CORRECTED JUDGMENT

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11249 OF 2022 WITH
CIVIL APPLICATION NO.16984 OF 2022

Bajaj Allianz General Insurance Co. Ltd.
Having its Registered Office at :
Bajaj Allianz House, Air Port Road,
Yerwada, Pune – 411 006
Email ID : onkar.kothari@bajajallianz.co.in
through its Authorised Representative
Anuja Vikas Joshi
Age 36 years, Occ. Service,
R/o Bajaj Allianz General Insurance Co. Ltd.,
ABC Complex, 3rd Floor, Near Prozone Mall,
Aurangabad – 431 001 … **PETITIONER**

VERSUS

1) The State of Maharashtra
through Secretary, Department of
Agriculture, Cooperation &
Farmers Welfare, Ministry of
Agriculture, Cooperation & Farmers
Welfare, Mantralaya, Mumbai

2) District Collector,
Central Administrative Building,
1st Floor, Hall No.65,
Aurangabad Road,
Osmanabad – 413 501

3) Commissioner of Agriculture
Dept. of Agriculture & Farmers Welfare,
Govt. of Maharashtra,
Central Building, Pune 411 001

4) Tahsildar, Pune City,
NH4, 76/10, Shukrawar Peth,
Mahatma Gandhi Road,
Shukrawar Peth, Pune
Maharashtra – 411 002

5) District Superintendent Agricultural
Officer, Central Administrative
Building, 1st Floor, Hall No.65,
Aurangabad Road,
Osmanabad – 413 501

(Copy to be served on Government
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad)

6) Union of India,
through Secretary,
Department of Agriculture, Cooperation
& Farmers Welfare, Ministry of
Agriculture & Farmers Welfare,
Government of India, Krushi Bhavan,
New Delghi – 110 001

7) Prashant s/o Achyutrao Lomte,
Age 35 years, Occ. Agriculture,
R/o Near Mahadev Temple,
Baba Nagar, Kalamb, Tq. Kalamb,
District Osmanabad … **RESPONDENTS**

....

Mr. Soli Cooper, Senior Advocate a/w Mr. Angad Kochhar, Mr. Vedant Kashyap, Advocates i/b
Mr. Mohit R. Deshmukh, Advocate for petitioner
Mr. R.N. Dhorde, Senior Advocate a/w Mr. P.S. Dighe, Advocate & Mr. Sanjay S. Dudhane, /i/b
Mr. A.R. Kale, Addl.G.P. for respondent No.1 to 5 - State
Mr. S.S. Dewe, Advocate holding for
Mr. A.G. Talhar, D.S.G. for R.No.6
Mr. V.D. Salunke, Advocate for R.No.7

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WITH

CIVIL APPLICATION NO.10719 OF 2023 IN
WRIT PETITION NO.11249 OF 2022

Prashant s/o Achyutrao Lomate
Age 35 years, Occu. Agriculture/ social work
R/o Near Mahadev Mandir, Baba Nagar,
Kalamb, Tq. Kalamb, Dist. Osmanabad
Mobile No. 9881840723 … **APPLICANT**
(Orig. Respdt.No.7)

VERSUS

1. Bajaj Allianz General Insurance Co. Ltd.
Having its Registered Office at :
Bajaj Allianz House, Air Port Road,
Yerwada, Pune – 411 006
Email ID : onkar.kothari@bajajallianz.co.in
through its Authorised Representative
Anuja Vikas Joshi
Age 36 years, Occ. Service,
R/o Bajaj Allianz General Insurance Co. Ltd.,
ABC Complex, 3rd Floor, Near Prozone Mall,
Aurangabad – 431 001

2) The State of Maharashtra
through Secretary, Department of
Agriculture, Cooperation &
Farmers Welfare,
Mantralaya, Mumbai

3) District Collector,
Central Administrative Building,
1st Floor, Hall No.65,
Aurangabad Road,
Osmanabad – 413 501

4) Commissioner of Agriculture
Dept. of Agriculture & Farmers Welfare,
Govt. of Maharashtra,
Central Building, Pune 411 001

5) Tahsildar, Pune City,
NH4, 76/10, Shukrawar Peth,
Mahatma Gandhi Road,
Shukrawar Peth, Pune
Maharashtra – 411 002

6) District Superintendent Agricultural
Officer, Central Administrative
Building, 1st Floor, Hall No.65,
Aurangabad Road,
Osmanabad – 413 501

7) Union of India,
through Secretary,
Department of Agriculture, Cooperation
& Farmers Welfare, Ministry of
Agriculture & Farmers Welfare,
Government of India, Krushi Bhavan,
New Delghi – 110 001 … **RESPONDENTS**

....

Mr. Rajdeep D. Raut, Advocate for applicant
Mr. Soli Cooper, Senior Advocate a/w Mr. Angad Kochhar, Mr. Vedant Kashyap, Advocates i/b
Mr. Mohit R. Deshmukh, Advocate for respondent No.1
Mr. R.N. Dhorde, Senior Advocate a/w Mr. P.S. Dighe, Advocate & Mr. Sanjay S. Dudhane, i/b
Mr. A.R. Kale, Addl.G.P. for respondent No.2 to 6 - State
Mr. S.S. Deve, Advocate holding for
Mr. A.G. Talhar, D.S.G. for R.No.7

..….

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Date of reserving judgment : 21st August, 2025

Date of written notes submitted by parties : 10th September, 2025.

