

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

PUBLIC INTEREST LITIGATION NO. 20 OF 2022

Sunil Sureshchandra Agarwal ..Petitioner
vs.
State of Maharashtra and ors. ..Respondents

Mr. Subhash Jha a/w Mr. Manoj Chauhan, Mr. Siddharth Jha
i/b. Law Global Advocates for petitioner.

Mr. P.P. Kakade, Government Pleader a/w Smt. R.A.
Salunkhe, AGP for State.

Mr. Sandeep Marne for respondent no. 4.

Ms. Sharmila U. Deshmukh for respondent no. 6 (MCZMA).

Mr. Vikram Nankani, Senior Advocate a/w Mr. Saket Mone,
Mr. Subit Chakrabarti i/b. Vidhi Partners for respondent no.
11.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

**RESERVED ON : FEBRUARY 8, 2022.
JUDGMENT ON : FEBRUARY 11, 2022.**

JUDGMENT (Per M.S. Karnik, J.) :

1. The petitioner has approached this Court by way of the present Public Interest Litigation petition filed under Article 226 of the Constitution of India for the following reliefs: -

“(a) that this Hon’ble court may be pleased to call for the records and proceedings concerning pockets ‘D’ and ‘E’, Sector 60, adjacent to NRI Complex,

Palm Beach Road, Nerul, Navi Mumbai and after examining the legality, validity and/or propriety of several permissions granted by CIDCO and other authorities, ignoring the factum of Pockets A to E falling under CRZ 2011 Notification deserves to be quashed and set aside by this Hon'ble court and the same be accordingly quashed and set aside;

(b) that this Hon'ble court may be pleased to call for the records and proceedings concerning different permissions granted by CIDCO, MCZMA, State Environment Impact Assessment Authority, Forest Department, Maha Rera etc. which enables Mistry Construction Co. Pvt. Ltd., the Respondent No.11 herein, to start digging/excavation/piling work on pockets 'D' and 'E' at Sector 60, adjacent to NRI Complex, Palm Beach Road, Nerul, Navi Mumbai and after examining the legality, validity and/or propriety of CIDCO inviting tender for development of 18 hole international standard golf course and country club in Pockets A to E which comprises of 35.55 H.a in view of the same falling under Coastal Regulation Zone Map for Navi Mumbai Municipal Corporation as per 2011 Notification be quashed and set aside in view of the entire process right from inviting RFP dated 18.10.2002 being fraudulent one;

(c) that this Hon'ble Court may be pleased to quash and set aside different sanctions/permissions obtained and/or granted in favour of Mistry Construction Co. Pvt. Ltd. by authorities such as CIDCO, MCZMA, State Environment Impact Assessment Authority, Forest Department, Maha Rera etc. concerning pockets 'D' and 'E' at Sector 60, adjacent to NRI Complex, Palm Beach Road, Nerul, Navi Mumbai may be pleased to quash and set aside the same;

(d) that this Hon'ble court may be pleased to direct the Space Application Centre – Ahmedabad, Water Resource Department-Government of Maharashtra, Survey of India – National Mapping Agency of

Country, Department of Science and Technology – Government of India, Waterbody Information System – GOI, Wetland Grievances Redressal Committee and or a committee be directed to be drawn out of such State and Central agencies and they be directed to have complete satellite mapping of present and past wetland, waterbodies, mangroves, hills/mountains, CRZ, inter tidal zone etc. and such natural resources be directed to be preserved and protected by framing a robust policy in respect thereof and the information of such mapping and or inventorising be made available on the websites of all such agencies;

(e) that this Hon'ble court may be pleased to direct Konkan Commissioner who is also president of wetland grievance redressal committee and mangrove redressal committee in consultation with its committee members comprising of at least two members of the committee drawn from NGO like Vanashakti/NMEPS/BEAG or such other NGO working for environment, National Centre for Sustainable Coastal Management (Ministry of Environment, Forest and Climate Change) be directed to identify CRZ/wetland out of pockets D and E, including its buffer zone and thereupon fence the area so as to ensure that CRZ/Wetland falling under pockets D and E, Sector 60, Nerul, Navi Mumbai remains preserved and protected from any construction / development / reclamation, encroachment etc.;

(f) that this Hon'ble court may be pleased to direct the state government to form a committee of such personnel as may be deemed necessary for initiating action against authors of letter dated 19.1.2017 (Exhibit-'Q') approval granted by MCZMA by letter dated 11.1.2018 (Exhibit-'S'), opinion given by Senior Law Officer, CIDCO dated 30.05.2019 (Exhibit-'Z-13') and all other such letter/orders/communication which smacks of malafide and have been issued with oblique and ulterior motive of benefiting the Respondent No.11

on the administrative side de hors their criminal prosecution sought hereinabove;

