

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

Hon'ble Justice Soumen Sen

Hon'ble Justice Uday Kumar

WPLRT 87 of 2015

Gulmarg Estate Private Limited

Vs.

Santanu Sarkar & Ors.

For the Petitioner	:Mr. Shakti Nath Mukherjee, Sr. Adv. Mr. Arindam Banerjee, Adv. Mr. Arpita Saha, Adv. Mr. Ashis Kr. Mukherjee, Adv. Mr. Saurabh Prasad, Adv.
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For the respondent No. 1, 3, 4, 5, 6 & 7	:Mr.Reetabroto Kr. Mitra, Adv. Mr. Rudrajit Sarkar, Adv. Mr. Arif Ali, Adv. Mr. Sayantak Das, Adv.
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For the KMC	: Mr. Alak Kumar Ghosh, Adv. Mrs. Sima Chakraborty, Adv. Mr. Debangshu Mondal, Adv.
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Hearing Concluded on	: 28 th February, 2023
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Judgment on	: 15 th March, 2023
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Soumen Sen, J.: What appears to be an otherwise simple proposition of law has been made to look complex and difficult.

The proposition of law that we are required to decide in this petition is whether West Bengal Land Reforms Tribunal constituted under Section 4 of the West Bengal Land Reforms and Tenancy Tribunal Act 1997 (in short 'Act of 1997') has the jurisdiction to extend time beyond the period of 30 days

from an order passed by the Collector under Section 6 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (in short 'Act of 2001'). At the first blush the argument advanced by the writ petitioner appeared to be attractive since the tribunal is a creature of statute not a court and hence the provision of Limitation Act ordinarily would not apply to a tribunal unless such power is specifically conferred by the statute creating such tribunal.

The dispute relates to premises No. 20 Ganesh Chandra Avenue Kolkata-700013 (hereinafter referred to as the 'subject property'). The respondent no.17 since deceased being the predecessor of the writ petitioner and the then owner of the subject property filed Thika Tenancy case no.3-D of 1962 for eviction of Thika Tenant Oriental Accessories Private Ltd. (hereinafter referred to as 'Oriental') under the Calcutta Thika Tenancy Act, 1949. In the said proceeding on 20th December, 1963 a final order of ejectment was passed by the appropriate authority. In a proceeding initiated for fixation of the amount of compensation being Misc. Case no. 64 of 2006, the learned Thika Controller passed an order on 2nd May, 2007 holding that the respondent no.17 was entitled to recover possession in terms of the final order dated 20th December, 1963.

The petitioner purchased the subject property on 18th May, 2007 from the respondent no.17. On 17th April, 2008 the respondent nos.1 to 11 filed O.A. No.1211 of 2008 purporting to challenge the said order dated 2nd May, 2007 passed in Misc. Case no.64 of 2006. The said appeal was filed before the WBLRTT after the lapse of 318 days. The respondent nos.1 and 2 filed

an application being M.A no.340 of 2008 praying for condonation of delay in filing O.A. no.1211 of 2008 assailing the order dated 2nd May, 2007 passed by the Controller in the Thika Tenancy Misc. Case no.64 of 2006. There was a delay of about 318 days. The Learned Tribunal being satisfied with the explanation offered for the delay allowed the application on 21st December, 2012. During the pendency of the original application before the WBLRTT a writ petition was filed by the present writ petitioner being WPLRT no.55 of 2013 before a Division Bench assailing the jurisdiction of the Tribunal to condone the delay. A co-ordinate bench presided over by Justice Girish Chandra Gupta who later on became the Chief Justice of the High Court at Calcutta disposed of the appeal on March, 8, 2013 with the following observations:

“We have considered the rival submissions advanced by the learned advocates appearing before us. There can be no denial of the fact that a substantive right to prefer an appeal has been provided under section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, and the period of limitation provided therein is thirty (30) days. We can also agree that the 1997 Act, was impliedly over-ridden by the legislature as regards the days within which the appeal has to be preferred. But the same cannot be said as regards the competence to condone the delay. The legislature was conscious of the fact that under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, the Tribunal has been given power to condone the delay. If the legislature intended to take away that power, specific provision in that regard would have been made. The legislature did not do any such thing. It is, therefore, not a case where the doctrine of merger can be applied. There can be a merger where there are two provisions governing one field. In that case it could be said that the subsequent provision shall govern the case and the earlier provision stood merged in the subsequent provision. In this case there is only one provision, which is holding the field, that is, power of the Tribunal to condone the delay, with regard to which, the subsequent act is silent. Therefore, logically it cannot be said that the power of the Tribunal to condone the delay was taken away. The Judgment cited by Mr. Basu is of no assistance.

We, as such, are of the opinion, that the Tribunal did not make any mistake in exercising the power of condonation of delay under section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. The question formulated above is answered in the affirmative.

The writ petition is thus disposed of. Parties shall bear their own cost.”
(emphasis supplied)

The writ petitioner being aggrieved by the said order preferred a Special Leave Petition being SLP No.19991 of 2013 in which the Hon’ble Supreme Court on 5th July, 2013 passed the following order:

“The special leave petition is dismissed with liberty to the petitioner to raise the question regarding discretion to condone the delay before the Forum where the matter is pending.” (emphasis supplied)

On the basis of the aforesaid observation the present writ petitioner filed an application being MA no.563 of 2013 for consideration whether WBLRTT constituted under the West Bengal Land Reforms and Tenancy Tribunal Act (in short the Act, 1997) has the authority to condone delay in any statutory appeal filed before it under Section 10 of the Act of 1997 read with Section 12 of WBTT Act 2001. The Tribunal upon consideration of the submissions made on behalf of the writ petitioner and the present respondent ruled in favour of its jurisdiction to condone delay in an appeal filed under section 12 provided the explanations and reasons for the delay are satisfactory. The relevant observations are:

“15. In our opinion, provisions of Section 3 of the Act, 2001 cannot be a bar to condone delay in an appeal filed under Section 12 if there is satisfactory explanation and reason for the delay caused to avoid miscarriage of justice. Such delay could not have been condoned, if such condonation had been bared expressly to the effect that Limitation Act will not apply as is manifestly expressed under Section 136(2) of the West Bengal Co-operative Societies Act, 1983.