Date of pronouncing judgment : 24th November, 2025

<u>JUDGMENT (PER : R.G. AVACHAT, J.)</u> :

This petition, under Article 226 of the Constitution of India, has been preferred for the following main reliefs :

"This Hon'ble Court be pleased to pass the following writs and directions :

(a) Issuance of a writ of mandamus or certiorari or any other appropriate writ, order or direction in the nature thereof, setting aside and quashing the impugned directions issued by respondents No.2 and 4 and annexed to the present petition as Exhibits – A, B, C, D, E and F;

(b) Issuance of a writ of mandamus, or any other appropriate writ, order or direction to the respondents to disburse compensation to eligible and affected farmers strictly in accordance with applicable law, as per the comprehensive and detailed assessment and analysis carried out by the petitioner based on the available NDRF data and communicated to the District Collector via letter of 28/10/2022.

(c) Issuance of a writ of mandamus, or any other appropriate writ, order or direction in the nature thereof, to the respondents declaring that assessment of compensation to be paid to eligible farmers must be only on the basis of the total affected area and not the total insured area as erroneously directed by the District Collector.

(d) Issuance of a writ of mandamus, or any other appropriate writ, order or direction in the nature thereof, restraining the District Collector, Osmanabad and/or the other official respondents from taking any coercive steps against the petitioner in furtherance to the Revenue Receipt Certificate dated 04/11/2022 annexed to the present petition as Exhibit F, or otherwise.

(e) Issuance of a writ of mandamus, or any appropriate writ, order or direction to the respondent No.1 to forthwith pay

> the balance subsidy of Rs.134,11,91,938/- (Rupees One Hundred Thirty Four Crores Eleven Lakhs Ninety One Thousand Nine Hundred and Thirty Eight only) to the petitioner with 12% p.a. interest accrued thereon."

FACTS :

2. The petitioner is an Insurance Company. The respondent No.1 is the State of Maharashtra, while the respondent No.2 to 5 are the officials of the respondent No.1. The respondent No.6 is the Union of India. The respondent No.7 was the petitioner in Public Interest Litigation (P.I.L.) No.91/2021. He has been made party respondent on his intervention application.

3. The Prime Minister Fasal Beema Yojana (PMFBY) was introduced in the State of Maharashtra. The respondent State issued Government Resolution (G.R.) dated 29/6/2020 for its implementation for Kharif Season 2020. The Union of India issued Revamp Operation Guidelines (ROG) in relation to the PMFBY effective from Kharif Season 2020. The petitioner Company was selected as the Insurance Company for the purpose of implementing the PMFBY for the district of Osmanabad for a period of three years commencing from Kharif Season 2020. A Memorandum of Understanding (MoU)

was executed between the petitioner Company and the respondent State. The subject matter of the MoU and this petition as well is post-harvest loss of Soyabean crop suffered by agriculturists on account of heavy rains in October 2020. Three petitions, two PILs and one Writ Petition were filed for enforcement of the Insurance Contract (petitioner's liability) to pay compensation to eligible farmers. This Court, vide its common judgment and order dated 6/5/2022, disposed of those petitions with certain directions. The petitioner Company preferred Special Leave Petitions (SLPs) against the said decision. It has, however, been unsuccessful therein.

4. Since the petitioner Company did not comply with the directions given by this Court vide its order dated 6/5/2022, the respondent No.2 issued the petitioner Company communication directing it to pay the amount of compensation as has been directed by this Court. The Tahsildar, on the instructions of respondent No.2, issued Revenue Recovery Certificates (RRCs) against the petitioner Company for recovery of the amount of compensation, as arrears of land revenue.

5. As per the scheme, the respondents No.1 and 6 were to pay the petitioner premium of insurance coverage. The insured farmers were also to pay their share of the insurance premium on time. Both, the insured farmers and the Union of India paid their respective shares. The respondent State has, however, not paid its second installment, said to have been amounting to Rs.134,11,91,938. It was expected to make the payment within a time-frame, lest the amount of premium was to carry interest @ 12% p.a. from the date it became payable to the date of its actual payment. The petitioner Company has also prayed the same.

6. This Court, vide its order dated 14/11/2022, granted interim relief restraining the State authorities to execute RRCs. The order was passed with a condition that the petitioner shall deposit with this Court a sum of Rs.150 Crores. The order has been complied with. In the meanwhile, Contempt Petitions were filed against the petitioner Company for non-compliance of the order of the Apex Court in Contempt Petitions. The Contempt Petitions were disposed of with certain directions. According to the petitioner Company, the issue of its liability

under the Insurance Contract stood concluded in view of the decision of this Court, dated 6/5/2022 in those three Petitions and the orders passed by the Apex Court in contempt proceedings.

SUBMISSIONS :

7. Learned Senior Counsel for the petitioner Company made oral submissions and has placed on record written notes of arguments. He has also relied on the notes of submissions dated 14/7/2023 filed pursuant to the leave granted by this Court on the said date. According to the learned Senior Counsel, the directions issued by the State official respondents were without jurisdiction, illegal and invalid as well. The directions and the demands issued by the State Government and its officials to pay the amount of compensation on the basis of entire insured area were erroneous and inconsistent with their stand in the earlier round of litigation (PILs. and W.P.). Their stand was that the petitioner Company was refusing to pay the compensation on the basis of entire insured area but only making payment on the basis of total affected area determined by the NDRF

Survey reports. The Apex Court, after detailed hearing, dismissed the Contempt Petitions, discharging contempt notices. Thus, the Apex Court did not consider the petitioner Company to be in violation of its earlier orders and negated the stand of the State and its officials. It has been conclusively determined that the total affected area was 208756.5 Hectors and the total amount payable by the petitioner Company was @ Rs.18,000/- per Hector. The total amount payable by the petitioner Company comes to Rs.375 Crores. The petitioner has already paid Rs.300 Crores before the contempt proceedings were disposed of. 50% of the amount deposited by the petitioner Company pursuant to this Court's order dated 14/11/2022 was directed to be appropriated towards payment of compensation to eligible farmers. The said order has also been complied with.