(g) that this Hon'ble Court may be pleased to direct Central Bureau of Investigation/Enforcement Directorate/Income Tax and/or such other investigating agencies as this Hon'ble Court may deem fit and proper and/or constitute SIT for the purpose of conducting investigation with regard to the manner in which Mistry Construction Co. Pvt. Ltd. has been able to get the tender concerning development of an international standard golf course on pockets 'A' to 'E' at Sector 60, Nerul, Navi Mumbai in their favour by practicing fraud and deceit at every level and all those who are responsible for colluding and conniving with Mistry Construction Co. Pvt. Ltd., including officials of CIDCO/Makhija Developers Pvt. Ltd./BSEL Infrastructure Realty Limited and/or any other such entity which may be found to be involved in the process of practicing fraud and deceit which could lead to massive destruction of CRZ, ecology, environment, natural resources such as mangroves, wetland, forest etc. of Pockets A to E, Sector 60, Nerul, Navi Mumbai and the report of such investigation be directed to be submitted to this Hon'ble Court so as to enable this Hon'ble Court to pass such appropriate order and/or direction as may be deemed necessary;

(h) pending the hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay the execution, implementation and/or effect of the revalidation order bearing No.CIDCO/BP-15516/TPO(NM)/2019/1179 dated 3.6.2019 issued by Deputy planner (BP) and all other revalidation of commencement certificate issued and/or permission granted by CIDCO concerning pockets D and E, Sector 60, Nerul, Navi Mumbai and/or such other permission/approval granted by CIDCO which enabled the Respondent No.11 to commence construction on Pockets D and E from October,

2021;

(i) pending the hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay all or any work being carried out/to be carried out on pockets 'D' and 'E', Sector 60, adjacent to NRI Complex, Nerul, Navi Mumbai by Mistry Construction Co. Pvt. Ltd. and/or their agents, servants and/or anybody else under them from carrying out any construction of any nature whatsoever such as excavation, levelling, piling or for that matter any work of any nature which would destroy and/or manipulate the position of the land which existed prior to October, 2021;

(j) interim and ad-interim relief in terms of prayer clauses (h) and (i) above be granted;

(k) any other further order and/or direction be given as the nature and circumstances of the case may require."

2. The petitioner prays for the reliefs set out above, on the following set of facts:

(A) The petitioner is a Chartered Accountant and claims to be actively involved in protecting and conserving nature and natural resources in and around the NRI complex where the petitioner resides in Navi Mumbai. The recitals in paragraph 3 of this PIL petition being relevant is reproduced hereunder, the same reads thus:

"3. The Petitioner before filing the present petition in this Hon'ble Court had filed PIL No.58 of 2018 in this Hon'ble Court inter alia seeking to challenge the Notification Bearing No.TPB/4316/1340/CR/97/03/UD/11 dated 5.10.2016, being Ex "G' annexed to the petition and so also other prayers which have been more particularly mentioned and set out in the said petition and

which were concerning Pockets 'A' to 'E' in Sector-60, Seawoods, Nerul, Navi Mumbai but on grounds which are different than the grounds urged in the present petition with documentary evidence which were not available with the Petitioner and have come in the possession of the petitioner recently. The documents which are annexed to the petition were neither pressed into service, nor were available to the Petitioner and hence not considered by this Hon'ble Court while deciding the petition filed by the Petitioner or the companion petition filed by Navi Mumbai Environment Preservation Society and hence the present petition is maintainable considering the fact that a massive fraud has been practiced by the parties herein in collusion and active connivance of statutory authorities."

(B) According to the petitioner, respondent no. 2 – City Industrial Development Corporation of Maharashtra Limited (CIDCO) invited tender from close quarters, without giving wide publicity in different newspapers and floated Request for Proposal (hereafter "RFP" for short) on October 18, 2002 for development of 18 holes International Standard Golf Course and Country Club (hereafter referred to as "the project", for short) on the Pockets 'A' to 'E' on 35.55 hectares; whereas the maximum area of real estate development permissible, as per the RFP, was not to exceed the area of pocket 'E' which is 1.5 hectares. To make the project viable, commercial exploitation of 1.5 hectares was permitted for residential purpose and the total FSI was restricted to 8.875 hectares. Three bidders namely (i) M/s. Makhija Developers Private Limited (respondent no. 12), (ii)

M/s. BSEL Infrastructure Realty Limited (respondent no. 13) and (iii) M/s. Mistry Construction Company Private Limited (respondent no. 11) participated in the tendering process. M/s. BSEL Infrastructure Realty Limited secured maximum marks out of the three bidders, both in terms of technical and financial bids. The note as regards the project prepared by the GM (IT-SP) of CIDCO submitted to Chief Economist, CAO and Managing Director dated December 6, 2002 obtained under the Right to Information Act (hereafter "RTI Act" for short) is relied upon. Further, the notings of the Managing Director and Joint Managing Director of CIDCO Limited dated March 11, 2003 obtained under the RTI Act is also relied upon. These notings reveal that the authorities had recommended inviting fresh offer after modifying some of the ambiguous clauses in the previous document known as RFP.

