

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

WRIT PETITION NO.5483 OF 2021

Devsing Ramchandra Chavan	...Petitioner
vs.	
The State of Maharashtra & Ors.	...Respondents

Mr. Abhijit P. Kulkarni, for the Petitioner.

Mr. A. A. Kumbhakoni, Advocate General, with Mr. P. P. Kakade, Government Pleader and Mr. S. H. Kankal, AGP for the State.

Mr. Prashant Katneshwar, Advocate for Interveners.

CORAM :- G. S. KULKARNI, J.

DATE : APRIL 18, 2022.

JUDGMENT :-

1. This writ petition is filed challenging an order dated 23 June, 2021 passed by the Maharashtra Revenue Tribunal Bench at Pune (for short “the Revenue Tribunal”) by which the Revenue Tribunal has held that an interim stay which was granted by it to an order passed by the Sub-Divisional Officer confirming the orders passed by the Tehsildar as impugned in the revision proceedings filed by the petitioner, stood automatically vacated in view of the orders passed by the Supreme Court in **Asian Resurfacing of Road Agency Private Limited & Anr. vs. Central Bureau of Investigation**¹.

2. Thus, the issue which arises for consideration in this Writ Petition is as to whether the learned Member of the Maharashtra Revenue Tribunal, was correct in applying the orders and observations of the

¹ (2018)16 SCC 299

Supreme Court in paragraphs 36 and 37 of its judgment in the case of *Asian Resurfacing Road Agency's* case (supra), to hold that the interim relief granted by the Revenue Tribunal in favour of the petitioner by an order dated 10 December 2018 stood automatically revoked on a period of more than six months having passed.

3. In brief, the relevant facts are:- The dispute between the parties before the Revenue Tribunal, Pune, concerns a land situated at Village Boroti, Taluka – Akkalkot, District – Solapur. There was a old previous litigation between the parties, which according to the petitioner culminated into final orders passed by the Revenue Tribunal, Pune on 17 March, 1971. The case of the petitioner is that however despite such orders passed by the Revenue Tribunal in petitioner's favour, which recognized the petitioner's rights on such land as also the consequent revenue entries made in that regard, the Tahsildar, Akkalkot had passed an order dated 6 December, 2016 whereby the petitioner's rights as reflected in the revenue records in the 'other rights column' were sought to be de-recognized. The petitioner challenged the said order passed by the Tahsildar in an appeal before the Sub-Divisional Officer (SDO). The SDO, by an order dated 28 November, 2017 confirmed the order dated 6 December, 2016 passed by the Tahsildar against which the petitioner filed the revision in question, before the Revenue Tribunal (Revision Application No.SH-II 05/2018) under Section 76 of the Maharashtra Tenancy and Agricultural Lands Act 1948. On such revision application

filed by the petitioner, an interim order dated 10 December, 2018, came to be passed by the tribunal, whereby the order passed by the SDO and subject matter of the challenge in the proceedings of the revision, came to be stayed by the Revenue Tribunal till further date, while issuing notice to the respondents. The said order of the Revenue Tribunal needs to be noted, which reads thus:-

“ **Order below ‘Stay appln’ in Revision No. SH/II/5/2018**

Matter is taken on board at the request of Ld. Advocate for the applicant. He has produced notice issued by Dy. Supdt. of Land Records, Akkalkot, dated 21/11/2018 and submitted that if the stay to the impugned order is not granted, multiplicity of litigation will be created.

Read the judgment & order passed by both the tribunals below. Matter is pending at the stage of ‘hearing before admission’. Therefore, when the matter is called on Board by showing urgency, I have no alternative other than to pass the following interim order with time limit.

Order

The judgment & order passed by SDO, which is under challenge in the revision application is hereby stayed till further date. However, this date shall not be interpreted for any of the purposes in respect of the action proposed under the notice dated 21/11/2018.

Issue notice to the respondents as to why the stay granted should not be made absolute till the decision of the stage of revision application i.e. ‘hearing before admission’.

Matter is fixed on 20/12/2018.

Petitioner is directed to serve fresh notices by E-Mail to all the respondents and also issue fresh notices on the given addresses at the cost and risk of the applicant.

Inform both the tribunals below.”

4. It is thus clear that the operation of the judgment and order dated 28 November, 2017 passed by the Sub-Divisional Officer confirming the orders of the Tehsildar was stayed by such interim order passed by the

Revenue Tribunal. But for such stay it would have resulted in deletion of the petitioner's name from the record of rights in respect of Survey no. 115 as a tenant in implementation of the orders dated 6 December, 2016 of the trial authority, namely that of the Tahsildar.

5. The said interim order was extended by the Revenue Tribunal from time to time, however, by the impugned order dated 23 June, 2021 passed on the petitioner's extension application, the Revenue Tribunal, referring to the decision of the Supreme Court in *Asian Resurfacing of Road Agency's* case (supra) as also referring to a Government Circular dated 6 May 2021, observed that the interim order dated 10 December, 2018 had come to an end. Notably the private respondents were not represented when the impugned order was passed. The impugned order needs to be noted which reads thus:-

“

Order

Read application dated 23.06.2021. In this case Tribunal has made order of stay on 10.12.2018 and revision applicants got extended that order from time to time till today. **Now in view of the observations of Hon'ble Supreme Court made in Misc.application No.1577/2020 in Criminal Appeal No.1375-76 of 2013 on 15.10.20 and directions given by State Govt. on 6th May 2021, stay order has come to an end.** Hence, this application is disposed off as filed. No order as to costs, Communicate this order to Lower Courts.”

(emphasis supplied)

6. It is to be noticed that the Revenue Tribunal referred to the Circular issued by the Government of Maharashtra in its Revenue and

Forests Department being Circular No.Miscellaneous-2021/M.No.15/L-1A, which is purporting to give effect to the directions of the Supreme Court in *Asian Resurfacing of Road Agency's* case by applying such directions to the quasi judicial matters under the land laws to be tried before the Revenue Authorities. The circular dated 6 May 2021 reads thus:

“(Translation of a copy of Circular typewritten in Marathi.)

In view of the orders of the Hon'ble Supreme Court, guidelines regarding stay-order in respect of Quasi-Judicial matters under Land related Acts, to be tried before Revenue Officers and Authorities....

Government of Maharashtra
Revenue and Forests Department
Government Circular Number : Miscellaneous-2021/M.No.15/L-1A
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400 032.
Date – 06th May, 2021

Reference :- Government Circular Number REV – 1093/354/M. No. 4/
'T-2,

Dated- 24th August, 1993.

Government Circular :-

The Hon'ble Supreme Court, by the order dt. 15th October, 2020 in the matter of MISCELLANEOUS APPLICATION No. 1577 CF2020 IN CRIMINAL APPEAL NOS 1375-76 of 2013, has directed that, “The period of interim stay granted by any Court in Civil/Criminal Case, shall remain in force only upto 6 months. If the Hon'ble Court has extended such stay beyond 6 months on the basis of substantial proofs, only then the stay granted shall continue, otherwise the said stay shall lapse automatically after the expiry of 6 months period and that, these orders shall be applicable to all the stay orders granted by any court in the entire country”.