8. The petitioner has also urged in this petition for payment of the balance amount of Rs.75 Crores, in deposit with this Court along with interest accrued thereon.

9. According to the learned Senior Counsel, the stand

of the respondent State as was depicted in its counter affidavit in one of the Contempt Petitions was that the petitioner Company had not complied with the common judgment and order dated 6/5/2022 of this Court. The petitioner Company ought to be directed to disburse compensation claims to the remaining agriculturists for their entire insured area. Based on area approach methodology, total amount of compensation was Rs.545.89 Crores. All these contentions have not been accepted by the Apex Court. The contentions in the affidavit dated 13/12/2022 filed by the official respondents were substantially identical to the affidavit dated 19/3/2023 filed by them in Contempt Petitions. They were, therefore, estopped from urging the same contentions as urged by them before the Apex Court. According to learned Senior Counsel, the principle of estoppel by record (res judicata) would be applicable with its full force. The learned Senior Counsel relied on the following authorities to buttress his submissions as regards principle of res judicata (estoppel by record).

> 11. The petitioner respectfully submits that the adjudication of the said disputed issues by the Hon'ble Supreme Court, which were raised based on the submissions advanced by the State Government as

referred to above, operates as res judicata as between the parties to the present writ petition and cannot be reagitated before this Hon'ble Court in view of the settled legal principles laid down herein below :

(i) Findings made in contempt proceedings attain finality and operate as res judicata (**Neelamega Bhatta Charyar Vs. Arulmighu Devenatha Swamy Temple Thiruvendhipuram, Judgment dated 12/04/2013 in S.A.. No.702 of 2000 (para 16) – Annexure-A).**

(ii) Once an issue is decided on merits in contempt proceedings, it cannot be re-opened in any subsequent suit or proceeding (**Smt. Ranjeet Kour Vs. State of J. & K., Judgment dated 02/12/2023 in CFA No.05/2019 (para 23) – Annexure B and Sanjay G. Khemuka (Dr.) Vs. State of Maharashtra 2004 SCC OnLine Bom 204 (para 40) – Annexure-C).**

(iii) Principles of res judicata applies with equal force on all questions which are expressly decided and also the questions which must be deemed to have been decided by necessary implication [**Sanjay G. Khemuka (Dr.) Vs. state of Maharashtra 2004 SCC onLine Bom (para 40) (supra)]**

(iv) A relief claimed but not granted must be deemed to have been denied and it shall not be open for the parties to such proceedings to reagitate or reopen the said issue in another proceedings [**Sanjay G. Khemuka (Dr.) Vs. state of Maharashtra 2004 SCC onLine Bom (para 48) (supra)]**

(v) the principles of res judicata are applicable in different stages of the same proceeding. [**Sulthan Said Ibrahim Vs. Prakasan, 2025 SCC OnLine SC 1218 (para 54) – Annexure-D and Satyadhayan Ghosal Vs. Deorajin Debi, 1960 SCC OnLine SC 15 (paras 7-8) Annexure-E]. In Satyadhan Ghosal,** the Hon'ble Supreme Court observed in para 7 that "the

> principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or on a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again."
>
> (vi) Any previous judgment on a matter in controversy decided after full contest by a court competent to decide it will operate as res judicata in a subsequent proceeding [**Gulabchand Chhotalal Parikh Vs. State of Bombay AIR 1965 sc 1153 – Annexure-F].**

10. According to learned Senior Counsel, even the impugned directions and issuance of RRCs could not subsist or survive in view of grant of compensation payable by the petitioner to have been determined and crystalised by the Apex Court in the Contempt petitions. He would further submit that, the State was barred and precluded from executing the RRCs on any other extraneous plea or reason. In support of his contention, reliance has been placed on the judgment of the Apex Court in case of **Mohinder Singh Gill Vs. Chief Election Commissioner 1978 (1) SCC 405**. According to

learned Senior Counsel, even otherwise, the claim of the respondent State fails on merit since it is contrary to Clauses 21.6.6.4.2, 21.6.6.4.3 and 21.6.6.4.4 read with the Government Resolution dated 29/6/2020 (Clauses 10.5 and 25.C.17 at Pages 129 and 178). According to him, since the insurance contract is in the nature of indeminification, liability of Insurance Company could only be to the extent of actual loss suffered. According to him, it is only the affected area that has to be considered and not the insured area, otherwise the principle of contract of insurance would stand negated. According to him, the stand of the State Government was also contrary to the operative directions in the common judgment and order dated 6/5/2022, whereunder the petitioner Company was directed to comply with the demand made in the letter dated 5/3/2021 and pay the compensation in terms of clause 11.2-E-6 of the Government Resolution dated 20/6/2020. According to him, the NDRF data was needed to be considered for the purposes of identifying and compensating the affected agriculturists. Eligible agriculturists were to be identified based on the panchanama of the affected area. According to him, clause No.11.2-E-2 to 11.2-E-5 needed to be read before interpreting clause E-6 thereof. The learned Senior Counsel relied on the affidavit dated 13/12/2022 and document dated 18/10/2022, wherein names of agriculturists with total area insured and area affected have been shown. According to learned Senior Counsel, the said document reflect the actual area affected in respect of which compensation was to be determined. The same negates the stand of the official respondents, that compensation to be paid was for total insured area. According to him, if the stand of the respondent State is accepted, it would lead to following consequences.