(C) Averments are then made in the PIL petition that information obtained under the RTI Act reveals that the Managing Director and Joint Managing Director of CIDCO vide notings dated March 31, 2003 suggested that all clearances have to be obtained first before taking any further steps in the matter. The notings record that major pockets are Pocket 'A' of 12 hectares, Pocket 'B' of 20 hectares, Pocket 'C' of 0.85 hectares and Pocket 'F' of 47 hectares and that they are no development zones. Despite opposition from several quarters to the proposal of Mistry Construction Company Private Limited, the Board of

Directors of CIDCO under mysterious circumstances gave approval and awarded the work of development of the project to Mistry Construction Company Private Limited on June 3, 2004 for a sum of Rs.33,00,33,000/-.

(D) BSEL Infrastructure Realty Limited challenged the award in favour of Mistry Construction Company Private Limited by filing Writ Petition No. 5617 of 2004 in this Court. On November 11, 2008, BSEL Infrastructure Realty Limited settled the issue with Mistry Construction Company Private Limited and on November 21, 2008 Mistry Construction Company Private Limited made the balance payment of Rs.29.70 crore. CIDCO issued the letter of allotment in favour of Mistry Construction Company Private Limited for developing a signature golf course on March 12, 2009. Construction activity was allowed in Pocket 'A' also. The principal agreement to lease was executed by and between CIDCO and Mistry Construction Company Private Limited on August 22, 2009 in respect of Pockets 'A', 'D' and 'E' and for the remaining pockets namely 'B' and 'C', CIDCO agreed to execute modified agreement at a later stage. Consequently, the modified agreement to lease dated November 4, 2016 was executed in respect of Pockets 'A', 'B', 'C' 'D' and 'E'.

(E) Reference is made to a report dated November 22, 2016 submitted by Ms. Aparna Vedula, Assistant City Planner, CIDCO to her superiors *inter alia* suggesting that Mistry Construction Company Private Limited is

contemplating to utilize 28.875 hectares built-up area for real estate development. This report suggests that the location restriction for real estate construction has been removed and the very object for permission being granted for real estate development which was to make the golf course a viable project, has been completely diluted.

(F) Prior in point of time, Makhija Developers Private Limited filed a writ petition in this Court, being Writ Petition No. 539 of 2005 *inter alia* challenging grant of tender in favour of Mistry Construction Company Private Limited. This Court vide its judgment and order dated January 20, 2010 held that the entire tendering process was vitiated and the letter of allotment dated March 12, 2009 issued by CIDCO in favour of Mistry Construction Company Private Limited was illegal and void *ab initio*. This Court quashed and set aside the letter of allotment dated March 12, 2009 and consequently the lease deed signed on August 22, 2009. This Court directed CIDCO to invite fresh bids for development of the project after fixing the reserved bid amount within the time stipulated therein. Adverse observations were made by this Court against Mistry Construction Company Private Limited and CIDCO. SLP (Civil) No. 10509-10510 of 2010 filed before the Hon'ble Supreme Court of India by M/s. Makhija Developers Private Limited was dismissed vide order dated July 19, 2010.

(G) Apart from laying a substantive challenge by way of separate SLPs, Mistry Construction Company Private

Limited as well as CIDCO had preferred SLPs for the limited purpose of expunging the adverse observations made by this Court in its judgment and order dated January 20, 2010 in Writ Petition No. 539 of 2005. Hon'ble Supreme Court vide order dated July 7, 2010, disposed of the SLP preferred by CIDCO with liberty to approach this Court. CIDCO filed a Review Petition No. 31402 of 2010 in this Court seeking to delete/expunge these adverse observations. The review petition came to be dismissed by this Court vide order dated May 4, 2011. SLP preferred by CIDCO against the order dated May 4, 2011 passed by this Court, on the review petition, came to be dismissed by the Hon'ble Supreme Court vide order dated April 25, 2014.

(H) So far as the substantive challenge in the SLP filed by Mistry Construction Company Private Limited against the order of this Court dated January 20, 2010 in Writ Petition No. 539 of 2005 is concerned, the Hon'ble Supreme Court was pleased to grant leave to appeal. During the pendency of these Civil Appeal Nos. 9454-9455 of 2010 before the Hon'ble Supreme Court, Mistry Construction Company Private Limited settled the matter with Makhija Developers Private Limited. I.A. Nos. 5-6 of 2013 came to be filed on behalf of Mistry Construction Company Private Limited and Makhija Developers Private Limited. Hon'ble Supreme Court was not inclined to accept the settlement or the compromise arrived at and these applications came to be dismissed. It was directed that the

appeals themselves be listed for hearing at an early date.