As per the provisions of the Maharashtra Land Revenue Code, 1966 or as per various land related Acts, hearings in Quasi-Judicial matters are held before the Hon'ble Minister (Revenue), Hon'ble Minister of State (Revenue), Principal Secretary (A. and R.), Regional Revenue Officers and Authorities and the Maharashtra Revenue Tribunal, from time to time.

Considering these points, the issue was under consideration of the Government to issue guidelines to the Revenue Officers and Authorities regarding the Stay orders in Quasi-Judicial matters under the land related Acts, tried before the Revenue Officers and Authorities.

In view of the order passed by the Hon'ble Supreme Court on the date 15th October, 2020 in MISCELLANEOUS APPLICATION NO. 1577 CF 2020 IN CRIMINAL APPEAL NOS. 1375-76 of 2013 (copy of the order is

enclosed herewith), the following guidelines are hereby issued to all the concerned Revenue Officers and Authorities, in respect of Quasi-Judicial/ Judicial matters tried before the Hon'ble Minister (Revenue), Hon'ble Minister of State (Revenue), Principal Secretary (A & R) Regional Revenue Officer and Authorities and Maharashtra Revenue Tribunal.

(1) In all cases of Quasi-Judicial/ Judicial matters tried before the Hon'ble Minister (Revenue), Hon'ble Minister of State (Revenue), Principal Secretary (A & R), Regional Revenue Officers and Authorities and the Maharashtra Revenue Tribunal, in which stay has been granted for the period of more than 6 months, all the concerned Officers should take an appropriate action, as per the Order passed by the Hon'ble Supreme Court on the date 15th October, 2020 in the Matter viz. MISCELLANEOUS APPLICATION NO. 1577 CF 2020 in CRIMINAL APPEAL NOS. 1375-76 of 2013. Moreover, the precaution should also be taken to see that contempt of order of the Hon'ble Supreme Court is not committed in any circumstances.

(2) The time limit of the interim stay granted by any of the above mentioned Revenue Court and Maharashtra Revenue Tribunal, shall be in force upto 6 months only. If the Revenue Court has extended such stay after 6 months, in exceptional circumstances, on the basis of reasonable grounds, then only, the stay granted earlier shall be continued. Otherwise, after expiry of the period of 6 months, said stay shall lapse automatically. Similarly, this order shall be applicable to all the stay orders granted by any of the Revenue or other Courts in the entire State.

(3) All the Divisional Commissioners, Collectors and Regional Revenue Authorities & Officers should implement these directions immediately.

This Government Circular has been made available on website www.maharashtra.gov.in of the Government of Maharashtra and computer code thereof is 202105061613027519. This circular is being issued by authenticating the same under digital signature.

RAMESH
SHIVAJI CHAVAN

Digitally Signed by
Ramesh Shivaji Chavan
(Ramesh Chavan)
Joint Secretary,
Revenue and Forest Department.
(emphasis supplied)"

7. The case of the petitioner is that the tribunal has erroneously applied the decision in *Asian Resurfacing Road Agency's case* (supra) to the proceedings before the Revenue Tribunal to hold that the interim order automatically stood vacated on a period of six months having lapsed after the interim order was passed by the Revenue Tribunal. The petitioner has contended that the decision in *Asian Resurfacing of Road Agency's case* (supra) was applicable in a completely different context,

as the directions of the Supreme Court in paragraph 36 of the said decision would apply only to proceedings which have stayed the civil and criminal trials and not to proceedings of a revision before the tribunal. It is also contended that even the Government Circular dated 6 May, 2021 referred to in the impugned order has totally misinterpreted the directions of the Supreme Court to give an impression that such direction would be applicable even to the proceedings before the quasi judicial authorities and the tribunal.

8. When this petition was heard by this Court on 29 September, 2021, while granting ad-interim reliefs on the petition, it was thought appropriate that as an issue of law on the correctness of the impugned order passed by the Revenue Tribunal, in the context of the orders and observations of the Supreme Court was raised, the learned Advocate General be heard on such issue, so that even the nature of the directions as contained in the Government Resolution dated 6 May, 2021 can be explained by the State Government. This Court hence passed the following order:-

“1. Heard Mr.Kulkarni, learned counsel for the petitioner and Mr.Kankal, learned AGP for the State.

2. Challenge in this petition is to an order dated 23 June, 2021 passed by the In-charge, Designated Member, Maharashtra Revenue Tribunal Bench at Pune, (for short ‘the Tribunal’) who has held that the interim order dated 10 December 2018 passed on petitioner’s stay application has come to an end by virtue of the observations as made by the Supreme Court in the case of **Asian Resurfacing of Road Agency Private Limited and Another Versus Central Bureau of Investigation** reported in **(2018) 16 Supreme Court Cases 299** and more particularly paragraph 36 which reads thus:-

“36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.”

3. Mr.Kulkarni, learned counsel for the petitioner submits that earlier by a reasoned order dated 10 December, 2018, the Tribunal had granted a stay in favour of the petitioner, which is now declared to be vacated by the impugned order. It is his submission that if the stay as earlier granted by the Tribunal is not continued, it would cause serious prejudice to the petitioner.

4. Mr.Kulkarni has made submission that it would fall for consideration of this Court as to whether it was appropriate for the the Maharashtra Revenue Tribunal to apply the aforesaid decision of the Supreme Court and hold that the stay granted in favour of the petitioner stood vacated by virtue of such directions of the Supreme Court. Mr.Kulkarni would also submit that another issue which would rise for consideration, as to whether the Government Resolution dated 6 May, 2021 issued by the State Government which according to him implements the orders passed by the Supreme Court is at all in consonance with the order passed by the Supreme Court.

5. In the aforesaid circumstances, in my opinion, interest of justice would require that the orders dated 10 December, 2018 passed by the Tribunal on the stay application as filed by the petitioner are directed to operate until further orders. Accordingly, the impugned order dated 23 June, 2021 shall remain stayed and the order dated 10 December, 2018 passed by the Tribunal shall continue to operate until further orders ordered accordingly.

6. In my opinion a larger issue arises for consideration in the present proceedings in regard to the applicability of the directions of the Supreme Court on the expiry of the stay in civil proceedings as directed in paragraph 36 of the above decision of the Supreme Court, as rightly pointed out by Mr. Kulkarni. In my opinion, it would be appropriate that the learned Advocate General appears in the matter

who can also be heard on the nature of the directions as contained in Government Resolution dated 6 May, 2021.