> "21. In conclusion, the stand of the official respondents, if accepted, would lead to the following consequences :
>
> (i) The State Government would be guilty of treating unequals as equals since agriculturists who intimated within time or even belatedly were paid compensation based on actual loss/ damage assessment whereas the remaining agriculturists would be paid compensation for their entire insured area despite the absence of NDRF data showing any post-harvest loss suffered by them.
>
> (ii) Insurance is a contract of indemnity. Thus, an insurance policy indemnifies loss against a specified peril on the occurrence of specified peril and upon consequential damage. On the contrary, the stand of the official respondents would require payment of

> compensation merely on account of occurrence of the insured peril which if accepted would amount to a contract of wager that is illegal under the Indian Contract Act, 1872.
>
> (iii) The State Government would be able to subvert the essential principles of payment of insurance compensation under the PMFBY Scheme, which is that affected agriculturists should be paid compensation for the actual loss suffered by them.
>
> (iv) The State Government would be able to circumvent the binding and conclusive adjudication by the Hon'ble Supreme Court on the issue of payment of compensation to the affected agriculturists."

RRCs :

11. The learned Senior Counsel first took us through the definition of the term, "land revenue" given in Maharashtra Land Revenue Code, 1966. Then he referred to the terms, "to hold land" or "the land holder" or "holder of land". In short, according to learned Senior Counsel, the amount allegedly payable by the petitioner towards compensation was neither land revenue nor was on account of anything payable in relation to an agricultural land or on account of interest therein. Section 168 of the Maharashtra Land Revenue Code, 1966 was also relied on. According to learned Senior Counsel, the MoU does not contain a clause authorizing recovery of

outstanding amount of compensation by issuance of RRC. According to learned Senior Counsel, the authorities relied on by the learned Senior Counsel for the respondent State were quite distinguishable on facts. He has dwelt at length to distinguish those authorities. We do not propose to dilate much on this issue since we are at one with the submissions advanced by the learned Senior Counsel for the petitioner, in this regard.

12. According to learned Senior Counsel, no insurer could assume any risk unless premium was paid to him. Section 64-VB of the Insurance Act, 1938 was referred to in this regard in addition to the judgment of the Gujarat High Court in case of **Universal Sompo General Insurance Co. Ltd. Vs. State of Gujarat, 2022 SCC OnLine Guj 1486**. According to him, payment of subsidy/ second installment of the premium was a sine qua non for disbursement of the amount of compensation. Certain clauses of the G.R. and ROGs were adverted to in this regard. Our attention was also adverted to a clause regarding payment of 12% interest in case of delay in payment of subsidy beyond three months of

the due date. Communications made by the petitioner Company, asking for payment of the outstanding insurance premium were also adverted to.

With all the aforesaid submissions, the learned Senior Counsel urged for allowing the Writ Petition in toto.

13. Learned Senior Counsel representing the respondent State too made oral submissions and placed on record a summary thereof. According to him, the issue involved in this Writ Petition regarding quantum of amount of compensation stood concluded vide judgment and order dated 6/5/2022 passed by this Court. The observations in paras No.55, 59, 64, 69, 75, 79 and the operative order have all been reproduced in his written submissions. According to him, reference to NDRF norms in the earlier round of litigation was in the nature of considering the percentage of loss to the crops during Kharif Season 2020. The NDRF data was the basis for concluding that, there was loss of more than 33% and therefore, considering the crop insurance scheme, the requirement was of loss more than 25%. Therefore, it is only in these circumstances, the said NDRF data was referred to

before this Court and it has nothing to do with the area. The petitioner Insurance Company itself has considered and granted full claims/ compensation to the agriculturists who had given intimations within 72 hours. The Insurance Company paid the claim amount for total insured area of each agriculturist as per the data provided by them. Therefore, the Insurance Company is now estopped from contending that, it will consider the claims of the insured agriculturists only to the extent of 2 Hector as per the NDRF Norms. The petitioner Insurance Company is subsequently in order to disobey the directions issued by this Court in PIL No.91/2021 is trying to misread and misinterpret the reference of NDRF Norms in the judgment after dismissal of their SLPs.

In view of the fact that, the petitioner Insurance Company has granted compensation for total insured area to initial 64953 agriculturists for total 65746.70 Hectors of land, the remaining agriculturists are also entitled to receive compensation for total insured area. Therefore, the contention now tried to be raised that, the remaining agriculturists as directed by this Court by judgment and order dated 6/5/2022 will not be paid for the whole insured area of each individual agriculturist cannot be accepted. It amounts to disobeying the directions issued by this Court.

14. According to the learned Senior Counsel, the contentions made on behalf of the petitioner Company as regards the issue to have been concluded by order dated 19/5/2023, passed by the Apex Court, is misconceived. Our attention was adverted to the order passed by the Apex Court in the Contempt Petition, whereunder the balance amount in deposit with this Court is to be dealt with in terms of decision to be given in the present Writ Petition. Meaning thereby, the order passed in the Contempt Petition kept the issue open for decision in the present petition. The written notes of arguments contain the summary with regard to the claims paid and yet to be paid by the petitioner Company. It reads thus :