The issue placed before this tribunal is not whether there is any difference between court and Tribunal or not. Issue is whether

W.B.L.R.T.T has authority and power to condone delay. Admittedly, there is a gulf of difference between the two. But facts discussed above go to show that the W.B.L.R.T.T formed under Article 323B has all the power to function as court though all tribunals are not courts. Hence, WBLRTT can apply its discretion under the Limitation act to condone delay. The delay under Section 12 of the Act, 2001 can be condoned by way of application of Sections 4 to 24 (both inclusive) of the Limitation Act read with Section 10(2) of the WBLR & TT Act. Even if it is not a court, due to vesting of jurisdiction, authority and power of all courts including power to condone delay, subject to the restrictions imposed by the Hon'ble Apex Court in L. Chandra Kumar (Supra), WBLRTT as Tribunal is in position to condone delay.

16. This Tribunal is formed under the WBLR & TT Act, 1997. Validity of the Act ousting the jurisdiction of all courts including the writ jurisdiction of the Hon'ble Single Bench is upheld by the Hon'ble Apex Court. The WBLR & TT is the Tribunal within the meaning of Article 323B(1). The Act itself is a guide to this Tribunal. This Tribunal cannot adjudicate the validity of the Act, 1997. As the question raised do-novo that Tribunal cannot condone the delay as it is not a Court, such challenge tantamount to assailing the validity of Section 10(2) of the WBLR & TT Act. The Act, 2001 cannot over-ride the provisions of the Act, 1997. For these reasons also, Tribunal cannot entertain the instant MA though the same has been filed in terms of liberty granted by the Hon'ble Apex Court.” (emphasis supplied)

Mr. Shakti Nath Mukherjee, the learned Senior Counsel appearing on behalf of writ petitioner submits that an appeal is a creature of statute. The order passed by the controller is appealable only under Section 12 of the Act, 2001 and not otherwise. Section 3 of the Act 2001 is an overriding provision and having an overriding effect over all other law being enforced at the relevant time.

Section 6 of the Act, 1997 determines the jurisdiction and Section 10 of the Act, 1997 provides the remedies. Section 6 of the Act, 1997 does not permit an appeal against any order under the Act, 2001.

Mr. Mukherjee, submits that Section 6 categorizes 5 types of matters over which the tribunal would have jurisdiction. One of the matters over

which the tribunal would have jurisdiction is any order made by an authority under the West Bengal Thika Tenancy Acquisition and Regulation Act, 2001 that was introduced in the definition of “Specified Act” under Section 2(r) of the Act, 1997 by way of amendment on 1st March, 2005.

Section 10 of the Act, 1997 refers to the application that may be made to the tribunal in relation to matters mentioned in Section 6 and other provisions of the Act. It is submitted that Section 6 contemplates proceedings which are original in nature namely in matters covered by Section 6(a), (b) and (d) and appellate jurisdiction in respect of matters mentioned in Section 6 (c) and (e) respectively.

Mr. Mukherjee submits that although Section 10(2) is not happily worded but original and appellate proceedings cannot be treated alike when it concerns condonation of delay as the benefit of condonation of delay beyond the period of 60 days cannot be availed when there is a specific provision under Section 12 of the Act, 2001 which gives right to a party affected by the order passed by the controller to prefer an appeal within 30 days from the date of order and the said Section has to be read in conjunction with Section 3 of Act, 2001 and Section 10 of Act, 1997 and not in derogation thereof.

It is submitted that the Act, 2001 is a subsequent legislation and is a special statute in relation to the Act, 1997.

The remedy under the Act 1997 is a remedy under a general law and the appeal under Section 12 of the Act of 2001 is a remedy under a special

law, in so far as challenges to orders are made from the order of the Thika Controller under the 2001 Act is concerned.

It is submitted that the Rules of interpretation uniformly accepted in case of conflict between two set of Rules or statute are well settled. Where a latter special law is repugnant to or inconsistent with the earlier general law, the latter special law will prevail over the earlier general law. [See. ***Maya Mathew vs. State of Kerala & Ors.***, reported in **2010 (4) SCC 498 (paragraph 12)**]

In the instant case, the remedy of appeal under Section 12 of the 2001 Act, being a special law remedy enacted later would prevail over the earlier general law remedy. In such circumstances, the only remedy left to a person aggrieved from an order of the Thika Controller, would be to file an appeal under Section 12 of the 2001 Act within a period of 30 days from the date of order.

Since the appeal was ex-facie time barred on the date of presentation of the O.A. before the Tribunal, the private respondents would not be entitled to any relief in the said appeal and the same would be liable to be dismissed as time barred. There is no scope for condonation of delay in connection with an appeal under Section 12 of the 2001 Act as the said Act does not provide any power to the Appellate Forum to condone such delay and also does not make the provision for condonation of delay under Section 5 of the Limitation Act, 1963 applicable in respect of an appeal under Section 12 thereof.

Section 10(3) of the 1997 Act creates a bar against admission of any application under Section 10(1) by the Tribunal unless the Tribunal is satisfied that the applicant has availed of all remedial measures available to him under the relevant specified Act. In this case, the relevant ‘Specified Act’ is the 2001 Act. The applicants have disentitled themselves from availing of the remedial measure available to them under the 2001 Act by not filing an appeal within the prescribed time period. As such, the statutory bar to the admission of an application under Section 10(1) of the 1997 Act would stare at the Tribunal disentitling it from admitting the proceedings being O.A. No.1211 of 2008 as a proceeding under Section 10 of the 1997 Act.

Section 6 of the 1997 Act is an empowering provision, which enables the Tribunal to exercise jurisdiction, power and authority in relation to an order made by an authority under a specified Act. However, exercise of such power has to be in connection with a proceeding presented validly under Section 10 of the 1997 Act. If the proceeding under Section 10 of the 1997 Act suffers from a bar to its admissibility owing to non-satisfaction of Section 10(3)(a) thereof, power conferred under Section 6 of the 1997 Act cannot necessarily be exercised. Thus, a proceeding under Section 10, which cannot be admitted by the Tribunal owing to the bar contemplated under Section 10(3) of the said Act would remain barred and inadmissible, as would be the case here, in the event the proceeding being O.A. No.1211 of 2008 is construed to be one under Section 10(1) of the 1997 Act.

