   Margao, Goa.

(Amendment carried out as per order dated 18/9/2010)

4. Communidade of Curtorim,
Communidade Hall,
Curtorim, Goa

(Amendment as per order dated 14/10/2010)

5. M/s. Kushawati Crusher,
St. Jose de Areal,
Salcee, Goa.

6. M/s. Quality Granites,
Sauricho Dando,
St. Jose de Areal,
Salcete, Goa.

7. M/s. Venus Stone Crushers,
Fatrigallidogos,
St. Jose de Areal,
Salcete-Goa.

(Amendment carried out as er order dt. 6/11/2017)

8. M/s. Peruos Stone Crushers,
Through is Proprietor,
Perris D'Cota, Major of age,
House No.75, Oile- Holl,
Near Don Khuris,
St. Jose de Areal, Salcete-Goa. ..... Respondents

(Amendment carried out as per order dt. 12/6/2019)

Mr. Nigel Da Costa Frias with Ms. B. Andrade and Mr. G. Malik, Advocates for the Petitioner.
Mr. D. Pangam, Advocate General with Ms. A. Kamat, Additional Government Advocate for the Respondent – State.
Mr. P. Kakodkar, Advocate for Respondent no.4.
Mr. Sudesh Usgaonkar, Advocate with Ms. R. Pereira, Advocate for Respondent nos.5 to 7.

CORAM: MANISH PITALE &
M. S. JAWALKAR, JJ.
Closed on: 24th September,2021
Pronounced on: 17th November, 2021

JUDGEMENT (Per Manish Pitale, J):

The subject matter of challenge in this Writ Petition is an order dated 2/3/2009 issued by the respondent-State while exercising power under section 35 of the Goa, Daman and Diu, Land Revenue Code, 1968.

2. The petitioner is a Union of villagers from Sao Jose De Areal village, Salcete Taluka, which claims that the impugned order deserves to be set aside for the reason that the respondent-state could not have invoked section 35 of the aforesaid Code in the facts and circumstances of the present case and that the order came to be issued only because of the heat that the respondent-state was facing due to orders passed by this Court in Writ Petition No.20/2008, concerning rampant illegal operation of basalt stone crushers in connivance with officials of the respondent-state. According to the petitioner-union, a proper interpretation of section 35 r/w other relevant provisions of the Code would indicate that an order in the nature of the impugned order could not have been issued by invoking section 35 of the said Code. According to the petitioner, the said order neither pertains to land nor any class of land and therefore, it is rendered unsustainable.

3. The background facts leading up to filing of the present writ petition are that the residents of the said village had filed an earlier writ petition bearing Writ Petition No.20/2008, in the context of

rampant illegal operation of stone crushers leading to high levels of pollution and destruction of green cover. In the said writ petition, a Division Bench of this Court had passed various orders, including order dated 6/2/2008, taking note of the illegal manner in which stone crushers were operating and it was found that the situation was pathetic and shocking as regards the manner in which the said authorities were acting in the context of extraction of minor minerals in the State. In this context specific directions were given in the aforesaid order, including inspection of various sites by the officers of the concerned department to identify as to whether any illegal cutting of trees and use of stone crushers was being undertaken.

4. Thereafter, this Court passed orders dated 5/3/2008 and 26/3/2008, whereby directions were given and a report was called from the respondent-state as to whether the stone crushers had obtained all necessary permissions in accordance with provisions of applicable statutes. This included information on the question whether such stone crushers were located in the industrial zone, or settlement zones or any other zone. On 4/8/2008, this Court in Writ Petition No.20/2008, took note of a serious grievance pertaining to certain lands which were earmarked for social forestry and even agricultural use wherein stone crushing activities were being undertaken. In this context, the Goa State Pollution Control Board was directed to place on record affidavits with relevant information. An

Affidavit filed in pursuance of the direction given by this Court demonstrated that a large number of stone crushers were operating in villages and location of quarries was also given in such affidavit.