7. Accordingly, the proceedings are adjourned to be taken up at **02.30 p.m. on 01 October, 2021.**"

(emphasis supplied)

9. On the above backdrop, I have heard Mr. Kulkarni, learned counsel for the petitioner, Mr. Kumbhakoni, learned Advocate General along with Mr. Kakade, learned Government Pleader and Mr. Kankal, learned Assistant Government Pleader for the State and Mr. Katneshwar, learned counsel for the interveners, on the issues of law as noted above.

10. To be more specific, the issue as urged by the petitioner is as to whether the observations of the Supreme Court in paragraph 36 of its decision in "*Asian Resurfacing of Road Agency*" case, can be construed to mean that in cases wherein interim orders in the nature of stay or injunction are passed and which have continued to remain in operation for more than six months, would stand automatically vacated after a period of six months of such orders being passed.

11. It was urged on behalf of the petitioner and the interveners that the interpretation of the directions of the Supreme Court as made in the impugned order and such interpretation, being also found in the consequent Government Resolution dated 6 May 2021 issued by the State Government, very serious consequences are brought about. It is submitted that it is not correct to construe the observations of the Supreme Court in paragraphs 36 and 37 of the said judgment to mean that such observations are intended to mean automatic vacating of the

interim reliefs which are granted in favour of the parties in the civil proceedings. It is urged that the State Government has also incorrectly interpreted such directions when it issued the Government Circular dated 6 May 2021, applying such directions to the proceedings before the Revenue Officers being quasi judicial authorities and the Tribunals constituted under the land laws. In such circumstances, the Court being of the *prima facie* opinion, that there was much substance in the contentions as urged on behalf of the petitioner and that certainly serious consequences were brought about if the observations of the Supreme Court in paragraph 36 of the said judgment are to mean automatic vacating of the interim orders passed by the Tribunal and Courts in civil proceedings as noted above, the Court has requested Mr. Kumbhakoni, the learned Advocate General, to assist the Court.

12. Mr. Kumbhakoni, at the outset, has drawn the Court's attention to the various paragraphs of the decision of the Supreme Court in *Asian Resurfacing Road Agency's* case (*supra*) to submit that in the said case in pursuance of the orders passed by a Bench of two Hon'ble Judges dated 9 September, 2013, the proceedings were put up before a three Judge Bench. The proceedings before the Supreme Court had arisen from the judgment and order passed by the Delhi High Court in "**Asian Resurfacing of Road Agency Private Limited & Anr. vs. Central Bureau of Investigation**"². The facts in relation to which, the controversy had arisen before the Supreme Court are noted in paragraphs 3 and 4 of the

² 2011 SCC OnLine Del 5688.

said decision of the Supreme Court. The relevant facts being that an FIR dated 7 March, 2001 was filed under the Delhi Special Police Establishment Act under Section 120-B read with sections 420, 467, 468, 471 and 477-A of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, “**the PC Act**”) filed at the instance of Municipal Corporation of Delhi (MCD) against the appellants and certain officers of the MCD, allegedly causing wrongful loss to MCD by using fake invoices of Oil Companies relating to transportation of bitumen for use in “dense carpeting works” of roads in Delhi during the years 1997 and 1998. After the investigation was complete, a charge-sheet came to be filed against the appellants and some employees of the MCD, by the respondent CBI, before the learned Special Judge, CBI, New Delhi on 28 November, 2002. Before the learned Special Judge, the appellants had filed an application for a discharge. On 1 February, 2007, the learned Special Judge, after considering the materials before the Court, directed framing of charges against the appellants, observing that a prima facie case was made out against the appellants and the other accused of having committed the offences in question. Such order of framing of charges was challenged by the appellants before the Delhi High Court in a criminal revision application no. 321 of 2007. The revision petition was converted into a Writ Petition (Criminal). In the course of adjudication of the said proceedings, the learned Single Judge referred the following question of law for consideration by the Division Bench:-

“27. Whether an order on charge framed by a Special Judge under the provisions of the Prevention of Corruption Act, being an interlocutory order, and when no revision against the order or a petition under Section 482 Cr.PC. lies, whether the same can be assailed under Articles 226/227 of the Constitution of India, whether or not the offences committed include the offences under the Penal Code apart from offences under the Prevention of Corruption Act ?”

13. In such referral order, the conflicting views taken in earlier two Single Bench decisions of the High Court in cases of **Dharambir Khattar v. CBI**³ and **R.C. Sabharwal v. CBI**⁴, were noted. The Division Bench rendered a decision on such reference, however while doing so, re-framed the questions as noted by the Supreme Court in paragraph 11 of its judgment, which are (i) Whether an order framing charge under the 1988 Act would be treated as an interlocutory order thereby barring the exercise of revisional power of the Court ? (ii) Whether the language employed in Section 19 of the 1988 Act which bars the revision would also bar the exercise of power under Section 482 Cr.PC. for all purposes? (iii) Whether the order framing charge can be assailed under Article 227 of the Constitution of India?”

14. The Division Bench while answering these questions held that the order framing charge under the PC. Act was an interlocutory order. It held that as Section 19(3)(c) clearly bars revision against an interlocutory order and framing of charge being an interlocutory order a revision will not be maintainable. It further held that the a petition under Section 482 of the Cr.PC. and a writ petition preferred under

³ 2009 SCC OnLine Del 1292

⁴ 2010 SCC OnLine Del 3

Article 227 of the Constitution of India were maintainable. The Division Bench also held that even if a petition under Section 482 of the Cr.P.C. or a writ petition under Article 227 of the Constitution of India is entertained by the High Court, under no circumstances, an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act. It was held that the exercise of power either under Section 482 of the Cr.P.C. or under Article 227 of the Constitution of India should be sparingly exercised and in exceptional circumstances be exercised keeping in view the law as enunciated by the Supreme Court in **Siya Ram Singh**⁵, **Vishesh Kumar**⁶, **Khalil Ahmed Bashir Ahmed**⁷, **Kamal Nath**⁸, **Ranjeet Singh**⁹'s case. Thus the Division Bench held that order framing charge was an interlocutory order and no revision petition under Section 401 read with Section 397(2) of the Cr. P.C. would lie to the High Court against such order. In paragraph 18 of the decision, the Supreme Court has noted the issue which fell for its consideration which reads thus:-

“18. We have given due considerations to the rival submissions and perused the decisions of this Court. Though the question referred relates to the issue **whether order framing charges is an interlocutory order, we have considered further question as to the approach to be adopted by the High Court in dealing with the challenge to the order framing charge.** As already noted in para 11, the impugned order also considered the said question. The learned counsel for the parties have also addressed the Court on this question.”

