

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.48 OF 2023

1 CORVUS URBAN INFRASTRUTURE LLP, ...**Petitioners**
THR. PARTNER SUMERMAL JAIN,
Flat No.27, 4th Floor Kranti Sadan 81/89, Shankar
Pupala Road, Kamathipura, Mumbai Central,
Mumbai, Maharashtra – 400 008 Age-71 years

2 MR. SUMERMAL JAIN,
Flat No.27, 4th Floor Kranti Sadan 81/89, Shankar
Pupala Road, Kamathipura, Mumbai Central,
Mumbai, Maharashtra – 400 008 Age 71 years

Versus

1 UNION OF INDIA ... **Respondents**
THROUGH THE SECRETARY
Ministry of Culture, Department of Archaeology,
New Delhi- 110 015;

2 THE STATE OF GOA
Through its Chief Secretary,
Alto, Porvorim – Goa;

3 THE ARCHAEOLOGICAL SURVEY OF INDIA
through its Director (Monuments-II) Government
of India, Dharohar Bhavan 24 Tilak Marg, New
Delhi;

4 THE DIRECTOR GENERAL
Archaeological Survey of India Dharohar Bhavan 24
Tilak Marg, New Delhi;

5 THE COLLECTOR, NORTH GOA
Government of Goa
office of District Collector, Collectorate Building,
Opp Municipal Garden, Panaji – Goa

6 SAVE OLD GOA ACTION COMMITTEE
A Society Registered under the Societies

Registration Act, with office at House No.198/6,
Calwaddo Corlim Tiswadi Goa Through its
President Mrs. Fatima Pereira Aged 51 years
married Indian National House No.198/6,
Colwaddo Corlim Tiswadi Goa.

Mr. D. Lawande with Mr. P. Dhagui and Ms. A. Joglekar,
Advocates for the Petitioners.

Mr. Raviraj Chodankar, Central Government Standing Counsel for
Respondent Nos. 1,3 and 4.

Mr. G. Shetye, Additional Government Advocate for the
Respondent No.5.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vinod
Korgaonkar and Mr. Vilas Pavithran, Advocates for Respondent
No.6

CORAM:	M.S. SONAK & BHARAT P. DESHPANDE, JJ.
RESERVED ON :	31st JANUARY, 2023
PRONOUNCED ON :	6th FEBRUARY, 2023

JUDGMENT: (Per BHARAT P. DESHPANDE, J.)

1. Rule. Rule returnable forthwith. With the consent of the parties and the learned Counsel, this matter is taken up for final disposal.
2. The petitioner is hereby challenging the order dated 16/08/2022 (impugned order) passed by respondent No.4 under Section 19(2) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, thereby directing the removal of the construction of the structure

in survey No. 4/1 of Village Ella, Old Goa. The substantive prayer in the petition is as under:

a. That this Hon'ble Court be pleased to call for the records of order dated 16/08/2022 bearing reference no.F.No. T-19056/46/2018-M issued by Additional Director General, Archaeological Survey of India, Government of India after examining the validity, legality, correctness and propriety of the same be pleased to quash and set aside the same;

3. Heard Mr. D. Lawande with Mr. P. Dhagui and Ms. A. Joglekar, learned Advocates for the petitioners, Mr. Raviraj Chodankar, learned Central Government Standing Counsel for respondent Nos. 1,3 and 4, Mr G. Shetye, learned Additional Government Advocate for the respondent No.5 and Mr. J.E. Coelho Pereira, learned Senior Advocate with Mr. Vinod Korgaonkar and Mr. Vilas Pavithran, learned Advocates for the applicant.

4. With the assistance of the learned Counsel appearing for the respective parties, we have perused the entire record, and considered the submissions advanced.

5. Mr Lawande submitted that the impugned order passed by respondent No.4 is violative of the principles of natural justice as no notice or opportunity was given to either the petitioner or to the erstwhile owner of the petitioner before passing such drastic order of demolition of the structure. He submitted that the petitioner is now owner of the entire property which was earlier owned by Mr Pinto and

later on sold in two parts to Mrs Suvarna Suraj Lotlikar and Mr Manish Navratn Munot. He submitted that there was some defect in the schedule of the Sale Deed by which the petitioner purchased both plots. However, by way of Rectification Deeds, such defects have been rectified. He submitted that by Deed of Rectification dated 01/10/2021 to rectify the deed of sale date 08/05/2015 by which Mr Jose Maria De Gouveia Pinto and Ms Marie Pinto sold the property to Mr Manish Navratn Munot. He submitted that the entire larger property admeasuring 11900 square meters consisted of two plots i.e. plot A and plot B. Whereas plot A admeasuring 9500 square meters and plot B admeasuring 2400 square meters. There was no partition of such plots in the survey records. Plot A was purchased by Mr Munot vide Sale Deed dated 08/05/2015 wherein in schedule III of the said Sale Deed inadvertently and by mistake mentions the existence of ancestral residential house bearing house No.57 admeasuring 600 square meters was shown and mentioned in plot A instead of mentioning of a loja structure existing in plot A.

6. He then submitted that plot B was purchased by Mrs Suvarna Suraj Lotlikar vide a Deed of Conveyance dated 08/05/2015. However, the said Deed, failed to mention the existence of the ancestral house structure bearing house No.57 admeasuring 600 square meters but was erroneously mentioned as a loja structure existing in plot B instead of plot A.

7. Mr Lawande then submitted that the petitioner vide Sale Deed dated 08/09/2021 purchased plot A and plot B from Mr Manish Munot and Mrs Suvarna Suraj Lotlikar and in the said Deed of Sale the property has been properly described. The entire property is described in Schedule-I including Survey numbers, land registration numbers and Matriz numbers. Similarly, the property which is the subject matter of the Sale Deed by which the petitioner purchased it, is described in schedule II which includes the property admeasuring 11900 square meters in Survey No. 4/1 of Ella village which there exists an ancestral house bearing house No.57 admeasuring 600 square meters and a loja existed therein. Similarly, plot A and plot B are correctly described in Schedule III and Schedule IV. Finally, the area purchased by the petitioner with plot A and plot B together with existing structures is shown in the plan attached to the Sale Deed. He, therefore, submitted that from the date of purchase i.e. from 08/09/2021, the petitioner becomes the owner of the entire property including plot A and B and the structures existing therein.