It is trite law that when a litigant disentitles himself from availing the statutory remedy granted by a particular statute, such disentanglement

cannot be a ground for the Writ Court under Article 226 of the Constitution of India to entertain a petition in the teeth of such disentitle/barred statutory remedy. Since the LRTT, in view of the judgment of ***L. Chandra Kumar vs. Union of India & Ors.*** reported in **1997(3) SCC 261**, exercises the powers equivalent to a Hon'ble Single Judge of this Hon'ble Court, in respect of the matters under Article 226 of the Constitution of India, the self same bar in entertaining of O.A. on the ground of disentitlement of the applicant in pursuing his special statutory remedy, would apply in case of the private respondents herein. [See ***A.V. Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhwani & Anr.***, reported in **AIR 1961 SC 1506 SC 1506** (paragraph 11)].

Section 12 does not contain any power for condonation of delay in the filing of the appeal contemplated therein.

The 2001 Act does not contain any substantive provision empowering or authorizing the appellate forum in an appeal under Section 12 to condone delay in filing of the same. The Appellate Authority specified in Section 12 of the 2001 Act is the Tribunal constituted under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 [hereafter "the 1997 Act"]. The Tribunal, though constituted under the 1997 Act, can only act within the confines of the 2001 Act while considering a statutory appeal under Section 12 of the 2001 Act. Further, and in any event, the power available to the Tribunal under section 10(2) of the 1997 Act cannot be used to condone the delay in filing of statutory appeal under Section 12 of the 2001 Act.

The legislature has consciously reserved the power of condonation under Section 10(2) of the 1997 Act to an application “within the meaning of Section 10(1)” thereof and not to an appeal. It is not open to read the term “appeal” instead of or in conjunction with the term “application” in section 10(2) of the 1997 Act as that would amount to judicial legislation, which is impermissible. For a harmonious construction of sections 10(1) and 10(2), one has to fall back on section 6 of the 1997 Act since Section 10(1) makes it clear that it is subject to the provisions of Section 6.

Section 6(c) does envisage an appellate remedy but as on the date of enforcement of the 1997 Act (i.e. on 12.08.1998), the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981 [hereafter “the 1981 Act”] which was then in force did not confer any appellate jurisdiction on the Tribunal in respect of orders passed by the Thika Controller.

Thus, as on the date of enforcement of the 1997 Act, what existed by way of appellate power was only the appellate power in section 6(c) thereof.

Since Section 6 contains mixture of sub-sections in which original [power [sub-section (c)] coexist, the State Legislature consciously made the power of condonation under Section 10(2) of the 1997 Act applicable only to an application by which an original proceeding is initiated and not an appeal. At the highest, such power to condone delay may be extended to an appeal under sub-section(c) of Section 6 but not to an appeal under Section 10(2) of the Act of 1997.

Hence, the power to condone the delay under Section 10(2) of the 1997 Act cannot be extended to condone delay in a statutory appeal under section 12 of the 2001 Act.

It is settled law that provisions of section 5 of the 1963 Act is available only to Courts. [See ***M.P. Steel Corporation vs. Commissioner of Central Excise*** reported in **2015(7) SCC 58, paragraphs 20-23**]. When an Appellate forum is created by a special statute, the provisions of section 5 of the 1963 Act cannot be read into such statute by implication. Only if such statute expressly makes the provisions of section 5 of the 1963 Act or the relevant part of the 1963 Act in which section 5 is housed, applicable to an appeal arising out of such special statute, can the power to condone under section 5 of the 1963 Act be assumed by the appellate forum.

The West Bengal Land Reforms and Tenancy Tribunal (hereafter “the LRTT”) under the LRT Act, 1997 was established under the provisions of Article 323B in Chapter XIV-A of the Constitution. The said Article expressly enables legislation to be made dealing with the procedure and limitation before Tribunals to be established in **Article 323(3)(c)**. In addition, the Article debars any court except the Hon’ble Supreme Court from dealing with the matters required to be dealt with by the Tribunal.

The LRT Act, 1997 created a Tribunal and not a Court. The Hon’ble Supreme Court in ***Union of India vs. R. Gandhi, President, Madras Bar Association***, reported in **2010(11) SCC 1** (paragraphs 38 and 45), has indicated the differences between a Court and a Tribunal and have observed that all Courts are Tribunals but all Tribunals are not Courts.

It has not now been settled that the power of condonation under Section 5 of the Limitation Act is not available to Tribunals and in this regard reliance was placed on **Ganesan vs. Commissioner Tamil Nadu Hindu Religious and Charitable Endowments Board & Ors.**, reported at **2019(7) SCC 108** (paragraphs 58, 59), which read as follows:

“58. We have already noticed that Mukri Gopalan [Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, 1995(5) SCC 5] was held to be not a good law by this Court in M.P. Steel [M.P. Steel Corpn, v. CCE, 2015(7) SCC 58: 2015(3) SCC (Civ) 510] on the ground that it has not noticed the earlier three-Judge Bench judgments and also in view of the subsequent three-Judge Bench judgment, the said case is not a good law. As far as Anshuman Shukla case [State of M.P. v. Anshuman Shukla, (2014)10 SCC 814] is concerned we have already noticed the issue, in the said case, of applicability of Section 5 of the Limitation Act in the revision filed in the High Court, the High Court being a court, the Limitation Act was fully applicable and the said judgment does not support the proposition that in an application not before a court, Section 5 shall automatically be applicable.

59. The ratio which can be culled from the abovenoted judgments, especially judgments of three-Judge Benches, as noticed above, is as follows:

- 1. The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a court.*
- 2. The suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and applications which are to be filed before a statutory authority like Commissioner under the 1959 Act.*
- 3. Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in court and not before statutory authorities like Commissioner under the 195 Act.*
- 4. However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of*

any provision of the Limitation Act which can be decided only after looking into the scheme of particular, special or local law.”

It may not be correct to contend that the Hon’ble Supreme Court while dismissing the Special Leave Petition on 15th July, 2013 upheld the power of the Tribunal and gave liberty to only raise the question regarding discretion to condone the delay. It is submitted that under Section 5 of the Limitation Act, the Court is empowered to exercise discretion to condone or not to condone after sufficient cause is shown. Reference in this regard is drawn to the judgment of **Ramlal, Motilal & Chotelal v. Rewa Coalfields Ltd.** reported at **AIR 1962 SC 361** (paragraph 12) which states as under:

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay.” (emphasis supplied)

In short Mr. Mukherjee raises a jurisdictional issue with regard to the competence of the Tribunal to decide an application for condonation of delay beyond 30 days from an order passed by the Thika Collector under Section 6 of Act 2001.