15. The Supreme Court, taking a review of law on the issue as also

⁵ Chandrasekhar Singh v. Siya Ram Singh, (1979) 3 SCC 118 : 1979 SCC (Cri) 666

⁶ Vishesh Kumar v. Shanti Prasad, (1980) 2 SCC 378

⁷ Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala, (1988) 1 SCC 155

⁸ M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213

⁹ Ranjeet Singh v. Ravi Prakash, (2004) 3 SCC 682

considering the principles of law as laid down in the decision of the seven Judges Bench of the Supreme Court in **L. Chandra Kumar**¹⁰ in paragraphs 27 and 28 held that the order framing charge may not be held to be purely an interlocutory order and in a given situation can be interfered under Section 397(2) or even under Section 482 of the Cr. P.C. or under Article 227 of the Constitution, being a constitutional provision. However, the Supreme Court held that the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation. The observations in paragraphs 27 and 28 are required to be noted:

27. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr.PC., the principle laid down in *Madhu Limaye* (supra) still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) Cr.PC. or 482 Cr.PC. or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.

28. We have thus no hesitation in concluding that the High Court has jurisdiction in appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further."

16. As seen from the observations as made in paragraph 28, the Supreme Court although holding that the High Court has jurisdiction in an appropriate case to consider the challenge against an order framing charge, and also to a grant a stay to the proceedings pending before the trial Court, in the further part of its judgment also examined the issue as

¹⁰ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

to how such power is to be exercised and as to when and in what circumstances a stay ought to be granted. It is in this context, the deleterious effect on the administration of criminal justice of a delay in criminal trials was immediately discussed in paragraphs 30 and 31 of the judgment. It was observed that delay in trials affects the faith in the Rule of Law and efficacy of the legal system. It was observed that it also affects social welfare and development. The Supreme Court further observed that even in civil or tax cases it has been held that power to grant stay has to be exercised with restraint and that mere prima facie case is not enough. The entire discussion in paragraphs 30 and 31 of the judgment is on a party seeking “stay on the trial” as pointed out by Mr. Kumbhakoni. It would be imperative to note the observations in paragraph 30 to 32 which read thus:-

“30. It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability.

31. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned, and concluded within two-three months.

32. The wisdom of the legislature and the object of final and expeditious disposal of a criminal proceeding cannot be ignored. In exercise of its power the High Court is to balance the freedom of an individual on the one hand and security of the society on the other. Only in case of patent illegality or want of jurisdiction the High Court may exercise its jurisdiction. The acknowledged experience is that where challenge to an order framing charge is entertained, the matter

remains pending for long time which defeats the interest of justice.”

(emphasis supplied)

17. Further in paragraph 34 of the decision, the Court observed that the legislative policy of expeditious final disposal of the trial is hampered when at the stage of charge, the High Court adopts the approach of weighing probabilities and reappreciating the material, which was certainly a time-consuming exercise. It was thus observed that even if a challenge to an order framing charge is entertained, the decision on such petition should not be delayed. It was observed that although no mandatory time limit can be fixed, normally it should not exceed two-three months, and if stay is granted, it ‘should not’ normally be unconditional or of indefinite duration. The Court ultimately observed that to give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, the proceedings should be taken on a day-to-day basis and concluded within two-three months. The Court then observed that when the matter remains pending for longer period, the order of stay would stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. It was observed that the timeline was being fixed in view of the fact that such trials are expected to be concluded normally in one to two years. It is in this context, in paragraph 35 the Supreme Court discussed its decision

in **Imtiyaz Ahmad v. State of U.P.**¹¹. The observations of the Supreme Court in paragraph 34 reads thus:-

“34. If contrary to the above law, at the stage of charge, the High Court adopts the approach of weighing probabilities and reappreciating the material, it may be certainly a time consuming exercise. The legislative policy of expeditious final disposal of the trial is thus, hampered. Thus, even while reiterating the view that there is no bar to jurisdiction of the High Court to consider a challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction, exercise of such jurisdiction has to be limited to rarest of rare cases. Even if a challenge to order framing charge is entertained, decision of such a petition should not be delayed. Though no mandatory time-limit can be fixed, normally it should not exceed two-three months. If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.”

18. It is in continuation of such observations as made in paragraph 34, the Supreme Court in paragraph 36 of the said decision and which has become subject matter of the discussion in the present proceedings, the Supreme Court also observed in regard to stay on civil and criminal proceedings. Paragraphs 36 to 38 are required to be noted which read thus:-

“36. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil

¹¹ (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986

or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

38. The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage.”

(emphasis supplied)

19. Mr. Kumbhakoni, learned Advocate General, has submitted that necessarily the observations of the Supreme Court in paragraph 36 on a plain reading relate to “stay of a trial”. It is submitted by Mr. Kumbhakoni that in order to remedy a situation of indefinite stay on

trials, the Supreme Court has issued such directions that in all pending cases where stay against proceedings of a “**civil or criminal trial**” is operating, the same will come to an end on expiry of six months from the date of the said judgment unless in an exceptional case by a speaking order such stay is extended.

20. It is also Mr. Kumbhakoni’s submission that the observations in regard to the reference to civil proceedings are required to be considered as an obiter and are not the ratio of the decision as according to him, the ratio of the decision would be as to what was held by the Supreme Court in relation to an order framing charge whether was an interlocutory order, not liable to be interfered with under Section 397(2) or even under Section 482 of the Cr. P.C. and in such context the Supreme Court holding that the principle which was laid down in **Madhu Limaye**’s case (supra) was holding the field namely that an order framing charge may not be held to be purely an interlocutory order and in a given situation can be interfered with under Section 397(2) Cr.P.C. or 482 Cr.P.C. or Article 227 of the Constitution. As also further observations that the power of the High Court to interfere with an order framing charge and to grant stay was to be exercised only in an exceptional situation.

21. It is Mr. Kumbhakoni’s submission that in paragraph 36 of the decision when the Supreme Court observes that “in all pending cases

where stay against proceedings of a “civil or criminal trial” is operating, and the same will come to an end on expiry of six months from the date of the said judgment unless in an exceptional case by a speaking order such stay was extended”, would certainly not mean that these observations were applicable to “interlocutory orders” passed by the Civil Court or tribunal in civil proceedings which are in the nature of stay of any order impugned before the Civil Court or the appellate Court or the revisional Court or orders which are *inter alia* in the nature of an injunction or any other interlocutory relief as granted under the provisions of the C.P.C. or the Specific Relief Act. It is submitted that the said orders/observations of the Supreme Court also cannot be applied to the interlocutory orders passed by Courts which do not have an effect to stay the criminal trial. It is further submitted that the said orders of the Supreme Court are also not applicable to the proceedings before the tribunals. It is thus submitted that the observations as made in paragraph 36, would be applicable only to such orders which stay the civil or criminal trials.

22. In supporting his submission that the duty of the Court would be to separate the ratio of the decision from the obiter, Mr. Kumbhakoni has placed reliance on the decisions of the Division Bench of this Court in **Mohandas Issardas And Ors. vs A.N. Sattanathan And Ors.**¹², **Union of India & Ors. vs. Dhanwanti Devi & Ors.**¹³ and **Ashwani Kumar Singh vs U.P. Public Service Commission & Ors.**¹⁴.