8. Mr Lawande then would submit that the erstwhile owners of the petitioner and more specifically Mrs Suvarna Suraj Lotlikar who purchased plot B with the existing house structure of 600 square meters, applied for repairs of the existing residential house in survey No.4/1 of village Ella and the Director of Monuments-II of Archaeological Survey of India vide letter dated 03/02/2020 granted approval of the competent authority for taking up repairs of the house

located in the protected area of two centrally protected monuments i.e. Church of St. Cajetan and Viceroy's Arch of Old Goa subject to conditions mentioned therein. Earlier such permission was granted to Mr Jose Maria Pinto by the same authority.

9. Mr Lawande then would point out that though permission was granted by respondent No.3, the subordinate officers including the Superintending Archaeologist Goa Circle issued certain communications dated 12/03/2020, 16/03/2020. 23/03/2020 and 02/06/2020. By these communications, the predecessor in title of the petitioner was asked to remove the poles which were erected for the purpose of repairing the existing structure. Such communications were challenged by Mrs Suvarna Suraj Lotlikar, the predecessor in title of the petitioner before this Court in LD-VC-CW-132-2020 which was decided by the coordinate Bench of this Court on 22/09/2020 and by the said order, all the above communications were quashed and set aside.

10. Mr Lawande would then submit that the matter did not rest there as present respondent No.6 claiming to be a society filed a petition before this Court vide Writ Petition No. 1153 of 2021(F). The said petition was clubbed together with Writ Petition No.1160 of 2021(F) filed by Mrs Suvarna Suraj Lotlikar and Contempt Petition No.1162 of 2021(F) in Writ Petition No.1161 of 2021(F). The said matter was decided by the coordinate Bench of this Court vide judgment dated 03/05/2021. The petition filed by respondent No.6

along with the petition filed by Mrs Suvarna Suraj Lotlikar and Contempt Petition was disposed of. Specifically, Rule was made absolute in terms of prayer clause 'a' in Writ Petition No.1160 of 2021 filed by Mrs Suvarna Suraj Lotlikar.

11. Mr Lawande then would submit that the Town and Country Planning Department of Government of Goa stepped in and issued an order of revocation of technical clearance dated 30/11/2021 without even issuing a Show Cause Notice. Since the petitioner became owner of the entire property and such revocation of technical clearance dated 30/11/2021 by the Town and Country Planning Department was directly affecting the rights of the petitioner, they preferred petition No.271 of 2022. By judgment dated 08/09/2022, this Court allowed the said petition thereby quashing and setting aside the revocation of the technical clearance by order dated 30/11/2021 and subsequent orders dated 01/12/2021 and 07/01/2022.

12. Mr Lawande then submits that suddenly respondent No.4 passed an order dated 16/08/2022 (impugned order) and that too against Mrs Suvarna Suraj Lotlikar directing her to remove any and all construction carried out by her or under her authority on survey No.4/1 of village Ella at her cost and expenses within a period of 07days from the receipt of the order. The District Collector, North Goa, was directed to ensure compliance of the aforesaid direction of removal and if not removed by Mrs Suvarna Suraj Lotlikar to cause the same to be removed and recover the costs of the same from her.

13. Learned Counsel Mr Lawande first of all challenged such order on the ground that it is against the principles of natural justice as no Show Cause Notice was issued either to Mrs Suvarna Suraj Lotlilar or the petitioner who are the owners of the said property and to the knowledge of respondent No.4. He then submitted that in the impugned order all earlier communications have been quashed and set aside by this Court in the earlier petition in which respondent No.4 was a party. Such an approach of respondent No.4 is clearly overreaching the orders of this Court. He then submitted that no material has been considered by respondent No.4 in the impugned order to come to the conclusion for demolition. According to him, now though some affidavit is filed on behalf of respondent no.4 that too by the Superintending Archaeologist at Goa Circle, such material cannot be considered for justifying the order of respondent No.4 on the ground that such material was never made available to the petitioner.

14. Mr Lawande then would submit that the order is also bad for the simple reason that the original permission which was granted by the same authority is still not revoked though the order is passed for demolition in terms of the permission. He then submitted that respondent No.4 was the party to the earlier petitions however failed to challenge such orders before the Supreme Court and therefore respondent No.4 cannot ignore the findings of this Court in earlier judgment concerning the same structure. He then submitted that in the entire reply filed on behalf of respondent No.4, there is absolutely no

explanation for not giving Show Cause Notice or opportunity to the petitioner or to Mrs Suvarna Suraj Lotlikar before passing such an order. He invited the attention of this Court to paragraph 2 of the order passed in this petition on 15/11/2022. He then would submit that the only ground in the impugned order was alleged dispute of ownership of the said plot, which is clearly unwarranted since the petitioner purchased both the plots including two structures which were shown in the old cadastral plan. Even Rectification Deeds are executed by the erstwhile owners to clarify the old structure and the loja existing in respective plots A and B. He would submit that only one house in dilapidated condition was shown on the existing Sale Deed. The permission to repair such a house was obtained by the erstwhile owner and thereafter by Mrs Suvarna Suraj Lotlikar who completed most of the repair works. He then submitted that by the impugned order, respondent No.4 is trying to reopen all earlier aspects which have been decided by this Court in the earlier petition.

15. Mr Lawande placed reliance on the following decisions:

1. *T. Takano v/s. Securities and Exchange Board of India and Another*¹

2. *Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. and Another v/s Shishir Realty Pvt. Ltd. and others*²

¹ (2022) 8 SCC 162

² 2021 SCC OnLine Sc 1141

3. *State Bank of Patiala and others v/s. S.K. Sharma*³

4. *Mohinder Singh Gill and Another v/s. The Chief Election Commissioner, New Delhi and others*⁴

5. *S.L. Kapoor v/s. Jagmohan and others*⁵

16. The learned Central Government Standing Counsel Mr Chodankar appearing for respondent Nos.1, 3 and 4 candidly submitted that no notice was issued to show cause either to Mrs Suvarna Suraj Lotlikar or to the petitioner and the orders were passed by considering earlier communications which were quashed by this Court. He accepted that there was a clear breach of principles of natural justice however the order has been passed by the competent authority and therefore left the matter for the decision this Court.