Per contra Mr. Reetabroto Mitra, learned Advocate submits that Section 6(a) refers to “any order made by an authority under its Specified Act”. The order passed by the Thika Controller was under a ‘Specified Act’ namely West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

By reason of Section 6(a) of the Act of 1997 it can only be challenged before the Tribunal. The appellate provision prescribes that an application can be made within 60 days from the date on which such order was passed by the authority.

It however, provides that the Tribunal may admit such appeal beyond the period of 60 days if it is satisfied with the explanation offered by the petitioner for not being able to file the appeal within the period of limitation.

It is submitted that the object of the Act is to provide remedy to a litigant who has suffered an order under a Specified Act.

It is submitted that in **L. Chandra Kumar** (supra) the Hon'ble Supreme Court has clearly stated that the Tribunals would continue to Act as the only court of first instance in respect of the areas of law for which they have been constituted meaning thereby all the powers that the Tribunal would be exercising under Section 6 of the Act of 1997 are original in nature irrespective of the fact whether it is arising out of an order made by an authority under a Specified Act or an appeal against an order of any Tribunal.

It is submitted that there is no conflict between the 2001 Act and the 1997 Act. The Act 2001 deals with substantive rights of the parties and it provides for a remedy that can be availed under a different statute and before a forum constituted for the purpose of deciding the merits of

the order made by an authority under a Specified Act or any other matter that has been specifically mentioned in Section 6 of the 1997 Act.

The Thika Tenancy Act (hereinafter “the Act of 2001”) in its preamble states that the Act of 2001 has been enacted to provide for the acquisition of interest of landlords in respect of land comprised in Kolkata, Howrah and other municipalities of West Bengal for development and equitable utilizations of such lands.

A bare reading and comparison of the two preambles (1997 and 2001 Act respectively), clearly indicate that the 1997 Act has been enacted for the establishment of the Tribunal with its powers to decide certain disputes while the 2001 Act is for a completely different purpose. Thus, the question of the Act of 1997 and that of 2001 being contrary to or inconsistent with each other clearly does not arise.

The powers of the Tribunals are solely guided by the Act of 1997 and the 2001 Act has not been enacted to clothe the Tenancy Tribunals with powers and consequently neither to undress the Tribunal with powers already vested in it by the 1997 Act. Thus, the arguments made by the Applicant/Petitioner that the provisions of 2001 Act will so far as it conflict with 1997 Act, shall prevail, being a subsequent act is completely unfounded. It cannot be denied and is indeed indisputable that both acts fall within the category of special statutes dealing with special purposes as expressed in their respective preambles.

Section 10(1) of the Act of 1997 clearly states that the aggrieved person may prefer an appeal to the Tribunal for redressal of his grievance. Sub-section 2 of the same section categorically provides to the concerned Tribunal, in this case the Tenancy Tribunal, a power to enlarge the time in filing such application.

It is a well accepted proposition of the general principles of interpretation that legislative intent which has been categorically provided for in a statute, it is intended to be negated or diluted, has to be done by way of similar legislation. A positive legislation cannot dilute by implication.

The provisions of Section 12 of the Act of 2001 provide a time period of 30 days within which the appeal has to be filed. It does not in any manner dilute or negates the Tribunal's power to enlarge such time. The mere mention of the time period (at 30 days) does not in itself make the subsisting legislative intent as envisaged in Section 10 of the Act of 1997 redundant or otiose.

The Hon'ble Supreme Court of India in its order dated July 15, 2013 has upheld the power of the Tribunal to condone such delay and remanded the back merely to revisit the discretion exercised by the Tribunal in condoning the delay. The matter is clearly res judicata. The reason for res judicata will appear from the fact that the order by this Hon'ble Court, while the same petitioner had challenged the discretion, has been upheld by a Division Bench by its order dated March 8, 2013.

The Hon'ble Division Bench had specifically come to a finding that the legislature being conscious of the fact that the LRTT Act had been given the power to condone the delay, chose not to take the same away, which ought to have been done specifically, if so intended, by the legislature, by the act of 2001. The subsequent act not having taken away the existing power specifically, it cannot be held that the power of the Tribunal to condone the delay have been taken away. The provision regarding the power of LRTT to condone delay being specific in the LRTT Act and being silent in the specific act of 2011, clearly means that the provision of power to exercise discretion has been upheld even by the subsequent act. Thus, the Tribunal did not make any mistake in exercising the power of condonation of delay under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1977.

It was precisely this aforestated finding that was carried in the appeal to the Hon'ble Supreme Court of India, which upheld such finding and restricted the remand only to the extent of the discretion exercised by the Tribunal in condoning the delay. The petitioner herein have not challenged the discretion exercised by the Tribunal, but has challenged the power/jurisdiction of the Tribunal to exercise its powers to condone the delay. This having already been decided by the Division Bench of this Court and upheld by the Hon'ble Supreme Court of India is *res judicata* and cannot be agitated afresh at this stage or in this proceeding.

The rationale behind the provision has been laid out and reiterated in no uncertain terms by the Hon'ble Supreme Court by deciding the case

of **L. Chandra Kumar**. The Hon'ble Supreme Court of India has categorically stated that the powers of the Tribunal are akin to that of a single judge of the High Court since the Tribunals were established to de clog the High Court with their enhanced jurisdiction under Article 226 on account whereof an appeal from the Single Bench is still treated as a writ petition to be entertained by a Division Bench at the first instance before a High Court.

It has been categorically held that the Tribunals created under Article 323 A and Article 323 B are possessed of the competence to test the constitution validity of statutory provisions and rules and will nevertheless continue to act like courts of the first instance in respect of the areas of law for which they have been constituted. Thus, insofar as Tribunals are concerned, the provisions of Section 29(2) of the Limitation Act should be made applicable and there being no express bar of or exclusion by the special statute, Sections 4 to 24 are to apply in its entirety to the Tribunals including the present one.

Had the legislature intended to take away the power, then specific provision in that regard would have also been made in the new Act but in the absence of such provisions and the Act of 2001 being silent on the same issue, the doctrine of merger in this case cannot be applied.