¹² ILR 1955 Bom 319

¹³ (1996) 6 SCC 44

¹⁴ 2003 (11) SCC 584

23. About 67 years back (1955) in the decision of the Division bench of this Court in **Mohandas Issardas** (supra) Chagla CJ, speaking for the Division Bench, traced the history of the law of precedents from the classic English jurisprudence and the distinction of the applicability of such principles in the Indian context, as the Constitution would mandate. The Court succinctly explained the doctrine of *Ratio Decidendi* and *Obiter Dicta*. It was observed that the opinion of the Court on the question which was necessary for the determination of the case would be undoubtedly be the 'ratio decidendi'; and the opinion of the Court on the question which was not necessary for the decision of the case is an 'obiter dictum'. It would be imperative to note the following 'enduring' observations on the principle of "*obiter dictum*" which are relevant in the context of the issue before the Court:-

"Before we turn to the Judgment of the Supreme Court, it is necessary to have our minds clear as to what is an 'obiter dictum' which has a binding effect upon a Court. It is rather significant to bear in mind that In England an 'obiter dictum' has no binding effect either upon a coordinate Court or upon a subordinate Court. An 'obiter dictum', especially of an eminent judicial tribunal like the Privy Council or the House of Lords, would undoubtedly be entitled to the highest respect. But a Judge in England would not feel that he would be bound by an opinion expressed by the higher tribunal. In India, we have -- perhaps advisedly -- made a departure from the principle operating in England with regard to 'obiter dicta'. At a time when the Judicial Committee of the Privy Council was the highest judicial tribunal in the Empire, as it then was, the Courts in India felt that it would be in the interests of judicial uniformity and judicial discipline if not only they accepted the decisions of the Privy Council, Which indeed were binding upon them, but also accepted the 'obiter dicta' of the Privy Council as binding upon them.

The feeling was that, if the Privy Council expressed an opinion on a point which, although not necessary for decision, clearly indicated the opinion formed by the Privy Council on a question of law, then the Courts in India should accept that as an authoritative pronouncement on the particular aspect of the law and treat that pronouncement as binding. The Supreme Court has now taken the place of the Privy Council and we would like to say unhesitatingly that we must show the

same respect for the 'obiter dicta' of the Supreme Court that we did for those of the Privy Council. The Supreme Court, is the highest Judicial tribunal in India to-day and it is as much necessary in the interests of judicial uniformity and judicial discipline that all the High Courts must accept as binding the 'obiter dicta' of the Supreme Court in the same spirit as the High Courts accepted the 'obiter dicta' of the Privy Council."

(emphasis supplied)

24. In the above context, Mr.Kumbhakoni has drawn Court's attention to the following dictum of law as laid down in the case **Dhanwanti Devi & Ors.** (supra) wherein it was propounded that every decision contains three basic postulates as explained in paragraph 9 of the said decision, which were necessary to understand the binding force of a decision. In paragraphs (9) and (10) the Supreme Court observed as under:-

"9. Before advertng to and considering whither solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Kishan Khosla's case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and per se per incuriam. It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the

Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents. It would, therefore, be necessary to see whether Hari Kishan Khosla's case would form a binding precedent. Therein, admittedly the question that had arisen and was decided by the Bench of three Judges was whether solatium and interest are payable to an owner whose land was acquired under the provisions of the Central Act? On consideration of the facts, the relevant provisions in the Central Act and the previous precedents bearing on the topic the Court had held that solatium and interest are not a part of compensation. It is a facet of the principle in the statute. The Central Act omitted to provide for payment of solatium and interest since preceding the acquisition the property was under was under requisition during which period compensation was under requisition during which period compensation was paid to the owner. The position obtained and enjoyed by the Government during the period of requisition continued after acquisition. The same principle was applied without further elaboration on entitlement to payment of interest of an owner. It is true that the decisions relied on by Shri Vaidyanathan on the principle of payment of interest as part of compensation in respect of land acquired were brought to the attention of this Court for discussion. What would be considered a little later. Suffice it to say for the present that the finding that solatium and interest are not payable for the lands acquired under the Central Act as part of compensation is a binding precedent. Obviously, therefore, this Court followed the ratio therein in District Judge, Udhampur case [supra]. The contention, therefore, that Hari Kishan Khosla's case cannot be treated as a binding precedent since therein there is no ratio but a conclusion without discussion, is not tenable and devoid of force. In that view, it is not necessary to discuss in extenso the effect of the decisions cited by Shri Vaidyanathan. Equally, the contention of Shri Vaidyanathan that the ratio in Hari Kishan Khosla's case is in conflict with the ratio in Satinder Singh's case which was neither distinguished nor overruled and that the decision of a co-ordinate Bench cannot have the effect of overruling decision of another co-ordinate Bench, cannot be given countenance. The effect of the ratio in Satinder Singh's case will be considered a little later; suffice it to state that there is no conflict in the ratio of these two cases if the facts in Satinder Singh's case are closely analysed and the principle laid down therein is understood in its proper perspective. Therefore, Hari Kishan Khosla's case cannot be held to be per incuriam not has it the effect of overruling the ratio decidendi of Satinder Singh's case."

25. In Ashwani Kumar Singh (supra) the Supreme Court held that the

Court should not place reliance without discussing as to how the factual position fixed in the fact situation of the decision on which reliance is placed. In such context, the Supreme Court in paragraphs 10 to 13 has observed thus:-

“10. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord McDermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....”

11. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said, “Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances” (All ER p. 297g-h). Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)* [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: (All ER p. 1274d-e) “One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;” In *Herrington v. British Rlys. Board* [(1972) 2 WLR 537 : (1972) 1 All ER 749 : 1972 AC 877 (HL)] Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”

12. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

13. The following words of Hidayatullah, J. in the matter of applying precedents have become *locus classicus*: (*Abdul Kayoom v. CIT* [AIR 1962 SC 680] , AIR p. 688, para 19)

“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases,

one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

* * *

“Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

26. The above cherished principles on the applicability of the doctrine of precedents have guided the Courts for all times. Nonetheless, sometimes it is certainly challenging for a Court to separate the ratio from the obiter and to locate the binding observations as made in a judgment. Mr. Kumbhakoni would be correct in his submissions on the principles of law on the doctrine of precedents and obiter dicta so as to be applied to the issues in hand. The endeavour of the Court would thus be in applying such salutary principles that a decision is only an authority for what it actually decides and insofar as the obiter dicta is concerned, a statement on law in the judgment would be required to be accepted to have a binding force.