17. Shri Pereira, learned Senior Counsel appearing for respondent No.6 forcefully submitted that the petitioner has no locus standi as the license was not issued in his name. Similarly, the impugned order is not addressed or issued against the petitioner and therefore he cannot challenge such an order. He then submitted that the notice to show cause is not necessary under Section 19(2) of the Act of 1958 as the illegality is on the face of record since the license earlier issued to Mr Pinto and thereafter in the name of Mrs Suvarna Lotlikar is not transferable. He then would submit that there is a fraud played by the

3 (1996) 3 SCC 364

4 (1978) 1 SCC 405

5 (1980) 4 SCC 379

petitioner and his erstwhile owners which is clear from the Sale Deed. Deliberately the old house structure is shown in plot A whereas loja was shown in plot B. Mrs Suvarna Suraj Lotlikar who purchased plot B was not entitled to carry out any repairs of the loja existing therein. He, therefore, claimed that the illegal construction is situated between two archaeological monuments and the petitioner, by playing fraud on the authorities, cannot approach this Court. He then submitted that an attempt was made on behalf of the erstwhile owners to show photographs of some different structure which was in fact existing at Mapusa, in order to get the orders for renovation. In this respect, he submitted that there is a report of the Archaeological Survey of India which shows that the photographs shown by Mrs Suvarna Lotlikar are actually photographs of a structure at Mapusa. He would submit that under the permission for repairs, a new structure has been constructed in defiance of all the permissions and orders.

18. Mr Pereira placed reliance on the following decision:

1. *Archaeological Survey of India v/s. Narender Anand and others*⁶

19. Rival contentions fall for consideration.

20. The main question which needs to be answered in the present petition is whether the impugned order dated 16/08/2022 suffers from

⁶ (2012) 2 SCC 562

the vice of principles of natural justice as admittedly no Show Cause Notice or even any opportunity was given to Mrs Suvarna Suraj Lotlikar or to the petitioner before passing such a drastic order of demolition of the structure. There are also the further questions of the authorities relying on orders and communications that were already set aside by this Court on earlier occasions.

21. There is no dispute that the petitioner purchased the property vide Sale Deed dated 20/09/2021 from Mrs Suvarna Suraj Lotlikar. Similarly, it is not in dispute that the petitioner also purchased the remaining portion of the said property from Mr Munot. Thus, the petitioner is now the owner of the entire plot having an area of 11900square meters of Survey No.4/1(part) and shown as plot A admeasuring 9500 square meters with a loja in it and plot B admeasuring 2400square meters wherein the existing structure of 600square meters is shown. It is also admitted fact that this entire plot was earlier owned by one Mr Pinto, who sold these two plots to Mrs Suvarna Suraj Lotlikar and Mr Munot. Therefore the issue of the existing structure falling in plot A or B is quite irrelevant. Neither the authorities nor Respondent No 6 allege that two structures are repaired by the Petitioner taking some undue advantage of the error in the schedule to the sale deed. The error is duly rectified and upon the Petitioner purchasing both plots, the issue of ownership is also sorted out entirely.

22. Mr Pinto, the erstwhile owner in the year 1986 obtained NOC of repairs/reconstruction of the existing old structure in Survey No.4/1 of Ella Village. The director of settlement and land records issued a certificate dated 22/04/2014 certifying that the old cadastral survey of Ella village bearing No.35(part) corresponds to new Survey No.4/1(Part). Mr Jose Pinto the erstwhile owner of the entire property under Survey No.4/1(part) of Ella Village applied for NOC approval for the proposed reconstruction of the existing house bearing House No.57 located in the property bearing No.4/1 of the Ella village. Goa Coastal Zone Management Authority vide their letter dated 28/12/2015 granted approval in terms of CRZ angle for the reconstruction of the existing house bearing house No.57 located in survey No.4/1 of Ella village on certain conditions. A plan for the reconstruction of the said house was also attached. Vide letter dated 07/10/2016, the office of the Chief Town Planner and Member Secretary of the conservation committee addressed a letter to the Deputy Town Planner, Tiswadi wherein the approval from the ASI was also considered and accordingly directed that the applicant may be informed that the proposal stand approved subject to compliance of conditions as imposed by the Conservation Committee and has communicated by ASI vide their letter dated 21/06/2016. Accordingly, the Deputy Town Planner issued a technical clearance order in favour of Mr Jose Pinto which is dated 18/10/2016. The Village Panchayat Se-Old-Goa accordingly issued a construction license dated 14/11/2016 in favour of Mr Jose Pinto. Such construction license dated 14/11/2016

shows that the license is granted for the proposed reconstruction of the residential house as per enclosed approved plan in the property shown as a settlement in the outline development plan situated at Ella Village bearing Survey No.4/1, on conditions mentioned therein.

23. Vide letter dated 04/10/2019, the Village Panchayat Se-Old-Goa renewed license dated 14/11/2016 for the proposed reconstruction of a residential house in Survey No.4/1 of Ella Village, for a period of three years w.e.f. 04/10/2019 to 03/10/2022.

24. The Archaeological Survey of India vide its letter dated 03/02/2020 addressed to Mrs Suvarna Suraj Lotlikar granted approval for repairs of the existing residential house in survey No.4/1 of Ella Village on certain conditions. The said letter reads thus:

*“F.No.T-19034/46/2018-M
Government of India
Archaeological Survey of India*

*“Dharohar Bhawar”
24 Tilak Marg, New Delhi*

Dated: 03 Feb 2020

*To
Suvarna Suraj Lotlekar
C/o Gopi J. Mhamal,
Manasa Sarovar, Ist Level.
Near Govt. Circuit House,
Altinho panjim-Goa*

*Sub:- Permission for repairs to existing residential house in Survey
No. 4/1 of Village Ella (Old Goa) Goa- reg.*

With reference to your letter dated nil on the subject cited above, I am to communicate approval of the Competent Authority for taking up repairs of house located in the protected are of two centrally protected monuments i.e. Church of St. Cajetan and Viceroy's Arch, Old Goa. The permission is further subject to following conditions:

- 1. The repair work should be taken up in consultation with the Superintending Archaeologist (I/c), ASI, Goa Circle.*
- 2. The exterior colour should match with the monument.*
- 3. There shall be no change in the facade design.*
- 4. There shall be no building material staked on the road side or near the monument*
- 5. There shall be no inconvenience to visitors*
- 6. It should be ensured that no damage is caused to ancient/archaeological structures within the monument area.*
- 7. The Provisions of AMASR Act,1958 and Rules,1959 made there under shall be observed.*
- 8. If any object of antique nature is found during the course of work, it has to be submitted to SA (I/c) immediately.*
- 9. There Should not be any variation in length, breadth and height of the structure after repairs in comparison to the existing dimensions.*
- 10. SA (I/c) Goa Circle would keep a strong watch on the repair work, document it periodically and would submit fortnightly report to this office.*
- 11. The permission does not cover reconstruction.*

Yours sincerely
Sd/-
Arvin Manjul
Director (Monuments-I)

Copy to:- The Superintending Archaeologist (I/c), Archaeological Survey of India, Goa Circle for information and necessary action please.”

25. Issuance of this letter dated 03/02/2020 clearly goes to show that Mrs Suvarna Suraj Lotlikar was considered as the owner of the said property wherein the residential house was existing in Survey No.4/1.

26. Since the Superintendent of Archaeological Survey of India, Goa Circle issued some communications to Mrs Suvarna Suraj Lotlikar dated 12/03/2020, 16/03/2020, 23/03/2020 and 02/06/2020 obstructing her from undertaking repairs/renovations consistent with the permission/approval/NOCs issued by all the authorities, she filed a petition before this Court No.LD-VC-WC-132-2020 challenging such communications.

27. By a detailed oral judgment passed by the coordinate Bench of this Court in which one of us was a member, quashed and set aside all above communications. The observations of the coordinate Bench of this Court in the said judgment clearly goes to show that the approach of said authorities and more specifically the Superintendent was not at all justified in restraining Mrs Suvarna Suraj Lotlikar from carrying out repairs/renovation on the basis of permission granted by various authorities.

28. After the said judgment was passed, Mrs Suvarna Suraj Lotlikar, the petitioner therein addressed a letter to the Superintendent, Archaeologist, the Archaeological Survey of India, Goa Circle and Senior Conservation Assistant of Goa Circle dated 24/09/2020 pointing out the reliefs granted by this Court in the said petition.

29. However, in the meantime, respondent No.6 being a society filed a petition before this Court vide Writ petition No.1153 of 2021 challenging permissions granted by various authorities to Mrs Suvarna Suraj Lotlikar claiming that such area is coming in the protected area and would cause damage to archaeological sites which are very near to such construction area.

30. Mrs Suvarna Suraj Lotlikar filed another Writ Petition No.1160 of 2021 thereby questioning the notice dated 08/04/2021 issued by the Superintending Archaeologist on the ground that the same is unjustified and overreaching the judgment passed by this Court on 22/09/2020. Similarly, Mrs Suvarna Suraj Lotlikar filed a Contempt Petition against the Superintending Archaeologist. All these matters were taken up together by this Court and vide judgment dated 03/05/2021, the coordinate Bench of this Court wherein one of us was a party, set aside the notice dated 08/04/2021 issued by the Superintendent of Archaeologist and directed Mrs Suvarna Suraj Lotlikar to abide by permission dated 03/02/2020 and as interpreted by this Court in the earlier decision dated 22/09/2020. Accordingly, Rule

was made absolute in terms of prayer clause 'a' in Writ Petition No.1160 of 2021 filed by Mrs Suvarna Suraj Lotlikar.

31. The petition filed by respondent No.6 bearing No.1153 of 2021 was also disposed of by making the Rule as partly absolute and directing Mrs Suvarna Suraj Lotlikar to abide by the permission dated 03/02/2020 issued by ASI and has clarified and interpreted by this Court in its judgment and order dated 22/09/2020. However, the challenge to the various permissions issued for repairs of the said house was rejected.

32. Subsequently, the Town and Country Planning Department of Government of Goa vide its revocation order dated 30/11/2021, revoked the NOC for repairs/reconstruction of the existing house in Survey No.4/1 of Ella village granted in favour of Mr Jose Pinto. Accordingly, the office of the Town and Country Planning Department addressed a letter to the Secretary / Sarpanch of Village Panchayat Se-Old-Goa dated 02/01/2021 informing about the revocation and taking action against the said construction. Vide order dated 10/02/2022 Village Panchayat of Se-Old-Goa in exercise of powers under Section 47(2) of Goa Panchayat Raj Act directed the present petitioner to demolish illegal construction in survey No. 4/1 of Ella village within 15 days. Thus it shows that the Village Panchayat of Se-Old-Goa considered the petitioner as the owner of the said property. Accordingly, the petitioner moved this Court vide Writ Petition No.71 of 2022 challenging the impugned orders of the Town and Country Planning

Department and the Village Panchayat Se-Old-Goa. Vide judgment dated 08/09/2022 this Court quashed and set aside the said impugned order issued by the Town and Country Planning Department on the premise that such orders were issued without following principles of natural justice and because no breach of the conditions of the permission dated 3.2.2020 were noticed.

33. In the above backdrop of the matter, the impugned order is again challenged on the same ground of violation of principles of natural justice as no Show Cause Notice or any opportunity was given to the petitioner or to the erstwhile owners before passing such impugned order.

34. Mr Lawande while inviting our attention to the impugned order dated 16/08/2022 pointed out that the concerned authority took cognizance of the letters dated 03/03/2020, 16/03/2020, 02/06/2020 etc. though such letters were quashed and set aside by this Court in the earlier petition decided on 22/09/2020 bearing LD-VC-CW-132-2020.

35. The impugned order dated 16/08/2022 was issued under Section 19(2) of the Ancient Monuments and Archeological Sites and Remains Act, 1958, by the Additional Director General of Archaeological Survey of India which is the department of Central Government having an office of New Delhi. Thus the provision of Section 19 of the Act of 1958 reads thus:

“19. Restrictions on enjoyment of property rights in protected areas.– (1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.”