(I) Later, on a motion made by the parties, the Hon'ble Supreme Court disposed of Appeal Nos. 9454-9455 of 2010 by an order dated February 25, 2014, thereby permitting Makhija Developers Private Limited to withdraw Writ Petition No. 539 of 2005 preferred by it in this Court. The petitioner alleges manipulation and that fraud has been practiced all throughout by Mistry Construction Company Private Limited including in obtaining the order dated February 25, 2014. It is alleged that the fraud is practiced obviously with the ulterior motive of ensuring huge monetary benefit accruing in favour of Mistry Construction Company Private Limited.

(J) It is then averred that the public properties are under the CRZ 2011 Notification. It is further averred that the Managing Director of CIDCO has no authority to decide whether the land in question is a wetland or not. The averments are made as regards an earlier writ petition preferred by the petitioner being PIL No. 58 of 2018 in this Court which was tagged along with PIL No. 218 of 2013 filed by Navi Mumbai Environment Preservation Society (NMEPS). This Court by a detailed judgment and order dated November 1, 2018 disposed of PIL No. 58 of 2018. Mistry Construction Company Private Limited as well as CIDCO challenged the judgment and order dated November 1, 2018 of this Court before the Hon'ble Supreme Court by filing SLP (Civil) No. 016310-016311 of 2019 and SLP (Civil)

No. 016313-016314 of 2019, respectively, which are pending.

(K) The petitioner alleges large scale irregularities in the matter of development and that even Pockets 'A' to 'E' are renumbered under mysterious circumstances. It is further alleged that by virtue of a Notification dated October 5, 2016 issued by Urban Development Department, Government of Maharashtra, the lands which were under 'No Development Zone' came to be converted into 'Regional Park Zones' and predominantly 'Residential Zone' in complete disregard to the fact that these plots of land were wetlands and hence change of user and/or zone was impermissible in law. Coming back to PIL No. 58 of 2018, in paragraph 61 of this PIL petition, the petitioner states about filing of PIL No. 58 of 2018 which has been disposed of by a Division Bench of this Court by judgment and order dated November 1, 2018. After passing of the judgment, the petitioner recently came in possession of certain documents which reflects massive fraud in the matter of tender being awarded by CIDCO in favour of Mistry Construction Company Private Limited. Following are the documents which form the basis for filing this PIL petition on grounds different than those taken up in PIL No. 58 of 2018: -

- i. CRZ 2011 Notification.
- ii. Letter dated 11.03.2016 of NMMC to Maharashtra Coastal Zone Management Authority.
- iii. Opinion of Shri. Chander Uday Singh, Senior

Advocate dated 17.05.2015.

iv. Note dated 6.12.2002 of GPI (IT-SP) submitted to Chief Economist, CAO and MD, CIDCO.

v. Notings of MD and JMD of CIDCO dated 11.03.2003.

vi. Notings of MD and JMD of CIDCO dated 31.03.2003.

vii. Letter of Chairman and Managing Director of CIDCO, Shri Vinay Mohan Lal dated 19.09.2003, addressed to the Principal Secretary of Urban Development Department (UDD).

viii. Letter dated 12.01.2006 of Dr. T. Chandrashekhar, IAS, Metropolitan Commissioner of MMRDA, addressed to Shri Ashok Sinha, IAS, Managing Director, CIDCO.

ix. Opinion dated 30.05.2019 by Senior Law Officer, CIDCO.

x. CC Revalidation order No.CIDCO/BP15516/TPO (NM)/2019/1179 dated 3.06.2019."

3. It is thus the petitioner's case that a fraud has been practiced at all stages right from inception by Mistry Construction Company Private Limited in active connivance with the statutory authorities. The petitioner sets out a case that fraud would vitiate all orders of allotment made in favour of Mistry Construction Company Private Limited and the consequential permissions granted by CIDCO for development of the project. The petitioner in paragraph 62 states that wetlands/water bodies/ponds/lakes are being illegally reclaimed and alleges destruction of natural resources which has cascading effect on ecology/environment. The petitioner sets up a case of fraud

on the basis of an opinion obtained by CIDCO from a senior advocate, Supreme Court of India. In paragraph 61 it is averred, based on the report of the Senior Law Officer, that pockets 'A' to 'E' are falling under CRZ, wetland/water bodies and part of pocket 'D' is certainly a wetland which is not disputed and/or controverted, and that these facts are suppressed while granting permissions. The petitioner in paragraph 67 further pleads that "The Senior Law Officer, CIDCO is not an expert on the subject so as to understand the CRZ, ecology, environment, wetland, forest, mangroves, inter tidal zone, water bodies etc. which are extremely complex subjects and then without applying mind and without hearing the parties concerned, holding that pockets 'A' to 'E' though considered as a single project, however, in view of modified agreement to lease, the contractual obligation which CIDCO has to discharge will prevail over the piece of land." The petitioner thus pleads a case of violation of environmental laws and that the permissions have been illegally obtained for developing the project on wetlands which will have a serious impact on the ecology/environment.