27. Insofar as the question before the Court is concerned adverting to the above principles of law, the first endeavour ought to be to consider as to what can be plainly inferred from the observations of the Supreme Court in paragraph 36 in *“Asian Resurfacing of Road Agency’s* case. To my mind paragraph 36 of the said decision contains “directions” of the Supreme Court as clear from the bare wordings of its contents which are binding on all the Courts in the country. These directions are,

however, in relation to all pending cases in which a stay against proceedings of a civil or criminal trial is operating, and in such context, it is observed by the Supreme Court that the same will come to an end on expiry of six months from the date of the said judgment unless in an exceptional case by a speaking order such stay is extended. This is clear from the plain contents of the following extract as contained in paragraph 36 of the decision:-

*“ In an attempt to remedy this, situation, we consider it appropriate to **direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating**, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order.”*

(emphasis supplied)

28. Also the following observations of the Supreme Court as contained in paragraph 37 would lead to the same conclusion on the intent of the directions as contained in paragraph 36 (supra). The relevant extract of paragraph 37 reads thus:-

In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

(emphasis supplied)

29. I find myself in agreement with Mr. Kumbhakoni, the learned AG and Mr. Kulkarni learned counsel for the petitioner when they submit that the directions of the Supreme Court in paragraph 36 and 37 of the

judgment of the Supreme Court in *Asian Resurfacing of Road Agency's* case, would not apply to a category of orders passed by the Civil Court or the Criminal Court which do not have the effect of stay of the proceedings of the trial before the said Courts, as also to the orders passed by the tribunals.

30. On a cumulative reading of paragraph 36 and 37 of the decision of the Supreme Court in *Asian Resurfacing of Road Agency's* case, it is quite clear that the directions of the Supreme Court relate to all pending cases in which there was a stay operating against the proceedings of a civil or criminal trial and which would automatically come to an end after the expiry of six months unless extended by a speaking order. The Supreme Court ordered that, the same course may also be adopted, by Civil and Criminal appellate/revisional courts, under the jurisdiction of the High Courts. The intention being that the trial of the pending cases be not halted for longer durations by orders which stay the trial and such cases ought to proceed for final adjudication, with utmost expedition. It may not be permissible to read something in the said directions which has not been provided, applying the principle that a judgment cannot be read as if it is a statute. Thus, as the said directions of the Supreme Court operate only qua the criminal and civil cases pending trial, such directions cannot be construed to be applicable to the other category of orders in such proceedings which would not stay the “trial of civil or criminal cases”. As far as civil cases are concerned, as

argued at the bar such orders illustratively can be orders of temporary injunctions, stay orders which are not in the nature of stay of trial, orders appointing Court Receivers, interim orders granting maintenance, custody etc., orders appointing commissioner, order for an attachment before judgment, and variety of such orders which a civil court may pass dealing with the rights and interest of the parties on the subject matter of the proceedings and which operate *interse* between the parteis pending the adjudication of a civil suit. Similar orders are also passed by appellate and revisional courts, which are also of a nature which do not stay the trial of a civil suit, hence the orders of the Supreme Court in paragraph 36 would not be applicable to such orders passed by the revisional or appellate courts. In so far as criminal matters are concerned, similarly as urged by the learned Advocate General that such directions of the Supreme Court also may not be applicable to several category of interim orders a Court may pass under the Code of Criminal Procedure which do not stay the criminal trial. Also as such directions of the Supreme Court apply to the pending proceedings before the Civil or Criminal Courts the trial of which is stayed, these directions as rightly pointed out at the bar, cannot be said to apply to the orders passed by the various tribunals.

31. It needs to be noted that orders of the Supreme Court in *Asian Resurfacing of Road Agency's* case were subject matter of consideration in a case before the Supreme Court and before different High Courts. A

reference and discussion on such orders would aid the above conclusion this Court has reached, on the applicability of such directions as contained in paragraph 36 and 37 in *Asian Resurfacing of Road Agency's* case. The following are those cases:-

32. A two Judge Bench of the Supreme Court in **Fazalullah Khan vs M.Akbar Contractor (D) By Lrs.**¹⁵ was considering the applicability of the directions as contained in paragraph 36 of the decision in *Asian Resurfacing of Road Agency's* case, in the context whether the interim protection which was granted to the appellant, would come to an end on expiry of six months as the trial Court has proceeded to apply the said directions of the Supreme Court to hold that after expiry of a period of six months, the interim stay which was granted was no more in force. The Supreme Court in such context observed that if the interim order as granted was not vacated and continued to operate beyond a period of six months by reason of pendency of the appeal, it cannot be said that the interim order would automatically stand vacated. The Supreme Court in such context, has observed as under:-

3. In the present case, the issue is of specific performance of an agreement which was granted by the first appellate court. The appellant is a tenant in the suit premises in whose favour the decree has been passed. The second appellate court reversed the decree. Leave has been granted by this court and the interim protection was granted on 20th March, 2009.

4. Learned counsel for the appellant submits that relying on the aforesaid judgment of this court in *Asian Resurfacing of Road Agency's case* (supra) in the eviction proceedings against the appellant as a tenant, the revisional court seeks to proceed on the basis of a submission of the respondents that on the expiry of period of six months, the interim stay is no more in force. He further states that the

¹⁵ 2019 SCC OnLine SC 1513

appellant undertakes before this court that if he loses in the present appeal, he will hand over vacant and peaceful possession within a time to be fixed by the Court without any further objection.

5. We are constrained to pen down a more detailed order as the judgment of this Court in *Asian Resurfacing of Road Agency's case* (supra) is sought to be relied upon by difference courts even in respect of interim orders granted by this Court where the period of 6 months has expired. **Such a course of action is not permissible and if the interim order granted by this Court is not vacated and continues beyond a period of 6 months by reason of pendency of the appeal, it cannot be said that the interim order would automatically stand vacated.**"

(emphasis supplied)

33. A Division Bench of this Court in an order dated 28 February 2019 passed in the case "**Oracle Financial Services Software Ltd., Mumbai vs. Deputy Commissioner of Income Tax-13(1)(1)**"¹⁶ had an occasion to consider the directions of the Supreme Court in *Asian Resurfacing of Road Agency's case*, in a case wherein an order passed by the Assessing Officer and the Commissioner of Income Tax (Appeals) respectively were challenged. The contention of the petitioner-assessee was to the effect that 15% of the tax demand being already deposited, as per the CBDT Circular dated 29 February 2016 as revised by further instructions dated 21 March 2016, stay was granted to the assessee upto the disposal of the appeal by the Commissioner (Appeals). The Assessing Officer passed a further order adjusting total refund amount against the demand and granted stay till disposal of the appeal. Subsequently, the Assessing Officer passed an another order in which referring to the decision of the Supreme Court in *Asian Resurfacing of Road Agency's case* (supra), observed that since the period of six months on a stay of demand had lapsed, as also was reviewed by the CBDT the stay granted in the