5. On 24/9/2008, a significant order came to be passed in the aforesaid Writ petition no.20/2008. This Court referred to a report placed on record stating that stone crushing units were operating in natural cover/ social forestry/ cultivable zones, but they did not have conversion sanads and that action under section 32 of the Code had been initiated against such units. The counsel appearing for the Goa Pollution Control Board stated and it was recorded in the said order that stone crushing units which did not comply with the relevant Rules and Regulations will face revocation of consent to operate and that appropriate action would be taken against defaulting stone crushing units. Thereafter, on 30/9/2008, this Court passed an order in Writ Petition no.20/2008, observing as follows:

> "4. Turning to the other limb of submissions made by the learned Counsel, who is appointed as Amicus Curiae in this Petition, is about the units being set up and operating without the requisite legal sanction inasmuch as it is contended that the crushing units are operating in areas wherein such activity is not permissible. The learned Advocate

General appearing for the State has submitted that the Collector has already initiated proceedings under Section 31 and 33 of the Land Revenue Code, 1968. Under Section 31, the Collector is empowered to regulate or prohibit the use of land for a purpose other than the one permitted under Law whereas Section 33 provides for imposition of penalties for so using the land without permission. The learned Advocate General submits that the crushing units have been issued show cause notices and the Collector is looking into the matters. We are also informed by the learned Advocate General that some of the crushing units are operating since prior to 1985 i.e. prior to coming into force of the Environment Protection Act. Be that as it may, on the one hand, the Pollution Control Board is taking requisite measures with a view to find out the level of pollution and, on the other hand, the Collector is examining the legality or otherwise of the crushing activities undertaken by the crushing units. We are further informed that the Collector is expected to render a final decision in the matters pending before him under Section 31 and 33 of the Land

Revenue Code within a period of about six months as the concerned parties will have to be heard into the matters after affording a fair opportunity. We are of the view, that the Collector would need the time as stated by the learned Advocate General. The issues raised in this PIL need to be seriously looked into and hence we issue Rule in the matter. The Petition to come up for final hearing after six months. This Order is passed without prejudice to the rights and contentions of the parties.

5. The learned Amicus Curiae submits that the petitioner is in possession of certain documents which she would like to produce before the Collector in the proceedings under Section 31 read with Section 33 of the Land Revenue Code. The learned Counsel appearing for the respondents do not have any objection if the petitioner is permitted to submit the documents and submissions before the Collector so that an appropriate decision is reached. Hence, petitioner's request in that regard, is granted. Respective Counsels for the Respondents waive service on Rule. Matter to come up for final hearing after six months."

6. It is evident from the above quoted order that action against stone crushing units was contemplated under sections 31 and 33 of the Code and the aforesaid writ petition was to come up for final hearing within six months of the said order dated 30/9/2008.

7. At this stage, the respondent-state issued the impugned order dated 2/3/2009 under section 35 of the Code which reads as follows:

> "Order
>
> No.14/11/2008-RD(Rep.18)
>
> In exercise of the powers conferred by Section 35 of the Goa Land Revenue Code, 1968 (Act No.9 of 1969) and further in public interest, the Government hereby retrospectively exempts Basalt/Stone crusher units which are having valid registration issued by the Department of Mines, Directorate of Industries, Trade and Commerce. No Objection Certificate from Goa State Pollution Control Board and having valid property documents, which are in operation/functional up to 31st December, 2007, from obtaining conversion sanads for the area they are presently occupying in the respective holding which is verified and recorded by the respective Collectors.
>
> This issues with approval of the Government.
>
> By order and in the name of the Governor of Goa, Secretary (Revenue-I(II), Porvorim, 2nd March, 2009."

8. The petitioner-union filed the present writ petition challenging the said order, inter alia, contending that the impugned order had been issued to frustrate the orders passed by this Court in Writ petition no.20/2008. It was submitted that the impugned order could not have been issued because it neither pertained to any land nor any class of land which could be exempted from operation of sections 30 to 34 of the Code. The impugned order was specifically issued in relation to stone crusher units, instead of land or any class of land, thereby demonstrating that it was unsustainable. It was further submitted that the impugned order was not issued in consonance with the objects of the aforesaid Code and it certainly could not be termed as being in public interest. In fact, it was issued only to benefit the stone crushing units retrospectively, which had been operating illegally for all these years.