36. The above provision under Section 19 is in regard to protected areas which is defined in Section 2(i). Protected area means any archaeological sites and remains which are declared to be of national importance by or under this Act.

37. The question remains regarding the exercise of such powers by the competent authority as contemplated under Section 19 of the Act of 1958. First of all this Section 19 puts restrictions on the enjoyment of property rights in the protected area and prohibits any person including the owner or occupier of such protected area from constructing any building within the protected areas or carrying out any mining, quarrying, excavation, blasting or any operation of a like nature

in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government. Thus, it clearly prohibits the construction of any building without permission of the Central Government. The matter in hand clearly revealed that permission was granted by the Central Government i.e. the Archaeological Department itself to the predecessor in title of the petitioner for the reconstruction of the existing dilapidated house. There is no allegation that the works at the site breach the terms and conditions of the permission. That is why such permissions has been left intact by the competent authority. Over ninety percent of the works are already completed as claimed by the Petitioners.

38. The impugned order dated 16/08/2022 is more particularly harping upon alleged suppression or fraud played by Mrs Suvarna Suraj Lotlikar with the said authority while obtaining permission for the renovation of the said house. Apart from specifying the fraud, if any, such orders cannot be made without compliance with the principles of Natural Justice. Assuming such orders are administrative, still natural justice cannot be bypassed because the impugned order requires demolition of ninety percent completed works in the teeth of three orders made by this Court on the same subject.

39. Respondent Nos.3 and 4 who are the concerned authorities under the Act of 1958 did not file any affidavit in response to the present petition. The affidavit filed on behalf of these respondents is in fact signed by Shri Hemsagar A. Naik who works as Superintending

Archaeologist from Goa Circle. Though he has mentioned that the contents of his affidavit are based on records maintained by respondent Nos.3 and 4, it is quite surprising that the Superintending Archaeologist working in Goa Circle is having access to the records maintained in the office of respondent Nos. 3 and 4 who are sitting at New Delhi. Admittedly, the authorities at respondent Nos.3 and 4 are superior authorities of the Superintending Archaeologist of Goa Circle who signed the affidavit. It was expected that the affidavit would have been signed and affirmed by one of the responsible officers working in the office at New Delhi and having access to the record of respondent Nos.3 and 4.

40. Be that as it may, the said reply affidavit is completely silent about any opportunity given to the petitioner or to Mrs Suvarna Suraj Lotlikar before passing such an order. Not a single document is produced to show that any Show Cause Notice was issued to Mrs Suvarna Suraj Lotlikar or to the petitioner since the petitioner purchased both the plots and that too with the knowledge of respondent Nos.3 and 4, before passing such order. There is also no explanation why no notice was issued to the Petitioner after the fact of purchase of the entire property was duly communicated to all authorities by the Lotlikars.

41. The "competent authority" under Section 19 of the Act of 1958 is defined in Section 2(db) which means an officer, not below the rank of Director of archaeology or Commissioner of archaeology of the

Central or State Government or equivalent rank, specified, by notification in the Official Gazette, as the competent authority by the Central Government to perform functions under this Act.

42. At this stage, it is again necessary to note that the permission issued to the erstwhile owner of the petitioner by the name Pinto and thereafter to Mrs Suvarna Suraj Lotlikar is for the repairs of the existing house in terms of the conditions in the said permission. This Court, in its previous orders, has directed compliance with such conditions. Therefore, as long as the works were within the scope of such conditions, the impugned order could not have been issued, and that too without opportunity to show cause.

43. Admittedly, there was an old existing residential house in Survey No.4/1 of Ella village which was purchased by a valid Sale Deed. The erstwhile owner Mr Jose Maria De Gouveia Pinto applied for repairs of his residential house existing in Survey No.4/1 in the year 2015 itself. All the authorities including respondent Nos.3 and 4 granted such permission for the the said house. The Village Panchayat of Se-Old-Goa granted NOC for repairs/ reconstruction of house No.57 existing in Survey No.4/1 to Mr Jose Pinto on 27/06/1996. Subsequently, Goa Coastal Zone Management Authority vide its letter dated 28/12/2015 addressed to Mr Jose Maria De Gouveia Pinto granted NOC/approval for the proposed reconstruction of house No. 57 located in the property in the Survey No.4/1 of Ella Village and along with such permission the plans were approved. The Town and Country Planning Department of

Government of Goa vide their order dated 07/10/2016 have granted approval subject to further compliance with the conditions as imposed by the Conservation Committee and as communicated by ASI vide their letter dated 21/06/2016. A technical clearance order was issued by the Town and Country Planning Department on 18/10/2016 which included an approved plan for repair/reconstruction of the existing house No.57. Subsequently, Village Panchayat Se-Old-Goa granted renewal for the construction license on 04/10/2019. The most important letter dated 03/02/2020 quoted above shows that it was addressed to Mrs Suvarna Suraj Naik with the subject as “permission for repairs to existing residential house in Survey No.4/1 of Village Ella(Old Goa).

44. Even in the impugned order dated 16/08/2022, at all places it is clearly refers to the existing residential house No.57 in Survey No.4/1 of Ella Village. It is thus clear that there is no new construction which the petitioner or the predecessors of the petitioner were intending to put up in the said property. All documents and permissions clearly refer to the existing house No.57 in Survey No.4/1. The survey of this area has been promulgated and the survey plan is available with the Village Panchayat, other Government Departments including Town and Country Planning Department and also with respondent Nos.3 and 4. Therefore, the question of invoking Section 19 of the Act of 1958 by the concerned authority and that too after obtaining all the necessary permissions and further without giving any Show Cause Notice or

opportunity either to the petitioner or to erstwhile owners would certainly against settled principles of natural justice. It is expected that Government authorities while taking such a drastic decision of ordering demolition would follow the principles of natural justice and would not condemn anyone without giving an opportunity to be heard.

45. While deciding Writ Petition No.271 of 2022 filed by the petitioner against the Town and Country Planning Department, we dealt with a similar situation wherein the petitioner was served with the order of revocation of technical clearance and subsequently withdrawal of the permission by the Panchayat, without giving any opportunity.