Further, the doctrine of implied prohibition is also not applicable in the present case. The doctrine of implied prohibition is a principle of statutory interpretation according to which, when a law or a statute directs that a thing is to be done in a certain way, then even if there are no

negative connotations or words attached to it, that thing shall not be done in any other way. The basic premise behind this doctrine is that “*the Court must, as far as possible, attach a construction which effectuates the legislative intent and purpose.*”

Considering the above discussion, the Hon’ble Supreme Court in the case of ***Apex Laboratories (P) Ltd. V. CIT, (2022) 7 SCC 98*** has held as follows:

“Interpretation of law has two essential purposes: one is to clarify to the people governed by it, the meaning of the letter of the law; the other is to shed light and give shape to the intent of the lawmaker. And, in this process the courts’ responsibility lies in discerning the social purpose which the specific provision subserves. Thus, the cold letter of the law is not an abstract exercise in semantics which practitioners are wont to indulge in. So viewed the law has birthed various ideas such as implied conditions, unspelt but entirely logical and reasonable obligations, implied limitations, etc. The process of continuing evolution, refinement and assimilation of these concepts into binding norms (within the body of law as is understood and enforced) injects vitality and dynamism to statutory provisions. Without this dynamism and contextualisation, laws become irrelevant and stale”.

“42. It is also a known principle that what cannot be done directly cannot be achieved indirectly, As was said in Fox v. Bishop of Chester [Fox v. Bishop of Chester, (1824) 2 B&C 635: 107 ER 520 quoted and applied in Jagir Singh v. Ranbir Singh, (1979) 1 SCC 560: 1979 SCC (Cri) 348: (1979) 2 SCR 282] that it is a:

“Well –known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance.”

And that: (Jagir Singh case, SCC p. 565, para 5)

“5.... “To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.” (emphasis supplied)

A judicious approach ought to be taken while interpreting different provisions of different statutes enacted for completely different purposes. In fact, the approach has always been to take a harmonious construction to ensure that the concerned Tribunal/Court as the case may be, is clothed with jurisdiction to afford maximum relief to persons in distress, who has approached the concerned Court or Tribunal.

The Tribunal in the impugned order of December 16, 2014 has considered itself to be a Tribunal and not a Court and has still held that he has the power to condone the delay which has occurred in filing the appeal. The appeal being an original application falls well within the parameters set forth in section 10 of the Act of 1997 and thus is entitled to the enlargement of time as rightly afforded by the said Tribunal.

Thus, West Bengal Land Reforms and Tenancy Tribunal had rightly condoned the delay by exercising its power under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and there cannot be any question of revisiting the opinion already formed by the Hon'ble Division Bench in 2013.

For proper and better appreciation of the issues raised in this writ petition it is necessary to refer to the objects and reasons of the two Acts and Sections 6 and 10 of the Act of 1997 and Sections 3 and 12 of the Act of 2001.

The objects and reasons of the Act of 1997 is summarised in the Preamble which reads:

“An Act to provide for the setting up of a Land Reforms and Tenancy Tribunal in pursuance of article 323B of the Constitution of India and for the adjudication and trial by such Tribunal of disputes, claims, objections and applications relating to, or arising out of land reforms or tenancy in land and other matters under a specified Act and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for the setting up of a Land Reforms and Tenancy Tribunal and for adjudication and trial by such Tribunal of disputes, claims, objections and applications relating to, or arising out of, land reforms or tenancy in land and other matters under a specified Act and for the exclusion of the jurisdiction of all courts except a Division Bench of the High Court exercising writ jurisdiction under articles 226 and 227 of the Constitution of India and the Supreme Court of India in adjudication and trial of such disputes, claims, objections and applications and for matters connected therewith or incidental thereto;” (emphasis supplied)

The objects and reasons of the Act of 2001 are:

“An Act to provide for the acquisition of interests of landlords in respect of lands comprised [in thika tenancies and certain other tenancies] in Kolkata, Howrah and other Municipalities of West Bengal for development and equitable utilization of such lands.

Whereas it is expedient to provide for the acquisition of interests of landlords in respect of lands comprised [in thika tenancies and certain other tenancies] in Kolkata, Howrah and other Municipalities of West Bengal for development and equitable utilisation of such lands with a view to subserving the common good.” (emphasis supplied)

The Sections 6 and 10 of the Act of 1997 read:

“Sec.6. Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by

notification in this behalf, exercise jurisdiction, power and authority in relation to—

- (a) an order in original made by an Authority under a specified Act;
- (b) an application complaining in action or culpable negligence of an Authority under a specified Act;
- (c) an appeal against an order of the Mines Tribunal appointed under section 36 of the West Bengal Estates Acquisition Act, 1953;
- (d) adjudication of disputes and applications relating to matters under any provision of a specified Act involving interpretation of any provision of the Constitution or of validity of a specified Act or of any other law for the time being in force;
- (e) adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal in accordance with the provisions of this Act.

10. (1) Subject to the provisions of section 6 and other provisions of this Act, a person aggrieved by any order passed by an Authority or any action taken either by an Authority or by the State Government may prefer an appeal to the Tribunal for the redressal of his grievance.

(2) Every application under sub-section (1) shall be made within sixty days from the date on which such order was passed or such action was taken, as the case may be, or within such further time as may be allowed by the Tribunal for cause shown to its satisfaction, and shall be made in such form, and shall be accompanied by such fee, as may be prescribed.

(3) Save as expressly provided in this Act, the Tribunal shall not admit an application referred to in sub-section (1) unless it is satisfied that—

- (a) the application has availed of all remedial measures available to him under the relevant specified Act, and
- (b) the remedial measures available under the provisions of the relevant specified Act are not adequate or shall cause undue hardship to the applicant.

(4) The Tribunal may, if it is satisfied after such enquiry as it may deem fit that requirements under this Act and the rules made thereunder are complied with in relation to the application referred to in sub-section (1), admit

such application, but where the Tribunal is not so satisfied, it may reject the application summarily giving reasons therefore.

(5) Where an application under sub-section (1) has been admitted by the Tribunal, it shall decide and dispose of such application as expeditiously as possible, and ordinarily within six months from the date of such admission or from the date of receipt of records from the concerned Authority or the State Government, as the case may be.

(6) While deciding the application under sub-section (5), the Tribunal shall issue such direction, or pass such order, as it may deem fit.