9. The respondent-state filed its affidavit contending that the impugned order was issued in public interest and in terms of the object of the Code for the reason that if such order was not issued, and the units as well as lands upon which the stone crushing units were existing, were not exempted from operation of sections 30 to 34, pertaining to conversion sanads, entire development activities in the State would come to a halt. This was because the activity of stone crushing was necessary for building roads and infrastructure as also other works and projects concerning public interest. It was submitted

that there would be no loss of revenue to the State and only the requirement of conversion sanad would stand exempted. Some stone crushing units were made respondents in the writ petition i.e. respondent nos. 5 to 8. They submitted their affidavits supporting the impugned order on the basis that there would be no loss of revenue and that the impugned order was issued based on proper interpretation of section 35 of the Code.

10. In the present writ petition, this Court passed various orders, including order dated 9/3/2018, whereby this Court directed the respondent-state to file affidavit specifying whether any stone crushing units mentioned in the list submitted to this Court had obtained conversion sanads, but the respondent-state failed to file affidavit giving the said details and consequently on 11/10/2018, this Court took up the contentions raised on behalf of the petitioner-union for consideration.

11. This Court found that since the expression “class of land” is defined in section 2(5) of the Code and the impugned order does not refer to any class of land in respect of which power under section 35 for granting exemption was being invoked, the stone crushing units could not have been considered as class of land for the purpose of section 35 of the Code. On this basis, it was observed that it would be incumbent upon the stone crushing units to apply for conversion sanads. Thereupon, a direction was given to the Collectors of North

Goa and South Goa Districts to identify the stone crushing units operating without conversion sanads and to issue notices to such units calling upon them to either place on record conversion sanads or to apply for such conversion sanads in stipulated period of time. The hearing of the petition was adjourned for a period of 8 weeks. The relevant portion of the order dated 11/10/2018 passed by this Court in the present Writ petition reads thus:

> *"5. It is the contention of the Petitioner that such a notification under Section 35 of the Land Revenue Code could not have been issued, as there is no such concept of exempting an activity from the provisions of Sections 30, 32 and 34 of the Code.*
>
> *6. To appreciate this contention, the provisions of the Land Revenue Code will have to be seen. Section 30 states that permission for non-agricultural use has to be taken before putting any land for non-agricultural purpose. Section 31 places restriction on the use and Section 32 lays down a procedure for conversion of use of land from one purpose to another. Section 33 lays down penalty for violation of the provisions. The State has power to exempt the land from this provision under Section 35 which reads thus:*

"35. Power of Government to exempt lands from provisions of sections 30, 32, 33 or 34.— Nothing in sections 30, 32, 33 or 34 shall prevent—

(a) the Government from exempting any land or class of lands from the operation of any of the provisions of those sections, if the Government is of opinion that it is necessary, in the public interest for the purpose of carrying out any of the objects of this Code, to exempt such land or such class of lands; and

(b) the Collector from regularising the non-agricultural use of any land on such terms and conditions as may be prescribed by him subject to rules made in this behalf by the Government."

7. The State Government, as can be seen from Section 35(a), can exempt any land or class of lands from the operation of any of the provisions of the Sections if it is of the opinion that it is in public interest, for the purpose of carrying out any of the objects of the Code. Nothing is placed on record what is the public interest. The provisions of the Code can be discerned from the objects which states that the Code is enacted to *consolidate and amend the Laws relating to Land and Land Revenue in the State. Land has been defined in Section 2(19). Class of land is defined in Section 2(5) and class of land means dry crop, rice garden land or non-arable. Gaothan land has been specified. Section 2 which contains the definition clauses, relate to land, its regulation and assessment. From these provisions, we do not find that because a particular activity is being carried out on a land, exemption can be granted under Section 35 which can only relate to class of lands. By very language of the sections, by relating an activity such as the stone crushing units on a land or lands, by one single notification all such lands cannot be exempted.*

8. Power does exist in the State Government to examine each case on its own to grant permission to convert the land to a non-agricultural use, but Section 35 of the Act does not empower the State to issue a notification in respect of the lands on which stone crushing units are operating. The lands where the stone crushing units are operating as on 31 December 2007 cannot be considered as a class *of land under the Code for the purpose of Section. It will be incumbent upon the stone crushing units to apply for Conversion Sanads and after permission was granted, or Conversion Sanad is obtained that this activity can be considered as legal.*

9. In these circumstances, we direct the Collectors of North and South Goa Districts to identify the stone crushing units operating without Conversion Sanads and issue notices to the stone crushing units calling upon them to either place on record the Conversion Sanads or give them a stipulated time to apply for Conversion Sanad. The exercise of issuance of notices to the Units to be carried out within a period of six weeks from today. Hearing of this Petition is deferred by a period of eight weeks."