¹⁶ Writ Petition No.542 of 2019(O.S.) Order dt. 28 February 2019

petitioner/assessee's case for the concerned assessment year stood revoked and accordingly, called upon the petitioner-assessee to pay the outstanding demand for the prior assessment years within seven days of receipt of the said letter. Against such demand as raised by the Assessing Officer, the petitioner-assessee approached the Principal Commissioner of Income Tax who rejected the request for stay also relying on the decision of the Supreme Court in *Asian Resurfacing of Road Agency's* case, (supra) and permitted the Assessing Officer to recover the full demand pending the appeal. It is in these circumstances, the Division Bench considered the effect of the directions of the Supreme Court in *Asian Resurfacing of Road Agency's* case (supra), and held that the Assessing Officer had not correctly understood the directions of the Supreme Court in *Asian Resurfacing of Road Agency's* case (supra). It was held that neither the purport of the said judgment of the Supreme Court nor the observations made therein, which were in the context of civil and criminal litigation can be imported for quasi judicial proceedings. It was held that the power of the Assessing Officer to review the situation every six months, would not authorize him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances. The observations of the Division Bench in paragraph 4 read thus:-

“4. We are prima facie of the view that the Revenue

Authorities committed serious error. Against the total demand arising out of the order of assessment of Rs. 205 crore, the Assessing Officer has already recovered a total of Rs. 140 crores by now through different means. There is no allegation that the petitioner is responsible for delay in disposal of the appeal before the Commissioner. Merely relying upon the decision of the Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd (supra), Revenue Authorities now held a belief that any stay against the recovery granted would automatically lapse after six months. This is neither the purport of the judgment of the Supreme Court, nor the observations made in the said judgment in the context of civil and criminal litigation can be imported in present set of quasi judicial proceedings. The power of the Assessing Officer to review the situation every six months, would not authorized him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances.”

(emphasis supplied)

34. A reference can also be made to a decision of the Division Bench of the Kerala High Court in “**Chandran Vs. C.H.Meenakshi & Ors.**”¹⁷. In this case the Court was considering the proceedings arising out of the Kerala Buildings (Lease and Rent Control) Act, 1965. The revision application before the High Court was pending and the legal issue as raised in the revision was also a subject matter of consideration before the Full Bench of the Kerala High Court. There was an interim stay of all further proceedings subject to certain conditions, the interim order was extended until further orders. When such was the position of the pending proceedings before the High Court, the Munsiff’s Court in execution proceedings issued a notice to proceed on the execution on the footing that the interim stay stood automatically vacated in view of the directions of the Supreme Court in *Asian Resurfacing of Road*

¹⁷ 2022 SCC OnLine Ker 702

Agency' case (supra). In such context, the Division Bench considered the effect of the said directions of the Supreme Court and held that the Munsiff Court was not correct in issuing notice on the ground that the interim stay as granted by the High Court was not extended after a period of six months. The Court observed that the directions of the Supreme Court in *Asian Resurfacing of Road Agency'* case (supra), had no application when the Appellate Court had granted stay to the execution of the decree or the order of the trial Court or the first Appellate Court as the case may be. The Division Bench in paragraph 18 has observed thus:-

“18. The time limit of six months in the directions issued by the Three-Judge Bench in *Asian Resurfacing of Road Agency Pvt. Ltd.* [(2018) 16 SCC 299] has no application, when the appellate court grants stay of execution of the decree or order of the trial court or the first appellate court, as the case may be; or when the revisional court grants stay of execution of the order of eviction granted by the Rent Control Court or the Appellate Authority, as the case may be; or when the Appellate Authority grants stay of execution of the order of eviction granted by the Rent Control Court; or when the appellate court in criminal side grants stay of the conviction or execution of the sentence by the trial court or the lower appellate court, as the case may be; or when the revisional court in criminal side grants stay of the conviction or execution of the sentence by the trial court. So long as the stay of execution of the decree or order in civil side remains in force, there can be no execution of that decree or order by the execution court. The trial court or the first appellate court cannot insist that there has to be a further order made by the High Court continuing the stay of such judgment and decree on the expiry of six months from the date on which that stay order was passed. Similarly, when the revisional court grants stay of execution of the order of eviction granted by the Rent Control Court or the Appellate Authority, as the case may be, or when the Appellate Authority grants stay of execution of the order of eviction granted by the Rent Control Court, the execution court cannot insist that there has to be a further order made by the revisional court or the Appellate Authority, as the case may be, continuing the stay of the order of eviction on the expiry of six months from the date on which that stay order was passed.”

(emphasis supplied)

35. Also the Division Bench of the Gujarat High Court in the case

“Commissioner of Central Goods and Service Tax Vs. Anmol Chlorochem¹⁸” had an occasion to consider the effect of the directions of the Supreme Court in *Asian Resurfacing of Road Agency’s* case, (supra), in the context of a pending tax appeal preferred by the respondent-assessee under Section 35(A) of the Central Excise Act, 1944, wherein a prayer for vacating of stay was made on behalf of the revenue, in view of the decision of the Supreme Court in *Asian Resurfacing of Road Agency’* case (supra). The Division Bench referring to the orders passed by the Division Bench of this Court in **Oracle Financial Services Software Ltd., Mumbai** (supra), while rejecting the prayer as made by the revenue, held that the observations of the Supreme Court with regard to continuation of any interim order beyond the period of six months in any civil or criminal proceedings arising from a trial fell altogether in a different context. It was observed that such observations made in the decision of the Supreme Court in the context of civil and criminal litigation cannot be made applicable in a Tax Appeal. The observations of the Division Bench read thus:-

“6. In our opinion, the present application has been preferred on absolute misreading of the decision of the Supreme Court referred to above, more particularly, the observations made in paras 34 and 35 referred to above. The observations of the Supreme Court with regard to continuation of any interim order beyond the period of six months in any civil or criminal proceedings arising from a trial fell altogether in a different context. The observations made in the decision of the Supreme Court in the context of Civil and Criminal litigation cannot be made applicable in a Tax Appeal. An identical issue fell for the consideration of a Division Bench of the High Court of Bombay in the case of Oracle Financial Services Software Ltd., Mumbai vs. Deputy Commissioner of Income Tax-13(1)(1) & Ors. (Writ Petition No.542 of 2019) decided on February 28, 2019. The Bombay High Court observed as under:

¹⁸ C/TAXAP/1332/2014, order dt.20/6/2019

“This is neither the purport of the judgment of the Supreme Court, nor the observations made in the said judgment in the context of civil and criminal litigation can be imported in present set of quasi judicial proceedings. The power of the Assessing Officer to review the situation every six months, would not authorized him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances.”