Sr. No.	Item	Farmers	Area in hector	Total balance amount to be deposited in Crores	
1.	Total amount required as per post-harvest claim (Area X Rs.18000/- ha.) as per order of Hon'ble Court	333412	285847.06	514.12	
a	As per order of Hon'ble Supreme Court dated 29/9/2022 in Special Leave Petition 10391/22. The			201.34 Pg. 912 SLP Order	-: Total area insured 3,51,593.76 Hector

	amount received by District Collector as on dated 19/10/2022				
b	As per order of Hon'ble Supreme Court dated 14/11/2022 in Special Leave Petition 10391/22. The amount received by District Collector as on dated 30/11/2022			12.42 Pg. 998 : Company letter 28/10/2022	-: Already paid insured area 65,746.70 Hector
c	As per order of Hon'ble Supreme Court dated 19/5/2023 in Contempt Petition 682/22 in Special Leave Petition 10391/22. The amount received by District Collector as on dated 31/7/2023			75.00 Pg. 1212 SC order	-: Remaining area to be paid 2,85,847.06 Hector
d	The total amount received from insurance company after the order of Hon'ble Supreme Court (a+b+c) dated 19/5/2023			288.77 Pg.1275 Gov. reply	
e	Balance amount yet to be paid			225.75	

15. According to the learned Senior Counsel, the State being the implementing authority, has every right to recover the amount of compensation as land revenue as it gets covered by the definition of the land revenue. He relied on the following authorities in justification of issuance of RRCs.

1) The Thane Janata Sahakari Bank Ltd. Vs. The Commissioner of Sales Tax & ors. [2006 (6) BOM.C.R. 186]

2) M/s R.S. Rekchand Mohota Spinning and Weaving Mills Ltd. Vs. State of Maharashtra [AIR 1997 SC 2591]

3) The State of Bombay Vs. The Hospital Mazdoor Sabha [AIR 1960 SC 610]

4) P. Kasilingam & ors. Vs. P.S.G. College of Technology & ors.

[AIR 1995 SC 1395]

5) Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration) Bareilly division, Bareilly & ors. [2010 (4) SCC 728]

6) Oriental Insurance Co. Ltd. Vs. Inderjit Kaur & ors. [AIR 1998 SC 588]

16. According to learned Senior Counsel, in a meeting dated 17/12/2021 of State Level Coordination Committee, it was resolved that, remaining premium subsidy would not be released to the Insurance Company until the issue was resolved. The said meeting was attended by the representative of the petitioner Company. The said resolution has not been challenged till date. The petitioner Company would, therefore, be estopped from raising the said issue in the present petition. According to him, in any case, the petitioner Company could not absolve itself of it's liability in view of directions issued in the earlier round of litigation in PIL No.91/2021. He, therefore, urged for dismissal of the Writ Petition.

17. The learned counsel for respondent No.7 (original petitioner in PIL No.91/2021) would submit that, the issue regarding quantum of compensation stood concluded vide

judgment and order dated 6/5/2022, passed in PIL No.91/2021. The SLP preferred against the said decision was dismissed. The State authorities took steps for execution of the said order. The present Writ Petition was, therefore, not maintainable, which is basically in the nature of review. The learned counsel urged for directing the petitioner Company to pay the amount of compensation with interest thereon.

18. We have considered the submissions advanced. Perused the documents relied on. PMFGY was introduced in the State. The State Government took steps for its implementation. MoU was entered into between the petitioner Company and the respondent State, in this regard. The petitioner Company undertook to compensate farmers who have insured their lands against post-harvest loss or damage likely to be suffered by them to Soyabean crop on account of downpour or other natural calamities. There were heavy rains in October 2020, causing severe loss/ damage to agricultural produce including Soyabean. The subject matter of this petition is a post-harvest loss of Soyabean crop harvested and gathered by the farmers on their respective lands. For

enforcement of the petitioner Company's liability under the MoU, two PILs and one Writ Petition were filed. This Court, by its judgment and order dated 6/5/2022, disposed of those petitions with a common order, which reads thus :

> A. In P.I.L.No.91 of 2021 respondent No. 7 and in P.I.L.No.64 of 2021 the respondent No. 6 are directed to sanction and grant compensation/claim for post harvest loss caused to the soyabean crop in Kharip season 2020 to the remaining 357287 agriculturists in Osmanabad district. If the said amount is not paid by the insurance company within a period of six (06) weeks from today, the State Government is directed to pay such claim for compensation for post harvest loss caused to the Soyabean crop in Kharip season 2020 to remaining 357287 agriculturists of Osmanabad district within a period of six (06) weeks thereafter. The insurance company is further directed to comply with the directions of the State Government issued by its letter dated 05th March, 2021.
>
> B. In Writ Petition No.6859 of 2021, the respondent No. 6/insurance company is directed to grant and disburse the crop insurance claims of the petitioners and all other entire eligible agriculturists in Osmanabad district as provided in Clause 11.2E-6 of the Government Resolution dated 29th June, 2020 within the time prescribed in the G. R. dated 29.06.2020.
>
> C. P.I.L.No.91 of 2021, P.I.L.No. 64 of 2021 and Writ Petition No.6859 of 2021 are allowed in aforesaid terms."

19. The SLPs. preferred by the petitioner Company

against the aforesaid judgment and order stood dismissed with the following order :

> “The connected matters arising from the judgment and order presently under challenge were dealt with by order dated 5/9/2022, which order is reproduced hereunder for facility.
>
> > “Mr. Vivek K. Tankha, learned Senior Advocate has relied upon the counter affidavit filed on behalf of Respondent No.2 in the instant Special Leave Petitions. He has also invited our attention to paragraphs 75 to 80 of the order passed by the Division Bench of the High Court which is presently under challenge.
> >
> > Having considered the entirety of the matter, in our view, the conclusions drawn by the High Court do not call for any interference in our jurisdiction under Article 136(1) of the Constitution. The instant Special Leave Petition is, therefore, dismissed.
> >
> > The amount of Rupees Two hundred crores which was deposited in the Registry of this Court along with interest accrued thereon shall now be remitted to the credit of District Treasury, Osmanabad, Maharashtra and the disbursement from and out of said sum as well as of any additional sums shall be done strictly in accordance with law under the supervision of the District Collector.
> >
> > The entire exercise shall be undertaken and completed within three weeks from today.”
>
> Later, certain clarifications were issued vide order dated 29/9/2022, in said matters.