12. It appears that when the aforesaid order dated 11/10/2018 was passed, the name of the counsel representing some of the respondent stone crushing units was not mentioned in the cause list, as a result of which they were not heard. Hence, they applied for recall of the said order. On this basis, by order dated 15/4/2019, this Court allowed such application and directed that the order dated 11/10/2018 would

not apply to the applicants i.e. respondents no.5,6 and 7 in the present writ petition. Thereafter, the writ petition came up for final hearing.

13. Mr. Nigel Da Costa Frias, the learned counsel appearing for the petitioner-union made submissions in support of the aforementioned grounds raised in the writ petition. It was submitted that the impugned order was unsustainable for the reason that it applied to an activity i.e. the activity of stone crushing undertaken by such units and that section 35 of the Code could not have been invoked for issuing such an order of exemption. On this basis, it was submitted that the impugned order was tailormade only for stone crushers illegally operating for a long period of time, in the backdrop of the series of orders issued by this Court in Writ petition no.20/2008. It was submitted that this Court had already found in the order dated 11/10/2018, that activity of stone crushing could not be covered under the expression "class of land", as defined in section 2(5) of the Code and therefore, the present writ petition deserved to be allowed.

14. It was further submitted that the respondent-state could not have invoked section 35 of the Code for granting exemption to stone crushing units, which had no reference to "land" or "class of land" and that, in any case, such an order was not in public interest for the purpose of carrying out any of the objects of the Code. On this basis, it was submitted that the impugned order deserved to be quashed and set aside. The learned counsel placed reliance on the Judgment of the

Hon'ble Supreme Court in the case of *Bihar Public Service Commission Vs. Saiyed Hussan Abbas Rizwi and another (2012) 13 SCC 6*1 and Judgment and Order dated 27/8/2021 passed by this Court in *PIL Writ Petition No.43 of 2019 (Mr. Kashinath Jairam Shetye and ors Vs. Union of India and others.*

15. Mr. Devidas Pangam, the learned Advocate General appearing for the respondent-State submitted that the contentions raised on behalf of the petitioner-union were misplaced. It was submitted that the impugned order was issued by invoking section 35 of the aforesaid Code, in respect of land upon which stone crushing units had been established. It was submitted that a proper interpretation of section 35 of the Code, read with definition of "land" as defined in 2(19) of the Code would show that land would include stone crushing units attached to the lands, and therefore, the respondent-state was justified in invoking power to exempt such lands from operation of sections 30 to 34 of the Code. It was submitted that the impugned order was issued in public interest and in furtherance of the objects of the Code, for the reason that activities of stone crushing were of immense importance for projects of public interest and infrastructure like roads, being undertaken by the respondent-state.

16. It was submitted that the definition of land in section 2(19) of the Code was an inclusive definition and that since the stone crushing units undisputedly stood attached to the earth, it could not be said

that the impugned order had been issued in respect of the activity of stone crushing and not in connection with land. It was submitted that the contentions raised on behalf of the petitioner-union in the context of the expression “class of land” as defined in section 2 (5) of the code were wholly misplaced and totally unacceptable in the facts and circumstances of the present case.

17. The learned Advocate General placed reliance on the judgments of the Supreme Court in the case of (i) ***Municipal Corporation of Greater Bombay and others Vs. Indian Oil Ltd.,1991 Supp* (2) SCC 18 (ii)** ***K. N. Farms Industries Private Ltd. Vs. State of Bihar and others (2009) 15 SCC 275*** **(iii)** ***Santosh Jayawal and anr Vs. State of M.P. And others (1995) 6 SCC 520, paras 2,4,5,6, and Ananda Behera & another Vs. The State of Orissa & anr. (1955) 2 SCR 919,***

18. It was further submitted that the impugned order itself clarified that the exemption from conversion sanad was made available only to such stone crushing units that had valid permissions required under law. It was brought to the notice of this Court that writ petition no.20/2008 stood disposed of with passage of time, where this Court found that the Goa State Pollution Control Board had placed on record material to indicate that pollution had not adversely affected the concerned persons living in the villages and, therefore, there was no substance in the contentions raised on behalf of the petitioner-union

in that regard.