(7) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceeding relating to, an application made under sub-section (1) unless—

(a) copies of such application and of all documents in support of the plea for such interim order are duly furnished seven days in advance to each of the parties against whom such application is made or is proposed to be made;

(b) an opportunity of being heard is given to each of the parties against whom such application is made:

Provided that the Tribunal may pass an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being immediately caused to the applicant:

Provided further that if the application referred to in subsection (1) is not decided and disposed of within a period of six months from the date of the interim order, the interim order shall, if it is not vacated earlier, stand vacated on the expiry of the period as aforesaid unless, for special reasons or in the interest of justice, the interim order is varied, modified or extended by the Tribunal.” (emphasis supplied)

The Sections 3 and 12 of the Act of 2001 read:

“3. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any custom or usage or in any contract, express or implied.

12.Appeal. (1) Any person aggrieved by an order of a Controller may, within 30 days from the date of the order, prefer an appeal in writing before the Land Reforms and Tenancy Tribunal established under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (West Bengal. Act 25 of 1997).

(2) Subject to provisions of this Act and rules made thereunder, any order passed by the Land Reforms and Tenancy Tribunal may, in the manner prescribed, be reviewed by the said Tribunal on account of some mistake or error apparent on the face of the record or for any other sufficient cause of like nature”

The objects and reasons of the Act of 1997 clearly shows that it was enacted for creation of a Land Reforms and Tenancy Tribunal for adjudication and trial by such Tribunal of claims, disputes, objections and applications, *inter alia*, in respect of matters under a specified act and for the exclusion of the jurisdiction of all courts except a Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India and the Supreme Court of India.

The Tribunal shall exercise jurisdiction, power and authority in relation to-

- (1) Any order made by an Authority under a specified Act;
- (2) An application complaining inaction or culpable negligence of an Authority under a specified Act;
- (3) An appeal against an order of the Mines Tribunal appointed under sec.36 of the West Bengal Estates Acquisition Act, 1963.
- (4) Applications relating to any constitutional validity of any Act.
- (5) Adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal.

A person may prefer an appeal to the Tribunal under Section 10 for the redressal of his grievance if such person is aggrieved by-

- (1) Any order passed by an Authority, or
- (2) Any action taken by an Authority, or
- (3) Any action taken by the State Govt.

‘Authority’ means an officer or authority or functionary exercising powers or discharging functions as such under a specified Act[*See.2(b) of the WBLR & TT 1997*].

Limitation period for filing such application is 60 days from the date on which such order was passed or such action was taken. The Tribunal has absolute power to condone the delay in filing application on the basis of sufficient satisfactory reasons shown by the applicant.

Under section 10, the Tribunal shall not admit an application unless it is satisfied that –

- (1) The applicant has availed of all remedial measures available to him under the relevant specified Act, and
- (2) The available remedial measures are not adequate or shall cause undue hardship to the applicant.
- (3) After admitting application, the Tribunal shall decide and dispose of it as expeditiously as possible, and ordinarily within 6 months from the date of such admission or from the date of receipt of records from the concerned Authority or the State Government, as the case may be. The Tribunal has power to reject the application summarily

giving reasons therefore. While deciding the application, the Tribunal may issue such direction, or pass such order, as it may deem fit.

- (4) Rule 3 of the W.B. Land Reforms and Tenancy Tribunal Rules, 1997 deals with the method of filing an application for the redressal of grievances. This Rule 3 also enumerates those matters which must be contained in such application.

It is a comprehensive legislation for adjudication of disputes, claims, objections and applications relating to or arising out of, land reforms or tenancy in land and other matters under a “Specified Act”. The tribunal has come in the place of courts to adjudicate such matters. It was for such reason the tribunal has been vested with the power of condonation of delay as a court would have exercised but for the present legislation.

Even before the amendment of Section 2(r) in the Act of 1997 by which the Act of 2001 was brought under the preview of the Act of 1997 under Section 12 of the Act of 2001 an appeal before the tribunal would lie from the order of the Controller within 30 days from the days of the order. The learned Counsel for the parties, however, could not immediately appraise the procedure that was followed when there was no reference to the Act of 2001 in the definition of ‘specified Act’ under Section 2(r) of the Act of 1997. The Thika Tenancy Act of 2001 was included in Section 2(r) as 2(r)(vii) in 2005 with retrospective effect from March 1, 2003. We presume that the tribunal notwithstanding such amendment to the 1997 Act might have exercised its jurisdiction because of the conferment of jurisdiction upon it by

the Act of 2001 as a litigant cannot be rendered remediless. However, we are not concerned with the said problem.

Here there are two statutes – one providing for substantive rights of the parties (Act of 2001) and the other remedial measures (Act of 1997). It is trite law that curtailment of jurisdiction shall not be easily inferred. Even if, there may not be any express provision for curtailing or ousting the jurisdiction, there shall be a clear indication to that effect in the statute. Ouster of jurisdiction of a Court or tribunal is a serious matter and unless there are strong indication to that effect such provisions are required to be interpreted in favour of the jurisdiction of the court or tribunal. The ouster of jurisdiction cannot be easily inferred. However, the court and tribunal are not to be equated alike. The tribunal is creature of statute and does not have a plenary jurisdiction.

Where a provision of an Act is inconsistent with a provision of earlier legislation, the earlier provision is impliedly repealed by the later. The rule was stated by North J in *Re Williams (1887) 36 Ch. D. 573, 578-*

*“The provisions of an earlier Act may be revoked or abrogated in particular cases by a subsequent Act, either from the express language used being addressed to the particular point, or from implication or inference from the language used.” [Thoburn v. Sunderland City Council [2002]3 W.L.R. 247]. [See. **Craies on Legislation, 12th Edition.**]*

However, there is presumption against a repeal by implication and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same rule, subject matter and therefore, when it does not provide a repealing provision, the

intention is clear not to repeal the existing legislation. [See, ***Municipal Council, Palai v TJ Joseph***, AIR 1963 SC 1561, p 1564, ***State of M.P. v Kedia Leather & Liquor Ltd. & Ors.***, 2003(7) SCC 389 paragraphs 13 14 & 15: ***Harshad S. Mehta & Ors. v. State of Maharashtra***, 2001(8) SCC 257].

In *Kedia Leather (supra)* the doctrine of implied repeal was explained in the following words:

“13. There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provisions, the intention is clear not to repeal the existing legislation. (See: *Municipal Council Palai through the Commissioner of Municipal Council, Palai v. T.J. Joseph* : [1964]2SCR87 , *Northern India Caterers (Private) Ltd. and Anr. v. State of Punjab and Anr.*: [1967]3SCR399 , *Municipal Corporation of Delhi v. Shiv Shanker*: 1971CriLJ680 and *Ratan Lal Adukia and Anr. v. Union of India*: AIR1990SC104 . When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle *expressio unius (Personal vel rei) est exclusio alterius*. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in *Garnett v. Bradley* (1878) 3 AC 944. The continuance of existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act and that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. (See: *A.G. v. Moore* (1878) 3 Ex. D 276, *Ratanlal's case (supra)* and *R.S. Raghunath v. State of Karnataka and Anr.*: AIR1992SC81 .