4. At the outset, learned senior advocate Mr. Nankani for Mistry Construction Company Private Limited raised preliminary objections to the maintainability of this PIL petition. According to him, the judgment of this Court in PIL No.58 of 2018 would operate as *res judicata* so far as the present PIL petition is concerned. Secondly, according to

him, it is not open for this Court to again consider the challenge to the tender process which commenced as far back as on October 18, 2002 by inviting RPF and which has attained finality in view of the observations made by the Hon'ble Supreme Court vide its order dated February 25, 2014 in Civil Appeal Nos.9454-9544 of 2010. Learned senior advocate would urge that this Court should not entertain the present PIL petition also on the ground of delay as the challenge to the project, the process in respect of which commenced from October 18, 2002, is by now hopelessly belated. Learned senior advocate would then urge, without prejudice to the rights and contentions of Mistry Construction Company Private Limited, that assuming the petitioner can lay a challenge to the project and various permissions granted on the ground that the same violates CRZ-2011 Notification as being contrary to the environmental laws, even then the petitioner's remedy is to approach the forum provided under the National Green Tribunal Act, 2010 (NGT Act).

5. Responding to the preliminary objections raised on behalf of Mistry Construction Company Private Limited, Mr. Subhash Jha, learned counsel appearing on behalf of the petitioner, vehemently urged that the present is a case where the earlier decisions rendered by the Hon'ble Supreme Court on February 25, 2014 be treated as nullity as the same has been obtained by practicing fraud. Learned counsel submits that the principle of "finality of litigation"

cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. According to him, Mistry Construction Company Private Limited and the statutory authorities, in active connivance with each other, in utter disregard to the statutory provisions, only with a view to gain unfair pecuniary advantages, are hell-bent on destroying the natural resources. In support of his submissions, Mr. Jha relied upon the decision of the Apex Court in the case of **S.P Chengalvaraya Naidu vs Jagannath**¹ to contend that it is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and *non-est* in the eyes of law. He submits that such a judgment/decreed by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

6. Learned counsel submits that the entire tendering process which commenced from 2002 is vitiated by fraud. In the submission of learned counsel, the Hon'ble Supreme Court ought not to have passed the order dated February 25, 2014 allowing withdrawal of the writ petition decided by this Court in Writ Petition No. 539 of 2005 on January 20, 2010, which is in the teeth of its earlier order dated May 2, 2013 passed in Interim Application Nos.5-6 of 2013 in Civil Appeal Nos. 9454-9455 of 2010. It is then submitted by

¹ (1994) 1 SCC 1

learned counsel for the petitioner, that though the petitioner had earlier filed PIL No.58 of 2018 which has since been disposed of by a detailed judgment and order passed by this Court, however, the petitioner has come in possession of documentary evidence recently which could not be pressed into service nor available with the petitioner earlier and hence not considered by this Court while deciding PIL No.58 of 2018. It is urged by learned counsel for the petitioner that CIDCO in all fairness should have produced the entire record for consideration before this Court when PIL No.58 of 2018 was heard and decided. Having failed to do so, considering the larger public interest involved, and the damage which will resultantly be caused by the project on the environment, the petitioner's challenge should be entertained. Learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **National Confederation of Officers Association of Central Public Sector Enterprises and Others vs. Union of India and others**² in support of the proposition that while determining the applicability of the principle of *res judicata* under section 11 of the Code of Civil Procedure 1908, the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed.

7. Learned counsel for the petitioner then urged that the power conferred on the High Court under Article 226 of the

2 2021 SCC OnLine SC 1086

Constitution of India is very wide. The existence of an alternate remedy of approaching the forum created by the NGT Act in respect of environmental issues will not put any fetters on this Court from exercising its extraordinary jurisdiction in a genuine case and especially in matters where issues of grave public importance are involved.

8. We now proceed to consider the preliminary objections raised by learned senior advocate for Mistry Construction Company Private Limited after considering the response thereto by learned counsel for the petitioner. We have perused the PIL petition, the documents annexed and heard learned counsel for the respective parties.

9. The project in question was initiated by CIDCO by inviting tenders in what is termed as "Request for Proposal" on October 18, 2002. One of the unsuccessful bidders, viz. Makhija Developers Private Limited challenged the award of tender in favour of Mistry Construction Company Private Limited. This Court by a judgment and order dated January 28, 2010 allowed the petition and held the entire tender process as vitiated and the letter of allotment dated March 12 2009 issued by CIDCO in favour of Mistry Construction Company Private Limited was declared illegal, and void *ab-initio*. CIDCO was directed to invite fresh tenders for the project. For substantiating the petitioner's case of fraud, Mr. Jha relied on the order dated May 2, 2013 in Interim Application Nos.5-6 of 2013 in Civil Appeal Nos. 9454-9455

of 2010. Mr. Jha submits that these interim applications came to be filed praying for disposal of the appeals in terms of the compromise recorded between the parties. The order dated May 2, 2013 reads thus: -

“I.A. Nos.5-6 have been filed on behalf of the appellant and the Respondent No.1, M/s. Makhija Developers Private Limited, for disposal of the appeals in terms of the compromise recorded between the said parties.