19. Mr. Sudesh Usgaonkar, the learned counsel appearing for respondent nos.5, 6 and 7 submitted that the petitioners were placing an erroneous interpretation on section 35 of the Code, while claiming that the impugned order deserved to be set aside. It was submitted that earlier writ petition no.20/2008 was already disposed of and that the petitioners were not justified in relying on the interim orders passed in the said writ petition, to claim that the impugned order was unsustainable. It was further submitted that the question as to whether a particular land was to be exempted from the requirement of conversion sanad and to pay charges in that respect, was within the domain of the respondent state and that a considered decision had been taken in the present case on behalf of the State. According to the learned counsel, a proper reading of the provisions of the Code, particularly section 51 thereof would show that the liability to pay land revenue would not go away and that there was no loss of revenue caused to the respondent-state even if the impugned order was issued invoking section 35 of the Code.

20. Having heard the learned counsel appearing for the parties, it becomes obvious that in order to appreciate the rival contentions, it would be appropriate to refer to section 35 of the Code. The relevant portion of the order dated 11/10/2018 passed by this Court in the

present writ petition is already reproduced above, wherein section 35 is quoted. A perusal of the above quoted section 35 of the Code would show that in normal circumstances sections 32 to 34 of the Code would apply, which are found in the Chapter with the heading "of use of land". By operation of the said provisions, it is mandatory to apply for conversion of use of land from one purpose to another. One of the main allegations in the present petition is that land which was meant for social forestry, trees and cultivation was illegally converted by rampant illegal use of stone crushing machines. When this activity, allegedly undertaken in connivance with the officials of the State, came to be highlighted in writ petition no.20/2008 and interim orders were passed wherein the respondent-state was feeling the heat, the impugned order was issued in a hurried manner, only to exempt such stone crushing units which were being illegally operated.

21. A perusal of the above quoted section 35 of the Code would show that the Government does have the power to exempt any land or class of land from the operation of sections 30 to 34 of the Code, provided that in the opinion of the Government, it is necessary in public interest for the purpose of carrying out any of the objects of the Code. Therefore, it becomes clear that a land or class of land can be exempted, provided such exemption is in public interest for the purpose of carrying out any of the objects of the Code.

22. In this context, the definitions of "land" and "class of land"

become relevant. These definitions read as follows:

> "2. (5) "class of land" means any of the following classes of land, namely, dry crop, rice, garden land or non-arable;
>
> 2. (19) "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth or other defined portions thereof."

23. In the order dated 11/10/2018 passed by this Court it was found on interpretation of the definition of "class of land" in section 2(19) of the Code that the manner in which the impugned order was worded, it was clear that it did not pertain to any class of land with reference to it being dry crop, rice, garden land or non-arable land. The learned Advocate General and the learned Counsel appearing for the respondents could not seriously dispute the fact that the impugned order issued on 2/3/2009 did not refer to any of the classes of land specifically identified in section 2(5) of the Code. Therefore, this Court is of the opinion that the observations and findings rendered in the order dated 11/10/2018 in the context of the definition of class of land, are unexceptionable and that the respondents have no answer for the same.

24. It is perhaps for this reason that the learned Advocate General submitted that the impugned order issued by invoking section 35 of

the Code was relatable to the word “land” as defined in section 2(19) of the Code. A perusal of the said definition clearly shows that it is indeed an inclusive definition and pertains to benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. According to the learned Advocate General, since the stone crushing units are attached to the land, they are covered under the expression “land” and therefore, power under section 35 of the Code was correctly invoked while issuing the impugned order.

25. In this context, it becomes necessary to consider the contents of the impugned order dated 2/3/2009 in detail. A perusal of the same would show that the respondent-state decided to retrospectively exempt basalt stone crusher units from obtaining conversion sanads for the area that they were occupying. Thus, the focus of the impugned order was stone crusher units, which were granted exemption retrospectively. There can be no doubt about the fact that such stone crusher units under the impugned order itself are required to satisfy certain permissions like having a No Objection Certificate from the Goa Pollution Control Board, possessing valid property documents, being functional up to December 2007 and the holdings in which the units are being located being verified and recorded by the Collectors. But, the very nature of language used in the impugned order shows that the focus of the same is the stone crushing units and exemption is

granted specifically to such units.