> The instant petition being fully covered by the order issued by this Court on 5/9/2022 as clarified on 29/9/2022, are disposed of in identical terms.
>
> The Special Leave Petition is dismissed."

20. Since the petitioner Company did not comply with the judgment and order dated 6/5/2022 passed by this Court in those three Petitions, the State authorities took coercive steps for recovery of the amount of compensation, by issuing RRC. A short question that falls for consideration in this petition is as to interpretation of the operative order dated 6/5/2022, passed by this Court in those three Petitions. There can be no two views over the submissions advanced by the learned counsel relying on the host of the authorities (referred to hereinabove) on the principle of res judicata. The respondents herein also do not dispute the same. According to them, the issue raised in this petition in fact stood concluded vide judgment and order dated 6/5/2022 itself. We, therefore need not dilate on this aspect (res judicata) of the matter.

21. Moreover, the order passed by the Apex Court in the contempt proceedings (referred to hereinabove) has kept the issue open for decision in the present Writ Petition. The

order reads thus :

> "During the course of hearing, the petitioner had contended that payments disturbed to the 72,000 admitted agriculturists was on the basis of the figure of Rs.18,000/- per hectare. This was not disputed by Bajaj. Upon consideration it appears that the total figure would work out to be approximately Rs.375 Crores. It is evident that as of today, in compliance with the impugned order, Bajaj has deposited a sum of Rs.300 Crores. As stated earlier, the total affected area is 208756.5 hectares. On a broad calculation of the outgoing at Rs.18,000/- per hectare, the total figure is Rs.375 Crores.
>
> It is also a matter of record that Bajaj has deposited Rs.150 Crores before the Aurangabad Bench, Bombay High Court on 21/11/2022 (in terms of the order dated 14/11/2022 in W.P. No.11249/2022). In these circumstances, it is hereby directed that the sum of Rs.75 Crores may be duly appropriated and accounted for as payment and consequentially disbursed to the eligible farmers by the respondent State of Maharashtra from the amount deposited in W.P. No.11249/2022. The balance of Rs.75 Crores shall be retained in the Registry of the High Court awaiting final appropriation in terms of the order to be made in the writ petition, on its merits."

22. We are conscious of the fact and legal position that, contract of insurance is in the nature of indemnification. Liability of insurer would only be in case of loss or damage suffered by the insured/ beneficiary under the contract of insurance. In the case in hand, although it was a contract

between the petitioner and the State of Maharashtra, the insured were agriculturists in Osmanabad district. Admittedly, those agriculturists paid their contribution of insurance premium.

23. It is true, in the affidavit-in-reply filed in the aforementioned three Petitions and the oral submissions made on behalf of the respondent State therein, it was specifically stated/ admitted that there were total 457216 affected agriculturists and the affected area was 208756 Hectors. There was loss of more than 33%. It is true that the factual observations made in the judgment or order are presumed to be correct, unless shown otherwise. It is also true that, said statement amounts to an judicial admission. Such admissions stand on higher footing. The admissions are, however, not conclusive proof. An admission can be explained or proved to be wrong. It can also be successfully withdrawn. The fact, however, is that, in view of the operative order passed by this Court in aforesaid three Writ Petitions on 6/5/2022, the evidence and pleadings therein stood merged therein. Admittedly, the petitioner Company preferred SLPs. against

the said judgment and order. The SLP stood dismissed. As such, the order dated 6/5/2022 attained finality. Relevant clauses of the Government Resolution dated 29/6/2020 need to be adverted to. Clause No.10.5 thereof speaks of determining post-harvest compensation. It reads as under :

> **“10.5) Determining post-harvest compensation.**
>
> Compensation will be given on individual level in case of damage from hailstorm, cyclone, hurricane and unseasonal rains up to a maximum of 2 weeks (14 days) from harvest only for the notified crops harvested in the notified area and spread for drying. Under this provision, unseasonal rainfall means that the risk is applicable only if the district receives more than 20% of the average rainfall of that month’s long-term rainfall and the damage found in the panchanama on an individual level.”

24. <u>While clause 11.2-E is very much relevant in this case, which reads thus</u> :

> **“E) Determination of loss and submission of report :**
>
> 1) Within 48 hours from the date of receipt of information by the insurance company, a supervisor should be appointed according to the prescribed experience and educational qualification criteria to determine the assessment of loss. It requires a diploma in any subject and two years experience or a degree in agriculture and allied subjects and one year experience.

2) Survey of crop loss will be done through joint committee which will include supervisor of insurance company, agriculture officer at taluka level and concerned farmers.

3) Damage report should be prepared within next 10 days.

4) Compensation should be paid within 15 days after receipt of the loss report (subject to the condition that the insurance premium has been paid).

5) For post-harvest risk, if the affected area of the notified crop is more than25% of the total sown area, then all eligible farmers in the notified area will be eligible for post-harvest compensation. The amount of loss will be decided by the insurance company on the basis of the sample survey conducted by the joint committee.

6) For local disaster risk, if the affected area is up to 25% of the notified insurance area, then at individual level and more than 25%, then eligible farmers in the notified area (participating in the insurance scheme and giving advance notified of the loss of pigs) will be liable for compensation.