Having regard to the fact that the present appeals are pending against certain findings of the High Court, we are not inclined to accept the settlement or the compromise arrived at between the appellant and the Respondent No.1 and the applications are, therefore, dismissed.

Let the appeals themselves be listed for hearing at an early date and, if possible, within three months from the date the appeals are ready for hearing.”

10. According to Mr. Jha, once the Hon’ble Supreme Court rejected the interim applications, it was then not open for the parties to have later requested the Court for allowing the prayer for withdrawal of the writ petition filed before the Bombay High Court, when the detailed judgment and order was the subject matter of challenge in the pending appeals. He submits that scathing observations were made by this Court against Mistry Construction Company Private Limited and the concerned authorities while setting aside the tender process. According to him, therefore, the order dated February 25, 2014 was obtained by practicing fraud.

11. We are afraid that it is not possible for us to accept this contention of learned counsel for the petitioner. In this context, it would be apposite to reproduce the order dated February 25, 2014 passed by the Hon'ble Supreme Court, which reads thus: -

"M/s Makhija Developers Pvt. Ltd.-respondent No. 1 herein filed a writ petition before the High Court inter alia impugning the decision of City and Industrial Development Corporation ("CIDCO" for short) allotting land to the appellant-Mistry Construction Co. Pvt. Ltd. for development of 18 Holes International Standard Golf Course and Country Club and to invite fresh bids with liberty to the writ petitioner to participate in that. The High Court by the impugned Order quashed the allotment made in favour of M/s Mistry Construction Co. Pvt. Ltd.-respondent No. 4 in the said writ petition and directed the CIDCO to invite fresh bids with liberty to the writ petitioner and other respondents to participate in the same.

M/s Mistry Constructions Co. Pvt. Ltd. assails this order in the present appeals with the leave of the Court.

When the matter is taken up, Mr. Senthil Jagadeesan, learned counsel appearing on behalf of the writ petitioner prays for withdrawal of the writ petition unconditionally. It is not opposed either by the appellant herein or the other respondents.

We permit the writ petitioner to withdraw the writ petition.

In view of the aforesaid, the impugned order passed by the High Court is rendered non est and, therefore, set aside on that ground alone. As the Project is old and the appellant has spent huge amount, we direct the CIDCO to provide necessary

assistance to the appellant to complete the Project without unnecessary delay.

In the light of the above, these civil appeals are allowed, the impugned order is set aside with the observation aforesaid but without any order as to costs.”

12. A reading of the order dated February 25, 2014 reveals that not only did Their Lordships permit withdrawal of the writ petition filed in this Court, but after recording briefly the controversy involved, observed that the order passed by the High Court is rendered *non-est* and therefore was set aside. It further observed that as the project is old, the CIDCO was directed to provide necessary assistance to Mistry Construction Company Private Limited to complete the project without unnecessary delay. All the material facts were before the Hon’ble Supreme Court. In these circumstances, it is not possible for this Court to accept the contention of the petitioner that the order has been obtained by practicing fraud. This order was passed as far back as on February 25, 2014 and it is now that the petitioner wants us to hold that the order dated February 25, 2014 has been obtained by practicing fraud. This contention cannot be taken up for consideration in this PIL petition. It is for the petitioner to avail of any other remedy permissible in law to canvas his case based on fraud.

13. Let us now examine the preliminary objection of Mr. Nankani that the present PIL petition should not be entertained only on account of some additional documents

which came in possession of the petitioner after the decision in PIL No. 58 of 2018.

14. We have gone through the decision dated November 1, 2018 rendered by this Court in PIL No.58 of 2018. Paragraphs 2, 3 and 4 of the said decision substantially cover the matters raised in this PIL petition. Even the prayer for taking action, both civil and criminal, against Mistry Construction Company Private Limited and the officials of CIDCO was subject matter of consideration in the said PIL. Paragraph 2 of the judgment and order refers to various pockets on which the development activities are to be carried on. The project was challenged on the ground that it is violative of environmental laws. The challenge to the decision rendered by this Court in PIL No. 58 of 2018 is pending consideration in the SLP filed by Mistry Construction Company Private Limited and CIDCO before the Hon'ble Supreme Court. At this stage, it would be material to reproduce the reliefs sought in PIL No. 58 of 2018: -

“(a) that this Hon'ble court may be pleased to call for the records and proceedings concerning the impugned notification bearing No. TPB/4316/1340/CR-97/03/UD-11 dated 5.10.2016, being Exhibit-'G' annexed herewith, and after examining the legality, validity and/or propriety of the same, may be pleased to quash and set aside the same;