14. The necessary questions to be asked are:

(1) Whether there is direct conflict between the two provisions.

(2) Whether the Legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law;

(3) Whether the two laws occupy the same field.

(See: Pt. Rishikesh and Anr. v. Salma Begum (Smt.): [1995]3SCR1062 , and Shri A.B. Krishna and Ors. v. The State of Karnataka and Ors.: [1998]1SCR157

15. The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The Court leans against implying a repeal, "unless two Act are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together." (See Craies on Statute Law, Seventh Edition, page 366, with reference to Re: Barry (1936) Ch. 274. To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects; and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side."

A distinct and unequivocal provision is required in the Act of 2001 or the Act of 1997 for the purpose of denuding the power of the Tribunal to decide an application for condonation of delay arising out of an order of the Collector under the Act of 2001 regard being had to the existing conferment of jurisdiction to the tribunal to decide an appeal from an order of the Collector and other orders passed by an authority under "Specified Acts". It seems to us impossible to suppose that the legislature can have intended under the Act of 2001, as it were by a side wind, to effect a material change

in the right of the person aggrieved to avail the remedy of appeal with a prayer for condonation of delay. This jurisdiction cannot be taken away except by express words or necessary implication. A general rule applicable to the construction of statutes is that there is not to be presumed without express words, an authority to deprive the tribunal of a jurisdiction it had previously exercised. Moreover, the rule of implied prohibition is, however, subservient to the basic principle that the court must, as far as possible, adopt a construction which effectuates the legislative intent and purpose. [See, **G.P. Singh Principles of Statutory Interpretation, 15th Edition, Jamal Uddin Ahmad v. Abu Saleh Najmuddin, AIR 2003 SC 1917: 2003 (4) SCC 257**, Paragraphs 11 and 12] The legislature while enacting the Act of 2001 has complete knowledge of the existing Act of 1997 and still then it does not provide for a repealing provision or an amendment to the Act of 1997 in Section 10(2) and thus holds out an intention not to abrogate the power of the tribunal to condone delay.

The continuance of existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same. [See. **Lybbe v Hart, (1883) 29 Ch D 8, p 15.**] The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act “that the two cannot stand together” [**Municipal Council, Palai v T J Joseph, AIR 1963 SC 1561**]

Moreover, both the acts are not operating on the same field. They may be complementary to each other.

Absence of an express prohibition is highly relevant for interring that there is no implied prohibition. The two acts are not inconsistent with each other.

Mr. Mukherjee has submitted that the Act of 1997 is a general statute and the Act of 2001 is a special statute. The doctrine of *generalia specialibus non derogant* provides that the provisions of a general statute must yield to those of a special one. However, we are of the view that there is no conflict between the two statutes and section 3 read with section 12 of the Act of 2001 have not in any way affected the jurisdiction of the tribunal to condone delay beyond 30 days arising out of an order passed by the collector under the Act of 2001. The doctrine of implied repeal was considered in a fairly recent decision in ***Pharmacy Council of India v. Dr. S.K. Toshniwal Educational Trust viderbha Institute of Pharmacy & Ors.***, reported at **2021(10) SCC 57** paragraphs 13.3 to 13.6. The observations relevant for the present purpose are:

“13.3. In the case of D.J. Bahadur (supra), this Court had an occasion to consider the conflict between the general legislation and the special legislation and argument of 'implied repeal'. In the said decision, this Court took note of the following extracts from the Craies on Statute Law [1963 Edn., pp. 376-77]:

49. ***

‘The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior

enactment is special and the subsequent enactment is general, the Rule of law being, as stated by Lord Selbourne in Swards v. Vera Cruz [Mary Swards v. Owner of the "Vera Cruz", (1884) 10 AC 59, 68],

'.....that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

There is a well-known Rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant -- i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.

13.4. In the said decision, it is observed that an 'implied repeal' is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. It is further observed that in determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. It is observed that for certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. It is further observed that what is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realizes itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any Rule of thumb.

13.5. In the case of Yakub Abdul Razak Memon (supra), this Court again had an occasion to consider the conflict between the general statute and the special statute. After considering the various decisions of this Court on the point, it is observed and concluded in paragraphs 1518 to 1522 as under:

“1518. The principle that the latter Act would prevail the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

1519. The basic Rule that a general provisions should yield to the specific provisions is based on the principle that if two directions are issued by the competent authority, one covering a large number of matters in general and another to only some of them, his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions must be given effect to.

1520. It is a settled legal proposition that while passing a special Act, the legislature devotes its entire consideration to a peculiar subject. Therefore, when a general Act is subsequently passed, it is logical to presume that the legislature has not repealed or modified the former special Act unless an inference may be drawn from the language of the special Act itself.

1521. In order to determine whether a statute is special or general one, the court has to take into consideration the principal subject-matter of the statute and the particular perspective for the reason that for certain purposes an Act may be general and for certain other purposes it may be special and such a distinction cannot be blurred.

1522. Thus, where there is inconsistency between the provisions of two statutes and both can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein. (Vide Ram Narain v. Simla Banking and Industrial Co. Ltd. [: AIR 1956 SC 614], J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P. [: AIR 1961 SC 1170], Kumaon Motor Owners' Union Ltd. v. State of U.P. [: AIR 1966 SC 785], Sarwan Singh v. Kasturi Lal [: (1977) 1 SCC 750], U.P. SEB v. Hari Shankar Jain [: (1978) 4 SCC 16: 1978 SCC (L&S) 481], LIC v. D.J. Bahadur [: (1981) 1 SCC 315: 1981 SCC (L&S) 111], Ashoka Mktg. Ltd. v. Punjab National

Bank [; (1990) 4 SCC 406: AIR 1991 SC 855] and T.M.A. Pai Foundation v. State of Karnataka

13.6. In the case of R.S. Raghunath v. State of Karnataka: (1992) 1 SCC 335, this Court was considering the enforceability of special law on the subject in spite of the general law. This Court noted the following paragraph in Maxwell on the Interpretation of Statutes:

“7. A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, 'where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.”