Marathi version reads thus :

६) स्थानिक आपत्तीच्या जोखिमीकरिता, जर बाधित क्षेत्र हे अधिसूचित विमा क्षेत्राच्या २५ टक्के पर्यंत असेल तर वैयक्तिक स्तरावर व २५ टक्के पेक्षा जास्त असेल तर अधिसूचित क्षेत्रातील पात्र शेतकऱ्यांना (विमा योजनेत सहभागी झालेले व पिकाचे नुकसान विहित वेळेत पूर्वसूचना दिलेले) नुकसान भरपाईस पात्र ठरेल.

7) Within 15 days after receipt of the loss report, the insurance company will pay the allowable compensation.

8) If the compensation determined on the basis of average yield received at the end of the season

> (based on crop harvesting experiment) is more than the compensation received under post-harvest compensation, the difference in the compensation will be paid to the farmers. However, if the post-harvest compensation is higher, the difference will not be recovered from the farmers.

25. Admittedly, the affected area of the notified crop was more than 25%. The petitioner Company, in its written submissions, relied on the very clause with a rider that clause 11.2.E-2 to 11.2.E-5 thereof reveal that post-harvest compensation would be payable to the eligible agriculturists who have suffered loss or damage and not all insured agriculturists. It is also true that, in Exh.R-1 (dated 18/10/2022), name of agriculturists with total insured area with total affected area has been shown. It is also true that, in some of the documents, the affected area is appearing lesser than the insured area. The petitioner Company, appears to be justified in contending that its liability is restricted only to the extent of actual loss suffered, subject to the maximum of Rs.18,000/- per Hector.

26. The issue, however, stood concluded in view of the judgment of the Division Bench of this Court in the aforesaid

three Writ Petitions. The operative orders direct the petitioner Insurance Company to grant and disburse the crop insurance claim of the petitioners therein and all other entire eligible agriculturists in Osmanabad district, as provided in clause 11.2E-6 of the Government Resolution dated 29/6/2020. The said clause has already been referred hereinabove. As per the said clause, if the affected area is more than 25%, then all the eligible farmers in the notified area will be entitled to receive compensation. The SLPs. preferred against the judgment and order in the aforesaid three Writ Petitions have been dismissed. As such, the order directing the petitioner Insurance Company to pay the compensation in terms of the aforesaid clause (6) attained finality.

27. The Division Bench, while deciding the Petitions, observed in its judgment:-

> "55. A perusal of the record indicates that the Government had collected total data through Collector and prepared data of different crops and submitted to the Divisional Commissioner. The said report submitted by the Collector would indicate that there was more than 33% loss caused.
>
> . . . .

59. Be that as it may, the insurance company has not disputed that loss was suffered by more than 33% and accordingly State Government directed the insurance company to pay the claims of the agriculturists. The agriculturists had approached the State Government collectively in view of the fact that the State Government was nodal agency between the agriculturists and insurance company. All the agriculturists in the Osmanabad district were severely affected and thus there was no question of any individual claim.

. . . .

64. Thus, it is an admitted position that, though in large number of cases intimation was not given by the agriculturists individually within 72 hours of the losses, the insurance company has paid those large number of agriculturists and waived their rights under the said scheme. On one hand, it is the case of the insurance company that the payments were made by the insurance company on the basis of data/ material made through the Government agencies or collected during the survey at adjoining lands were considered along with weather report and payment of compensation was made in view of the special instructions from the Government to entertain all the intimations of losses irrespective of breach of timeline under the scheme. On the other hand, in respect of these agriculturists who are the petitioners in the writ petition and large number of other agriculturists are denied payment on the ground of these agriculturists not having individually intimated the loss within 72 hours from the date of incident. In our view, the action on the part of the insurance company not to release the payment of compensation is discriminatory, arbitrary and without any reasonable basis. The impugned action on the part of the insurance company is in violation of Article 14 of the Constitution of India.

. . . .

69. We are inclined to accept the submissions made by the learned counsel for the petitioners that, the insurance company is liable to grant claims of eligible agriculturists as per clause 11.2E-6 of the G.R. dated 29/06/2020, as the loss caused was more than 25% of the notified area. The individual agriculturist was not required to intimate the insurance company of his loss within 72 hours from the date of such loss suffered by the agriculturist.

. . . .

75. The said Pradhan Mantri Fasal Bima Yojana was being implemented in the State with an object to provide financial support to agriculturists suffering crop loss/ damage arising out of unforeseen events, stabilizing the income of agriculturists to ensure their continuance in farming, ensuring flow of credit to the agricultural sector. The State Government has acknowledged the payment of premium paid by the agriculturists and that total 520175 Hector area had been covered under the said scheme. In para No.7 of its affidavit it is admitted by the State Government that agriculturists who intimated their loss through agriculture department and even after 72 hours of natural calamity were also honoured and compensated. The insurance company was also instructed to determine the compensation based on the loss intimation received in offline mode through Agriculture Department after 72 hours of the calamity. A total of 72325 agriculturists were compensated by the insurance company by paying aggregate amount of Rs.87.87 Crores.

. . . .

> 79. The additional affidavit in reply filed by the insurance company clearly indicates that they have implemented the directions issued by the State Government partly and in respect of large number of selective claims and have taken unreasonable stand in respect of balance agriculturists. The insurance company cannot be allowed to discriminate two sets of agriculturists similarly situated."