(b) that this Hon'ble Court may be pleased to call for the records concerning permission for

construction of boundary wall granted by CIDCO to the Respondent No.11 vide their letter dated 18.09.2017, being Exhibit-'H1' annexed herewith, and after examining the legality, validity and/or propriety of such permission having been granted in gross violation of various orders passed by this Hon'ble Court in PIL No.218 of 2013 as well as different statutes enacted for protection and preservation of nature be quashed and set aside;

(c) that this Hon'ble Court may be pleased to direct the Respondent No.1 to initiate such civil and/or criminal action as may be deemed necessary in the facts and circumstances of the case as against the Respondent No.11, their agents, servants, officers, directors responsible and liable for its day-to-day affairs, including the personnel of CIDCO involved in the process of granting permission for construction and other government officials responsible for enforcement of various orders passed by this Hon'ble Court in PIL No.218 of 2013 as well as environmental laws under civil as well as criminal laws, including on the administrative side against the government officials/personnel;

(d) that this Hon'ble Court may be pleased to direct the Respondent No.11 to restore back the area reclaimed by them in furtherance of permission for construction of boundary wall obtained by them from CIDCO vide their letter dated 18.09.2017, being Exhibit-'H1' annexed herewith, and they be further directed to have the compound wall, construction materials such sand concrete slabs, granite, gravel, tin sheds and materials removed from the site and restore it in the same condition in which the areas of Pockets A to E in Sector 60, Seawoods, Nerul, Navi Mumbai were prior to the permission for construction of compound wall granted by CIDCO to the Respondent No.11 vide their letter dated 18.09.2017;

(e) pending the hearing and the final disposal of the petition, this Hon'ble Court may be pleased to direct appointment of committee and/or person(s) as may be deemed necessary to visit wetland/mangrove/water bodies and submit their detailed report in connection with damage/destruction caused by cutting trees/mangroves/wetland etc. with debris in attempt to encroach on the said land by the Respondent No.11 after securing permission to erect compound wall from CIDCO on 18.09.2017;

(f) pending the hearing and the final disposal of this petition, this Hon'ble Court may be pleased to direct the Respondents, their agents, servants and/or anybody else claiming through and/or under them from carrying out any construction of any nature whatsoever on Pockets A to E in Sector 10, Seawoods, Nerul, Navi Mumbai and the Respondent No.9 be directed to ensure complete protection being accorded so as to prevent any construction activity of any nature whatsoever thereon;

(g) interim and ad-interim relief in terms of prayer clause (e) and (f) above be granted;

(h) any other further order and/or direction be given as the nature and circumstances of the case may require."

15. The present PIL is filed mainly on the ground that the documentary evidence which was available with the petitioner and which came in his possession recently entitles the petitioner to challenge the actions of CIDCO on grounds which are different than those urged in PIL No. 58 of 2018. We are inclined to uphold the preliminary objection raised by learned senior advocate for Mistry Construction Company Private Limited that the present PIL petition is not

maintainable on salutary principles traceable in the Code of Civil Procedure. Prayer clause (a) of the present petition relates to a challenge to the project as being violative of CRZ; prayer clause (b) relatable to a challenge to the tender process which commenced pursuant to inviting RFP; prayer clauses (c), (d) and (e) relate to challenges to the various sanctions/permissions granted in favour of Mistry Construction Company Private Limited as violative of the environmental laws; prayer clauses (f) to (g) seek initiation of civil and criminal actions against the project proponent, i.e., Mistry Construction Company Private Limited, and the statutory authorities involved who granted various permissions. Not only the issues involved in the present PIL petition were directly and substantially involved in PIL No.58 of 2018 and dealt with by this Court by a detailed judgment and order, we find that PIL No.58 of 2018 was filed by the present petitioner himself. The judgment and order passed by this Court in PIL No.58 of 2018 reveals that there has been a substantial adjudication of the matter on merits. Merely because, some additional documents are now in possession of the petitioner would not give cause to the petitioner to raise the very same challenge in PIL No. 58 of 2018 by filing a fresh PIL in the present form. It is for the petitioner to adopt such remedies as are permissible on the basis of additional materials/documents before the appropriate forum. Additionally, even the judgment and order passed in PIL No. 58 of 2018 is under challenge

before the Hon'ble Supreme Court; and, on this count too, we ought to be loath to entertain the present PIL petition. On the basis of certain documents which have later come in his possession, the petitioner is not entitled to raise the same challenge as in PIL No. 58 of 2018 but on different grounds by way of the present PIL petition. From the submission of learned counsel for the petitioner and upon reference to the new documents, we are satisfied that the petitioner at the highest is trying to make out the case of discovery of new and important matter or evidence which was not within his knowledge or could not be produced by him at the time when the judgment and order was passed in PIL No. 58 of 2018. In our opinion, remedy of the petitioner is elsewhere but certainly not by way of the present PIL petition. It is not possible for us to conclude that failure to produce the documents which the petitioner alleges to have recently come in possession of, would tantamount to practicing fraud on the Court. The decision of the Hon'ble Supreme Court in **S.P Chengalvaraya Naidu** (supra) will not have any application in the given set of facts and circumstances emerging from this PIL petition, in view of the above.