That, thereafter it is further observed and held as under:

“7. In Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey [AIR 1966 SC 1931: (1966) 3 SCR 663] applying this principle it is held that general law does not abrogate earlier special law by mere implication. In Eileen Louise Nicolle v. John Winter Nicolle [(1922) 1 AC 284], Lord Phillimore observed as under:

“..... It is no doubt a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one. This as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute ... or be the underlying common or customary law of the country.

... Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation ... that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general

words, without any indication of a particular intention to do so'. [Ed.: Quoting from Vera Cruz case, (1884) 10 AC 59, 68]

In Justiniano Augusto De Piedade Barreto v. Antonio Vicente Da Fonseca [(1979) 3 SCC 47 : AIR 1979 SC 984] this Court observed that a law which is essentially general in nature may contain special provisions on certain matters and in respect of these matters it would be classified as a special law. Therefore unless the special law is abrogated by express repeal or by making provisions which are wholly inconsistent with it, the special law cannot be held to have been abrogated by mere implication. (emphasis supplied)

The object of Section 12 of the Act of 2001 was not to repeal Section 10(2) of the Act of 1997 but merely to constitute a disability to prefer an appeal beyond thirty days without curtailing the power of the Tribunal to condone delay in appropriate situation.

If the intention of the legislature were to deny right of appeal beyond 30 days this should have been stated expressly in Section 12 of Act of 2001 or Section 10(2) of the Act of 1997.

The tribunal in deciding the application for condonation of delay was conscious of the fact that it is not a court and its power is derived from the Act of 1997. We have in the earlier part of the order referred to the relevant observations made by the tribunal in this regard. The co-ordinate Bench in the first round of litigation has dealt with the said issue and affirmed the order passed by the tribunal with regard to its jurisdiction. It is interesting to note that in the Special Leave Petition the observation of the Hon'ble Supreme Court was with regard to the discretion of the tribunal to condone the delay and not with regard to the jurisdiction to decide the application for

condonation of delay. The SLP was dismissed. The exercise of discretion is part of jurisdiction and an authority can only exercise its power of discretion provided it is vested with the authority to decide the matter one way or the other. In our respectful reading of the order of the Hon'ble Supreme Court it has not nullified the order of the Co-ordinate Bench. It has only directed the tribunal to decide on the question of discretion to condone the delay if it is raised by the petitioner. However, without being pedantic we have relooked at the power and jurisdiction of the Tribunal to condone the delay. We are of the view that Section 12 of the Act of 2001 has by necessary implication amended the period to prefer an appeal against the order of the Controller and does not in any way whittle down the power of the tribunal to consider a prayer for condonation of delay if it is filed beyond the period of 30 days. There is no clear indication to that effect. The said two provisions are to be read harmoniously. It would also be anomalous that for orders passed by authorities in respect of all other "Specified Acts" the Tribunal would have jurisdiction to decide an application for condonation of delay and for an order of the Controller the Tribunal would have no jurisdiction at all to condone delay. This is clearly not the intention of the Legislature.

In other words the right to prefer an appeal and/or application by a person aggrieved by an order of a Controller under the Act of 2001 would be 30 days from the date of the order whereas the statutory period for preferring an appeal and/or application by an aggrieved party would be 60 days in respect of any other matter covered under Section 6 of the Act of 1997. The legislature was conscious of the provision of appeal under

Section 10 of the Act of 1997. If the legislature were of the view that any person aggrieved by the order of the controller would not be able to prefer an appeal beyond 30 days then they would have brought suitable amendment in Section 12 of the Act of 2001 or Section 10 of the Act of 1997. There is no substantive and material difference to an order passed under any specified Act when it comes to the matter of challenge Section 10(1) of the Act of 1997 does not make any distinction between the orders covered under Section 6(a) to 6(c). The nature and complexion of the order for the purpose of challenge has remained the same. Moreover the Tribunals would continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted [See. **L. Chandra Kumar** (supra) paragraph 93].

The legislature has amended Section 2(r) of the Act of 1997 to include the Act of 2001 in the definition of “Specified Acts” with effect from 1st March, 2005. Once the tribunal is vested with the power to condone the delay on sufficient cause being shown the said power in our view cannot be taken away while deciding an appeal from the order of the controller under the Act of 2001 without an express provision to that effect in the Act of 1997. The tribunal is clearly vested with the power to condone the delay and accordingly, the principles of section 5 of the Limitation Act would be applicable in deciding the application for condonation of delay. The legislature was conscious of the fact that under the Act of 1997 the tribunal has been given the power to condone the delay and unless there is a specific provision taking away that power we are unable to accept the contention of

the writ petitioner that such power has been impliedly taken away by reason of Sections 3 and 12 of the Act of 2001. We accept the submission of Mr. Reetabrato Mitra, learned Advocate for the respondent in this regard. A right of appeal is a valuable right and any interpretation that would defeat such right when there are existing provisions to that effect cannot be easily inferred. The intention of the legislature has to be gathered from the object, reasons and purpose of the two statutes. There is no conflict between the two statutes. In our view the time for a party to prefer an appeal from the order of the Controller is reduced to 30 days as opposed to 60 days that are available for orders passed by an authority under other “Specified Acts” without disturbing the power of the tribunal to exercise its discretion to condone the delay. It has not been argued before us that the discretion was wrongly applied by the tribunal. The issue raised before the tribunal was its jurisdiction to decide an application for condonation of delay and once it is held that it has the power to condone the delay the question of discretion comes.

The legislature never intended to denude the power of the Tribunal to condone the delay as the tribunal would act as the court of first instance. It was for this reason the tribunal was vested with the power to condone delay. This is clearly discernible from the objects and reasons of the Act of 1997. If no such power is vested or interpreted in the manner as argued by Mr. Mukherjee it would make the appellate provision otiose. The legislature was of the clear view that the Tribunal would have appellate jurisdiction over orders passed by authorities under the specified Acts as a court of first

instance. It has never intended to attach finality to an order passed by an appropriate authority under the Specified Act after a specific time or period and for that purpose vested the tribunal with the jurisdiction to condone delay on fulfilment of certain conditions.

No argument has been advanced before us that the respondents have failed to offer sufficient explanation for condonation of delay and the Tribunal has arbitrarily exercised such discretion.

Under such circumstances the writ application stands dismissed.

However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)