36. A useful reference can be made to the view taken by a learned Single Judge of the Andhra Pradesh High Court in “**K. Ranga Prasad Varma Vs. Kotikalapudi Sitarama Murthy & Anr.**”¹⁹. In such case again a question which had arisen for consideration of the Court was, whether the directions of the Supreme Court in *Asian Resurfacing of Road Agency*’ case, (supra) were correctly applied by the executing Court on the ground that the stay which was granted by the High Court was not extended and was considered to have been automatically vacated as per orders of the Supreme Court in *Asian Resurfacing of Road Agency*’ case. The executing Court hence intended to proceed to execute the decree. The learned Single Judge in paragraph 13 of the judgment referring to a decision of the Karnataka High Court observed that the contingency of the expiry of stay after six months would arise only in cases where there is a stay of the trial. The Court made the following observations:-

“13. A reading of the abovementioned paragraphs of the judgment of the Hon'ble Apex Court demonstrates, in vivid and clear terms, that contingency of expiry of stay after six months would arise only in cases where there is stay of trial. In the instant case, such contingency does not exist. Admittedly when the petitioner herein approached this court by way of filing appeal in ASSR No. 6444 of 2005, this court, Vide order dated 16.06.2005 in A.S.M.P No. 1097 of 2005, granted interim stay of all further proceedings in E.P No. 3 of 2005 in O.S. No. 27 of

¹⁹ 2019 SCC OnLine AP 69

1998 on the file of the I Additional District Judge, Visakhapatnam. According to the learned counsel, the said stay is still operating and subsisting. When a similar issue cropped up before the Karnataka High Court in execution, the Karnataka High Court, after elaborately considering the issue, held in its order dated 10.01.2019 in W.P. Nos. 100648-100649/2019, that the executing court cannot proceed to execute judgment and decree which is stayed and categorically held that if any appellate court in any regular appeal or second appeal grants an interim stay of impugned judgment and decree, either of the trial court or of the first appellate court, as the case may be, then, so long as the stay of the execution of the decree remains in force, there can be no execution of the judgment and decree. In the said judgment, the Karnataka High Court also observed that the trial court or any other court subordinate to the High Court, cannot insist that there has to be further order made by the High Court continuing the stay of such orders on the expiry of six months from the date on which stay order was passed. The said principle was reiterated by a division Bench of the Karnataka High Court in its order dated 15.03.2019 in R.F.A. No. 1344 of 2012.”

(emphasis supplied)

37. A reference can also be made to a decision of a learned Single Judge of the Allahabad High Court in “**Dharam Vir Sood Vs. Smt. Savitri Devi & 4 ors.**”²⁰. In this case, the contention of the revision petitioner was to the effect, that although, the Court had stayed the eviction of the revision applicant until further orders, however, the executing Court relying on the judgment of the Supreme Court in *Asian Resurfacing of Road Agency*’ case (supra), was inclined to proceed with the execution of the decree on the assumption that the stay stood vacated after six months. In these circumstances a prayer was made that such action of the executing Court be stayed. The learned Single Judge of the Allahabad High Court considering the purport of the directions of the Supreme Court in *Asian Resurfacing of Road Agency*’ case, (supra) observed that the directions of the Supreme Court were in relation to the pending trial wherein proceedings of the trial court had remained

²⁰ SCC Revision No.205 of 2016 decided on 5 April 2019.

stayed by the High Court. It was observed that the said direction would not apply to the facts of the case wherein the trial stood concluded and the final judgment of the trial court was under challenge. Following are the observations of the Court :-

“It is abundantly clear that the above direction of the Supreme Court is in relation to the pending trial where proceedings of the trial court is stayed by the High Court. The said direction would not apply to the facts of the instant case where the trial has concluded and the final judgment of the trial court is under challenge.

This Court, therefore, holds that the order passed by this Court while entertaining the writ petition dated 3.8.2016 staying eviction of the revisionist pursuant to impugned judgement and decree, would not automatically come to end upon expiry of six months unless modified or vacated.”

38. The Court’s attention was also drawn by Mr. Kulkarni to a Circular dated 18 July 2019 issued by the Central Board of Indirect Taxes & Customs, Directorate of Legal Affairs, Government of India, in the context of the directions of the Supreme Court in *Asian Resurfacing of Road Agency’* case (supra), informing all the Principal Chief/Chief Commissioners of CGST & Customs and others, that the directions of the Supreme Court in the said case would apply only to cases pending trial before the Criminal and Civil Courts and in cases wherein a stay has been granted on recovery of revenue by the CESTAT or the High Court, the proper approach would be to file an application for vacating of the stay before the appropriate forum and obtain suitable directions of the tribunal or High Court, as the case may be, before initiating any recovery action.

39. As regards the Government Circular dated 6 May 2021

Mr.Kumbhakoni has also fairly pointed out that the said Circular which has been issued, considering the decision of the Supreme Court in *Asian Resurfacing of Road Agency's case (supra)*, would also require modification as it does not, in the correct perspective apply the directions of the Supreme Court in paragraph 36 as noted above. Mr. Kumbhakoni states that further appropriate steps would be taken to amend the circular so that the authorities are appropriately guided on the correct effect of the directions of the Supreme Court. This more particularly noticing that also in the present case the tribunal was guided by the said circular in passing the impugned order.

40. In conclusion, it needs to be observed that the directions of the Supreme Court in paragraph 36 and 37 in *Asian Resurfacing of Road Agency Private Limited*, operate only qua the criminal and civil cases pending trial, and such directions cannot be construed to be applicable to the other category of orders in proceedings which do not stay the trial of the civil or criminal cases as observed in paragraph 30 above. Such orders of the Supreme Court are also not applicable to the proceedings before the Tribunals. Thus, the tribunal was not correct in passing the impugned order as also applying the government circular dated 6 May, 2021.

41. Before parting, it needs to be noted that the impugned order dated 23 June, 2021 was passed by the Revenue Tribunal on a routine/

simplicitor application made by the petitioner seeking extension of the ex-parte interim stay. The respondents were not represented before the revenue tribunal when the impugned order came to be passed by the Maharashtra Revenue Tribunal. In these circumstances, in my opinion, as the present petition is being heard purely on an issue of law with the assistance of the learned Advocate General, it is thought appropriate that no useful purpose would be served to keep the petition pending and the same can be disposed of at the admission stage itself, keeping it open for the private respondents to make an application for vacating of the ex-parte interim stay by making a proper application, if they so desire. Thus, this decision would not cause any prejudice whatsoever to the private respondents.

42. As a result of the above discussion, the present petition is disposed of by the following order :-

- (i) The impugned order dated 23 June, 2021 passed by the Maharashtra Revenue Tribunal Bench at Pune is quashed and set aside holding that the interim stay as granted by the tribunal continues to operate unless vacated by a speaking order. It is open to the respondents to make an application for vacating of the interim order passed by the Revenue Tribunal.
- (ii) In view of the conclusion as noted above it is held that the Government Circular dated 6th May 2021 does not correctly apply the decision of the Supreme Court in *Asian Resurfacing Road Agency's* case (supra) in relation to the

proceedings before the quasi judicial authorities and the tribunals under the Land laws, when it directs in paragraph 2 thereof that the interim stay granted by the quasi judicial authorities, tribunals under the Land Laws shall stand automatically vacated after six months of the same being granted.

(iii) Disposed of in the above terms. No costs.

43. The Court expresses its gratitude to Mr.Kumbhakoni, the learned Advocate General for his valuable assistance in deciding the present proceeding.

(G. S. KULKARNI, J.)