16. So far as the challenge to the tender process is concerned, we find that the tender process was subject matter of challenge before this Court in Writ Petition No. 539 of 2005 and thereafter before the Hon'ble Supreme Court which has now attained finality in view of the order

passed by such Court on February 25, 2014.

17. Learned senior advocate for Mistry Construction Company Private Limited is justified in placing reliance on the decision of the Hon'ble Supreme Court in the case of **Forward Construction Co. and others vs. Prabhat Mandal (Regd.) Andheri and others**³. We make a profitable reference to paragraphs 19 and 20 of the said decision where Their Lordships held thus: -

"19. The second question for consideration is whether the present writ petition is barred by res judicata. This plea has been negated by the High Court for two reasons: (1) that in the earlier writ petition the validity of the permission granted under Rule 4(a)(i) of the Development Control Rules was not in issue; and ***.

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The

3 (1986) 1 SCC 100

principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.”

(emphasis supplied by us)

18. We, therefore, have no hesitation in holding that the challenge to the tender process based on new documents and grounds is barred by the principle of constructive *res judicata*.

19. The decision of the Apex Court in **National Confederation of Officers Association of Central Public Sector Enterprises** (supra) was rendered in completely different fact situation. In paragraph 34, Their Lordships have observed that while determining the applicability of the principle of *res judicata* under section 11 of the Code of Civil Procedure 1908, the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. It is observed that there is a trend of poorly pleaded public interest litigations being filed instantly following a disclosure in the media, with a conscious intention to obtain a dismissal from the Court and preclude genuine litigants from approaching

the Court in public interest. The Court went on to hold that “this Court must be alive to the contemporary reality of ‘ambush Public Interest Litigations’ and interpret the principles of *res judicata* or constructive *res judicata* in a manner which does not debar access to justice. The jurisdiction under Article 32 is a fundamental right in and of itself.” Noticeably, here, there has been a previous adjudication on merits on a challenge being mounted by the self-same petitioner and the earlier PIL petition cannot be labelled as an ‘ambush Public Interest Litigation’. Even otherwise, the Hon’ble Supreme Court is seized of the challenge to the judgment and order on the petitioner’s earlier PIL petition. We, thus, are of the clear opinion that the decision in **National Confederation of Officers Association of Central Public Sector Enterprises** (supra) would not be of any assistance to the petitioner to hold that this PIL petition should be entertained.

20. Insofar as the reliefs prayed for in prayer clauses (a) to (e) are concerned, the same appear to be challenges based on alleged violation of environmental laws. Prayer clauses (f) to (g) are reliefs consequential to the decision on prayer clauses (a) to (e). This Court in **Vanashakti and Anr. Vs. Union of India and ors.**⁴ in paragraphs 28, 31 and 32 held thus: -

4 PIL No.28 of 2021 Bombay High Court decided on October 8, 2021.

"28. The Tribunal's jurisdiction to deal with environmental issues is so wide and expansive that literally speaking, 'everything under the sun' raising substantial question relating to environment can be dealt with by it. It would matter little that in its pursuit to further the objects for which the Tribunal has been brought into existence as well as to ensure protection of environment and conservation of forests and other natural resources including enforcement of any legal right relating to environment, any other enactment is required to be considered. So long as the basic question remains the same, i.e., the Tribunal is either approached or is duty bound to secure proper implementation of the enactments specified in Schedule I of the NGT Act and a substantial question in relation thereto arises, and the decision of the Tribunal on such question would beneficially impact the environment, merely because in the process of decision making the Tribunal may be required to consider provisions of any other enactment would not denude it of its fundamental and predominant task of taking decisions that would advance the object of the Schedule I enactments as also to secure the ends of justice in any particular case. We may refer in this connection to rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 framed by the Central Government.

31. We are also minded to observe that no Court ought to interfere in respect of matters over which the Tribunal has jurisdiction, or else the very purpose for enactment of the NGT Act would stand defeated. The Tribunal, having regard to its constitution, would be better equipped to deal with all points of law and facts, which could be intricate, with the expert assistance that is available at its level.

32. The discussion must end by quoting paragraph 40 of the decision of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union**

of India, reported in (2012) 8 SCC 326, reading as follows:

'40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the NGT Act) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned'."

(emphasis supplied in original)

21. The decision of this Court in **Vanashakti** (supra) squarely applies to the present case.

22. For the reasons aforesaid, we decline interference. The writ petition is dismissed with no order as to costs. This will not preclude the petitioner from exploring such other remedy as is available to him, in accordance with law.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)