46. In the case of *Mohinder Sing Gill*(supra), the Hon'ble Apex Court while discussing the facet of natural justice as an area of application of it, observed in paragraphs 43 to 56 as under:

'43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has, many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam – and of Kautilya's Arthashastra – the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has

sanctioned its prevalence even like the Anglo-American system.'

'44. The dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after Kraipak [A.K. Kripak v. Union of India, (1969) 2 SCC 262 : (1970) 1 SCR 457] in India and Schmidt [Schmidt v. Secretary of State for Home Affairs, (1969) 2 Ch 149] in England.'

'45. Kraipak marks the watershed, if we may say so, in the application of natural justice to administrative proceedings. Hegde, J., speaking for a Bench of five Judges observed, quoting for support Lord Parker in In re H.K. (an infant) (1967) 2 QB 617, 630: (1967) 1 All ER 226] :

“It is not necessary to examine these decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding.

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The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.

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The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as

*administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in **Suresh Koshy George v. University of Kerala** the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”'*

'46. It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. Natural justice is being given access to the United Nations. It is notable that Mathew, J. observed in Indira Gandhi (p. 513, SCC p. 128, para 303):

“If the amending body really exercised judicial power, that power was exercised in violation of the principles of natural justice of audi alteram partem. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance.”

Lord Morris of Borth-y-Gest in his address before the Bentham club concluded:

“We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying those principles which we broadly classify under the designation of natural justice. Many testing problems

as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fairplay in action – who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled if it lacks more exalted inspiration.'"

'47. It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play.'

'48. Once we understand the soul of the rule as fairplay in action – and it is so – we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more – but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.'

'49. Let us look at the jurisprudential aspects of natural justice, limited to the needs of the present case, as the doctrine has developed in the Indo-Anglican systems We may state that the question of nullity does not arise here because we are on the construction of a constitutional clause. Even otherwise, the rule of natural justice bears upon construction where a statute is silent save in that category where a legislation is charged with the vice of unreasonableness and consequential voidness.'

'50. Article 324, on the face of it, vests vast functions which may be powers or duties, essentially administrative and marginally even judicative or legislative. (See All Party Hill Leaders' Conference, Shillong v. Capt. W.A, Sangma [(1977) 4 SCC 161] .) We are not fascinated by the logomachic exercise suggested by Sri P.P. Rao, reading "functions" in contradistinction to "powers" nor by the trichotomy of diversion of powers, fundamentally sound but flawsome in several situations if rigidly applied. These submissions merely serve to draw the red-herring across the trial. We will now zero in on the crucial issue of natural justice vis-a-vis Article 324 where the function is so exercised that a candidate is substantially prejudiced even if he has not acquired a legal right nor suffered "civil consequences", whatever that may mean.'

'51. We proceed on the assumption that even if the cancellation of the poll in this case were an administrative act, that per se does not repel the application of the natural justice principle. Kraipak nails the contrary argument. Nor did the learned Addl. Solicitor-General contend that way, taking his stand all through, not on technicalities, easy victories or pleas for reconsiderations of the good and progressive rules gained through this Court's rulings in administrative law but on the foundational thesis that any construction that we may adopt must promote and be geared to the great goal of expeditious, unobstructed, despatch of free and fair elections and leaving grievances to be fully sorted out and solved later before the Election Tribunal set out by the Act. To use a telling word

familiar in officialese: “Election Immediate”.’

'52. So now we are face to face with the naked issue of natural justice and its pro tem exclusion on grounds of necessity and non-stultification of the on-going election. The Commission claims that a direction for re-poll is an “emergency” exception. The rules of natural justice are rooted in all legal systems, not any “new theology” and are manifested in the twin principles of nemo judex in causa sua and audi alteram partem. We are not concerned here with the former since no case of bias has been urged. The grievance ventilated is that of being condemned unheard. Sporadic applications or catalogue of instances cannot make for a scientific statement of the law and so we have to weave consistent criteria of application and principles for carving out exceptions. If the rule is sound and not negated by statute, we should not devalue it nor hesitate to hold every functionary who affects others' right to it. The audi alteram partem rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain. Let us study how far the situation on hand can coexist with canons of natural justice. While natural justice is universally respected, the standards vary with situations contracting into a brief, even post-decisional opportunity, or expanding into trial-type trappings.'

'53. Ridge v. Baldwin is a leading case which restored light to an area “benighted by the narrow conceptualism of the previous decade”, to borrow Professor Clark's expression. [Natural Justice : Substance and Shadow ‘Public Law’ Journal – Spring 1975] Good administration demands fairplay in action and this simple desideratum is the fount of natural justice. We have already said that the classification of functions as “judicial” or “administrative” is a stultifying shibboleth, discarded in India as in England. Today, in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights penumbral areas it is only for improving the quality of government by injecting fairplay into its wheels.'

'54. The learned Addl. Solicitor-General welcomed the dramatic pace of enlargement in the application of natural justice. But he argued for inhibiting its spread into forbidden spaces lest the basic values of Article 329 be nullified. In short, his point is that where utmost promptitude is needed – and that is the raison d'etre of exclusion of intermediate legal proceedings in election matters – natural justice may be impractical and may paralyze, thus balking the object of expeditious completion. He drew further inspiration from another factor to validate the exclusion of natural justice from the Commission's actions, except where specifically stipulated by statute. He pointed out what we have earlier mentioned – that an election litigation is one in which the whole constituency of several lakhs of people is involved and, if the Election Commission were under an obligation to hear affected parties it may, logically, have to give notice to lakhs of people and not merely to candidates. This will make an ass of the law and, therefore, that is not the law. This reductio ad absurdum also has to be examined.'

'55. Law cannot be divorced from life and so it is that the life of the law is not logic but experience. If, by the experiential test, importing the right to be heard will paralyze the process, law will exclude it. It has been said that no army can be commanded by a debating society, but it is also true that the House of Commons did debate, during the days of debacle and disaster, agony and crisis of the Second World War, the life-and-death aspects of the supreme command by the then British Prime Minister “to the distress of all our friends and to the delight of all our foes” – too historic to be lost on jurisprudence. Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity. Such is the sensible perspective we should adopt if ad hoc or haphazard solutions should be eschewed.'