28. It is true that, in the contempt proceedings, the Apex Court calculated the amount of compensation considering the quantified affected area. It has, however, kept the issue open for decision in the present Writ Petition. It, therefore, could not be said that the order passed by the Apex Court in the contempt proceedings gave finality to the issue involved. In our view, the principle of res judicata will come in the way of the petitioner Insurance Company, although in the earlier Writ Petition the respondent State authorities stated on affidavit the actual affected area to have been lesser than the one for which the petitioner Insurance Company is sought to be directed to pay compensation. Admittedly, it was of compensation to be paid for post-harvest loss of the Soyabean crop gathered/ stored on the respective lands. It is reiterated, the affected area was admittedly more than 33%. By virtue of

clause (6) referred to hereinabove, no actual loss was, therefore, expected to be assessed/ surveyed. Each and every farmer insured under the Scheme for the loss of Soyabean crop was entitled to receive compensation amounting to Rs.18,000/-. The respondent authorities, therefore, rightly calculated the amount as Rs.18,000/- multiplied by the number of farmers affected. We are conscious of the legal position that in case of contract of insurance, it being in the nature of indeminification, liability of insurance company is necessary to the extent of actual loss suffered. The fact is, however, the petitioner Insurance Company itself, in view of the terms of Memorandum of Understanding, agreed to pay the amount of compensation without going for assessment thereof in case the affected area is more than 33%. Even though the State authorities had come with a case in the earlier Writ Petitions that loss was to be assessed in terms of NDRF norms, the issue stood concluded in view of the decision of this Court in PIL No.91/2021, the same could not be reopened. The reason behind the parties to have agreed upon to pay compensation in terms of clause (6) is logical and rational as well when due to heavy rains, harvested Soyabean crop gets damaged, it would be impossible, (at least difficult) to quantify the loss suffered. Be that as it may, when the petitioner Insurance Company agreed to pay the insured farmers a sum of Rs.18,000/- without there being assessment of actual loss, and the issue to have been concluded, the petitioner Insurance Company could not be heard to say that its liability would be restricted to the actual affected area. More so, when it has already paid the farmers, who gave intimation within 72 hours, compensation @ Rs.18,000/- per hector without ascertain the actual loss suffered.

29. The prayers (in common) in both the PIL Nos.91/2021 and 64/2021, decided on 6/5/2022 are reproduced below

> (B) The insurance company and respondents may kindly be directed to compensate or to pay the sum insured to all the insured farmers of Osmanabad District for their all the insured crops of Kharif Season 2020.

ISSUE OF REVENUE RECOVERY CERTIFICATES (RRCs)

30. Admittedly, the respondent No.4 Tahsildar, on the directions of the respondent No.2 Collector, issued RRCs

against the petitioner Insurance Company. Those certificates have been issued for recovery of the amount payable under the contract of insurance. We do not propose to dwell at length on this issue since admittedly, the amount sought to be recovered was neither a land revenue, nor an amount payable to the State Government in relation to the agricultural land. Moreover, there is no statutory provision nor a term in a contract of insurance to recover such amount by issue of RRCs. In our view, addressing the said issue with reference to the relevant provisions of MLRC etc. would be nothing short of a show off on our part. More so, when the Division Bench of this Court, after this judgment was reserved, has decided the same issue between the same parties (petitioner Insurance Company and the respondent State, in Writ Petition No.11973/2022), that the amount payable under the contract of insurance could not be recovered by taking recourse to Section 162 of the MLRC. We have perused the said judgment, and are in respectful agreement therewith. In our view, therefore, the action of the State authorities in issuance of RRCs is illegal and unsustainable. To this extent, the Writ Petition deserves to be allowed.

<u>State Government's liability to pay the outstanding amount of premium/ subsidy</u> :

31. The respondent State does not dispute its liability to pay second installment of the insurance premium. It is also true that, in view of Section 64V-B of the Insurance Act, 1938, it is statutorily provided that, no insurer can assume any risk unless the premium is paid. It is also true that, in view of the terms of Memorandum of Understanding, the respondent State was supposed to pay the second installment well before the petitioner Insurance Company assumes its risk.

32. In the meeting dated 17/12/2021 of the State Level Coordination Committee, which was attended by a responsible representative of the Insurance Company, it was resolved that, the remaining premium/ subsidy would not be released to the petitioner Insurance Company till the issue gets resolved. In view of this resolution, the respondent State was justified in not releasing the second installment of the subsidy/ premium in faovur of the petitioner Insurance Company. Necessarily, the petitioner would also not be entitled to claim 12% of interest on the said amount on account of delay in payment thereof in

spite of there being a clause to pay interest @ 12% p.a.

33. For the reasons stated hereinabove, the Writ Petition is partly allowed in terms of the following order :

<u>O R D E R</u>

(i) The Writ Petition is partly allowed.

(ii) The Revenue Recovery Certificates issued by the respondent No.4 Tahsildar for recovery of the amount, are hereby set aside.

(iii) The sum of Rs.75 Crores in deposit with this Court along with interest accrued thereon be paid to the respondent State for being paid to the eligible farmers.

(iv) We hope that, the amount of second installment of the subsidy/ premium to be paid by the respondent State to the petitioner Insurance Company, would be appropriated towards payment of compensation to the eligible agriculturists.

(v) The directions in the above clauses (iii) and (iv) to be implemented after a period of two months from the date of this order.

(vi) In view of disposal of the Writ Petition, Civil Application No.16984/2022 stands disposed of.

(vii) Since no substantive Writ petition has been filed by the applicant Prashant Achyutrao Lomate (in Civil Application No.10719/2023), Civil Application No.10719/2023 stands disposed of.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

FMPathan/-