26. It is in this context that the contentions raised by the learned Advocate General for the respondent-state need to be appreciated for the reason that according to him, stone crusher units are covered under the definition of land as they are attached to the earth. In order to support the said contention, the learned Advocate General placed much reliance on judgments of the Hon'ble Supreme Court in the case of (i) *Municipal Corporation of Greater Bombay and others Vs. Indian Oil Corporation, 1991 Supp (2) SCC 18- 26 (ii) K. N. Farms Industries Private Ltd. Vs. State of Bihar and others (2009) 15 SCC 275 and (iii) Santosh Jayawal and anr Vs. State of M.P. And others (1995) 6 SCC 520, supra.*

27. Even if it is to be accepted that the ratio of the said judgments would apply, the facts of the respective cases need to be appreciated.

28. In the case of *Municipal Corporation of Greater Bombay and others Vs. Indian Oil Corporation (supra),* the question was whether tanks meant for storage of petrol and petroleum products attached to the earth could be included in the definition of "land" or "building" as defined in the relevant provision of the Bombay Municipal Corporation Act, 1888, for the liability of payment of property tax. After taking into consideration the specific definitions in the concerned statute, the Hon'ble Supreme Court concluded that since the definition of land was an inclusive definition, considering the

object of the statute, a literal construction may not yield proper and correct result. Therefore, by applying purposive interpretation to the said expression, it was held that the petroleum storage tanks are structures attached to the land and hence they are covered under the definition and exigible to property tax. The Hon'ble Supreme Court took into consideration the objects of the statute in question, which included levying and collection of property tax and on that basis held in favour of the Municipal Corporation.

29. In the case of *K. N. Farms Industries Private Ltd. Vs. State of Bihar and others (supra), t*he question was as to whether a water tank could be included in the definition of land for the purpose of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. In the said case, the definition of land was to be ascertained in the context of the extent of land area to be taken into consideration while applying the provisions of the said Act. Once again, by taking into consideration the objects stated in said enactment, the Hon'ble Supreme Court held that the definition of land covered land perennially covered under water and included a water tank.

30. In the case of *Santosh Jayaswal and another Vs. State of M. P. and others (sup*ra), the Hon'ble Supreme Court was concerned with the definition of immovable property in the M. P. General Clauses Act, which was similar to the definition of land in the aforesaid Code. In

the context of the question of compulsory registration of instrument concerning immovable property, it was held that since right to catch fish was a benefit arising out of the land, a document of lease concerning fishing rights for a period of more than one year was a compulsorily registerable instrument. In the said case also, it was evident that the Hon'ble Supreme Court took into consideration the object of the relevant statute to hold that the definition of land, included the aforesaid benefits of fishing.

31. Even applying the said position of law, as sought to be projected on behalf of the respondent-state on the basis of said Judgments of the Hon'ble Supreme Court, this Court finds that the language used in the impugned order cannot be said to be applying to any benefit arising out of or from the land. The impugned order specifically applies to basalt/stone crusher units, exempting them from obtaining conversion sanads. Although, there is reference to the area occupied by the stone crusher units, the interpretation sought to be placed by operation of section 2(19) of the Code on behalf of the State is a stretched interpretation and it does not appeal to sense or logic. This is particularly so, in the backdrop of the orders that were passed by this Court in Writ Petition no.20/2008.

32. There is no substance in the contention raised on behalf of the respondent that since Writ petition no.20/2008 was eventually disposed of, the interim orders passed by this Court in the said

petition, could not be of any relevance for the present case. This Court is of the opinion that the tenor of the orders passed in Writ Petition no.20/2008 dated 6/2/2008 to 30/9/2008, sufficiently demonstrate that the respondent-state was facing adverse orders from this Court in the said Writ petition, wherein it had become evident that the stone crusher units had been rampantly functioning illegally for a long period of time and that no steps in that regard were taken by the respondent-State. It was when the respondent-State faced such adverse orders with specific reference to failure of stone crusher units to obtain conversion sanads, that the respondent-state all of a sudden issued the impugned order granting exemption, that too retrospectively to such stone crushing units who had failed to obtain conversion sanads while they were rampantly indulging in stone crushing activities. This Court cannot be oblivious of the aforesaid background in which the impugned order dated 2/3/2019 was suddenly issued by the respondent-State.