'56. Normally, natural justice involves the irritating inconvenience for men in authority, of having to hear both sides since notice and opportunity are its very marrow. And this principle is so integral to good government, the onus is on him who urges exclusion to make out why. Lord Denning expressed the paramount policy consideration behind this rule of public law (while dealing with the *nemo iudex* aspect) with expressiveness: "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking "the Judge was biased'." We may adapt it to the *audi alteram* situation by the altered statement: "Justice must be felt to be just by the community if democratic legality is to animate the rule of law. And if the invisible audience sees a man's case disposed of unheard, a chorus of 'no-confidence' will be heard to say, 'that man had no chance to defend his stance'." That is why Tucker, LJ in *Russell v. Duke of Norfolk* [(1949) 1 All ER 109, 118 : 65 ILR 225] emphasised that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What is reasonable in given circumstances is in the domain of practicability; not formalised rigidity. Lord Upjohn in *Fernando* [*Durayappah v. Fernando*, (1967) 2 AC 337 : (1967) 2 All ER 152 (PC)] observed that "while great urgency may rightly limit such opportunity timorously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable". It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural precondition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness. The Election Commission is an institution of

central importance and enjoy far-reaching powers and the greater the power to affect others right' or liabilities the more necessary the need to hear.'

47. In the case of **S.L. Kapoor**(supra), the Hon'ble Apex Court discussed the aspect of natural justice and also audi alterem partem in detail. It was held that the old distinction between judicial act and administrative act has withered away and now even an administrative order, if involves civil consequences, must comply with the rules of natural justice. In its comprehensive connotations, everything that affects a citizen in his civil life inflicts a civil consequence. The action of respondent Nos. 3 and 4 in the present matter by issuing the impugned order cannot be simply considered as an administrative order as it has comprehensive civil consequences and if complied with, the petitioner would be required to demolish the entire house, which in fact was repaired/renovated at the place of earlier existing structure, on the basis of all permissions issued from time to time including the permission granted by the Archaeological Department itself. The Hon'ble Supreme Court in the said decision of **S.L. Kapoor** (Supra) observed in paragraphs 17 to 20 and 24 as under:

'17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non

observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.'

'18. In Ridge v. Baldwin [1964 AC 40, 68 : (1963) 2 All ER 66, 73] one of the arguments was that even if the appellant had been heard by the watch committee nothing that he could have said could have made any difference. The House of Lords observed:

“It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly, on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course.”'

'19. Megarry, J., discussed the question in John v. Rees. He said :

“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. ‘When something is obvious’, they may say, ‘why force everybody to go through the tiresome waste of time involved in framing charges and giving an

opportunity to be heard? The result is obvious from the start'. Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

'20. In Annamunthodo v. Oilfields Workers' Trade Union Lord Denning, in his speech said: "Counsel for the respondent Union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man-to be denied justice."

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'24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

“The distinction between justice being done and being seen to be done has been emphasised in many cases. . . .

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery, C.J.'s judgment in R. v. Home Secretary [(1977) 1 WLR 766, 772] , ex. p. Hosenball, where after saying that “the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done” he went on to describe the maxim as “one of the rules generally accepted in the bundle of the rules making up natural justice”.

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland [(1971) 2 Lloyd's Rep 515] Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or “to use the time hallowed phrase” that justice should not only be

done but be seen to be done. In R. v. Thames Magistrates' Court, ex. p. Polemis [(1974) 1 WLR 1371] , the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same. That is mixing up doing justice with seeing that justice is done (per Lord Widgery, C.J. at p. 1375)."

In our view, the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.'

48. In the case of *Vice Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Ltd.* (supra), the Hon'ble Apex Court observed in paragraph 40 as under:

“40. Natural justice is an important aspect while reviewing the administrative orders. Providing effective natural justice to affected parties, before a decision is taken, it is necessary to maintain rule of law. Natural justice is the sworn enemy of intolerant authority. Any attempt by authority to circumvent the requirement of providing effective hearing before reaching a conclusion, cannot pass the muster. Coming to the facts herein, the post-decisional hearing given to the respondent-lessee is reduced to a lip-service, which cannot be upheld in the eyes of law.”

49. The ratio as laid down by the Apex Court is squarely applicable to the facts and circumstances of the matter in hand and there is clear violation of natural justice and now the admission made by the authority to circumvent the requirement of providing effective hearing cannot pass the muster.

50. In *State Bank of Patiala*(supra), the Hon'ble Apex Court was dealing with the questions concerning natural justice in the context of disciplinary proceedings. The observations in paragraph 28 reads thus:

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election

Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] .) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable – a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing – applying the test of prejudice, as it may be called – that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding – which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465] . There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the

said principle. In other words, distinction is between “no notice”/“no hearing” and “no adequate hearing” or to put it in different words, “no opportunity” and “no adequate opportunity”. To illustrate – take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin* [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid – or void, if one chooses to use that expression (*Calvin v. Carr* [1980 AC 574 : (1979) 2 All ER 440 : (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category – violation of a facet of the said rule of natural justice – in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct – in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.”

51. Mr Lawande rightly submitted that the case of the petitioner falls in the first category as there was no notice / no hearing given to the

petitioner or to the earlier owners before passing such orders by respondent Nos.3 and 4. He would submit that the impugned order suffers from the vice of arbitrariness and also violates the facet of the rule of natural justice when the party affected by such order is not even issued with a Show Cause Notice to explain. He, therefore, was right in pointing out that in case opportunity would have been given, the petitioner would have been able to succeed in convincing the concerned authorities that there was no fraud or misleading of the authority with regard to a structure existing in plot Nos.A and B. In this respect, he invited our attention to the Rectification Deeds conducted by the erstwhile owners which clearly show that earlier there was some confusion or a mistake in showing the residential house and the loja in proper plots A and B. Such confusion/mistake has been rectified by executing all documents of the Rectification Deed. He was also justified in submitting that now the petitioner purchased both plots A and B and therefore the petitioner is the owner of the entire property admeasuring 11900 square meters which exists in Survey No.4/1 and more specifically in this property old residential house bearing No.57 and a loja for storing coconuts exist.

52. In the case of *T. Takano*(supra), the Apex Court was dealing with a matter wherein the Bombay High Court dismissed the petition instituted by the appellant under Article 226 of the Constitution challenging the Show Cause Notice issued by SEBI or the Board, alleging a violation of the provisions of the SEBI Regulations, 2003. A

petition for review of the said judgment of the Bombay High Court was disposed of. While considering a Special Leave Petition the core issue was whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person to whom a notice to show cause is issued, was under consideration. While dealing with this issue, the Hon'ble Apex Court concluded in paragraph 62 that the right to disclosure of the material relevant to the proceedings initiated against the appellant is valid. It is sufficient to disclose the material relied on if it is for the purpose of issuing a Show Cause Notice for deciding whether to initiate an inquiry, however, all information that is relevant to the proceedings must be disclosed in adjudication proceedings.

53. Thus the Apex Court categorically observed that even if a Show cause Notice is issued without disclosing the material relied upon by the authority and the information relevant to the proceedings, it vitiate as the same is against the principles of natural justice. Not only the material relied upon has to be disclosed but the material which is relevant to the proceedings must also be disclosed by the adjudicating authority.

54. This observation of the Apex Court is basically relied upon as respondent Nos.3 and 4 in their reply tried to justify and rely upon documents, which were neither furnished to the petitioner nor the predecessor in the title or to any other person who is going to be affected by such order. Admittedly no Show Cause Notice was issued to the petitioner or to the predecessor in title namely Mrs Suvarna Suraj

Lotlikar. Therefore such document relied upon by the respondent Nos.3 and 4 along with their affidavit would not justify their action as these documents were not at all sufficient to the affected party before passing such an order. No opportunity was given even to show cause and therefore it clearly vitiates the principles of natural justice.

55. As far as respondent No.6 is concerned, first of all, cannot justify the impugned order made by Respondent nos 3 and 4 when the said authorities find such order to be indefensible. Secondly Respondent No. 6 cannot introduce new grounds to justify such order when such grounds find no place in the impugned order. Even the authority cannot add to or supplement grounds by filing affidavits, much less a private Respondent or a third party. The Petition filed by Respondent no. 6 was already disposed of by directing the Respondents in the said Petition to adhere to the terms and conditions of the permission. In any case, the contention about there being no necessity of compliance with natural justice cannot be accepted.

56. The learned Senior Counsel Mr J.E. Coelho Pereira forcefully submitted that even a Show Cause Notice is not necessary to be issued while passing orders under Section 19 of the Act of 1958. Surprisingly, no such case has been put up by the concerned authorities in their affidavit. There is no denial of the contentions raised in the petition regarding the violation of principles of natural justice in the reply filed by respondent Nos.3 and 4.

57. We are not inclined to accept the arguments advanced by Mr Pereira in connection with the powers under Section 19 of the Act of 1956 and more specifically on issuing such orders without even issuing a Show Cause Notice to the affected parties. First of all the order passed by respondent Nos.3 and 4 is clearly affecting the civil rights of the petitioner who is the owner of the entire property. Therefore any order which affects the civil rights of the party has to follow the principles of natural justice. *Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.* There is no substance in the arguments advanced on behalf of respondent No.6 in this regard.

58. In *Archaeological Survey of India*(supra), the Hon'ble Apex Court dealing with the orders passed by the Delhi High Court and the Civil Court allowing Narender Anand to raise construction up to the height of 55 feet on plot No.14, Janpath Lane, New Delhi. While dealing with such matters, the Hon'ble Apex Court considered various provisions of the Ancient Monuments Preservation Act, 1904 and the Ancient Monuments and Archaeological Sites and Remains Act, 1958. basically, Section 20A to 20Q of 1958 Act came up for discussion and in that context, it was observed that in terms of Section 20A(2) no person other than the Archaeological Officer shall carry out any

construction in any prohibited area. The Apex Court found that the conditions of the permission were flouted and an entirely new construction was proposed / set up in a protected area. No such issue arises in present case because there is no breach of the conditions alleged or established and the permission itself is not revisited or revoked. Besides, the above decision of the Apex Court deals with Section 20-A of the Act of 1958 whereas the impugned order is passed under Section 19 of the Act which deals with protected areas. Section 20-A deals with prohibited and regulated areas. Both these provisions act in different spheres/areas.

59. If the ninety percent of the works undertaken in terms of permission dated 3.2.2020 in which the Petitioner, to the knowledge of the authorities is to be demolished by the impugned order made without notice to the Petitioners or the previous owners, surely it cannot be said that the Petitioners lack locus standi. This contention of Mr. Pereira cannot be accepted.

60. Coming back to the impugned order dated 16/08/2022, though it is lengthy order, it nowhere disclosed that any Show Cause Notice was issued to the petitioner or to Mrs Suvarna Suraj Lotlikar before passing such an order. The entire history has been reproduced including the earlier communications which are specifically quashed and set aside by this Court in the earlier petition. Similarly, in paragraph 5 of the impugned order, there are some allegations made on Mrs Suvarna Suraj Lotlikar about the discrepancies with regard to the structure shown in

the Sale Deeds. Therefore, it was incumbent upon the said authority to call upon Mrs Suvarna Suraj Lotlikar or the petitioner being the successor to explain. By not giving such an opportunity, the said authority has acted clearly in violation of principles of natural justice and therefore such action on the part of said authority cannot in any way be permitted to be considered as valid in the eyes of law. The minimum expectation from such authority is to give an opportunity to the party concerned to put up his defence before passing such drastic order of demolition. Such order cannot by any stretch of imagination be construed as purely an administrative function. Powers given to such authority under the statutes must be exercised by the procedure laid down by law, which includes following principles of natural justice. The action of respondent Nos.3 and 4 certainly carries civil consequences and therefore the natural justice demand that the party should have been heard by giving appropriate opportunity before passing such drastic order.

61. Having said so, we clearly observe that the impugned order dated 16/08/2022 (Exh.-A) passed by the Additional Director General, Archaeological Survey of India, New Delhi is bad in law and requires to be quashed and set aside for not following principles of natural justice. Consequently, the petition must succeed.

62. Rule is made absolute in terms of prayer clause 'a'.

63. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

MEENA
VISHAL
BHOIR

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by MEENA
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