33. The contention raised on behalf of the respondent-State that the impugned order had to be issued in public interest is also misplaced and it is wholly misconceived. The respondent-State failed to place on record any material to indicate as to what was the public interest that was being hurt if the stone crusher units were not retrospectively exempted from obtaining conversion sanads, thereby exempting them from paying the necessary charges and penalties. The respondent-

State chose to make only hollow statements in the reply affidavit to claim that all development activity in the State would come to a halt if such step of exempting the stone crusher units retrospectively was not taken. There is no material on record to show that development activities in public interest, like construction of roads etc. would come to a standstill, but for issuance of the impugned order under section 35 of the Code. The material on record, on the other hand indicates that the impugned order came to be issued only to benefit certain stone crushing units, which had been operating illegally and in the absence of the conversion sanads and payment of relevant charges and penalties.

34. In this context, the petitioner-union is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of *Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and anr*. (supra), wherein the Hon'ble Supreme Court held as follows in para 22:

> "The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time

and state of society and its needs. [State of Bihar v. Kameshwar Singh (AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake [Black's Law Dictionary (Eighth Edition)]."

35. In the case of *Kashinath Jairam Shetye Vs. Union of India* (supra), this Court held as follows in para 35.

"In the present case, the Central Government, by invoking Rule 5(4) of the said Rules has dispensed with the public notice. This means that the Central Government has departed from the normal procedure prescribed under Rule 5(3) of he said Rules. Therefore, the Central Government, upon challenge, had to explain, by placing relevant material, the reasons for which and circumstances in which the notice under clause (a) of sub-rule (3) of Rule 5 of the said Rules came to be dispensed with. The mere recital of "pubic interest" in the impugned Notification or an ipse dixit in the defense affidavit is not sufficient in such matters. The Central Government, when challenged, has to place on record the relevant material demonstrating such public interest in

> dispensing with the public notice. Sufficiency or adequacy of such material may not be the concern of a writ Court. But the existence and relevancy of such material is undoubtedly a concern when it comes to judicial review by a writ Court in such matters."

36. Thus, it becomes clear that the State cannot claim that an action taken by it or an order, like the impugned order herein, has to be deemed to be in public interest only because the State itself claims that it has been issued in public interest. It cannot be accepted that the State merely invokes the concept of "public interest" as a mantra or an incantation for stalling judicial review of its order. In this backdrop when the aforesaid provision i.e. of section 35 of the Code is perused, it becomes all the more significant that the words "public interest" have been used in the context of the words "for the purpose of carrying out any of the objects of the Code". This Court is of the opinion that the object of the Code is to provide for a mandatory procedure of collecting land revenue and charges like conversion charges and penalties, which are inter alia found in the operation of provisions like sections 30 to 34 of the said Code.

37. Therefore, it was incumbent upon the said respondent-state when it invoked the concept of public interest to show that issuance of the impugned order was in public interest for the purpose of carrying

out the object of the Code. In the present case, no such attempt was made on behalf of the respondent-state. The petitioner-Union has placed on record sufficient material to indicate that the impugned order dated 2/3/2009, was issued in a hurried manner in the backdrop of the aforesaid orders passed by this Court in Writ Petition No.20/2008 and that the order had nothing to do with public interest, much less anything to do with the object of the aforesaid Code. Thus, the impugned order issued by the respondent-state by invoking statutory power delegated under section 35 of the Code is found to be manifestly arbitrary and hence wholly unsustainable.

38. In view of the above, it is found that the impugned order dated 2/3/2009, issued under section 35 of the aforesaid Code cannot be sustained and it deserves to be quashed and set aside.

39. Accordingly, the Writ Petition is allowed. The impugned order is quashed and set aside. The Respondent-State is directed to take consequential action, including implementation of the directions issued in the order dated 11/10/2018 passed by this Court in the present Writ Petition.

40. Rule is made absolute in the aforesaid terms.

M. S. JAWALKAR, J **MANISH PITALE, J.**