2. NATIONAL HIGHWAY AUTHORITY OF INDIA
PROJECT IMPLEMENTATION UNIT,
MANGALORE - 575001.
REP. BY PROJECT DIRECTOR.

…RESPONDENTS

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE
FOR SRI SHOBHITH SHETTY, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED AWARD DATED 22.01.2021 PASSED BY R1 AS PER ANNEXURE-A AND CONSEQUENTLY DIRECT THE R1 TO DETERMINE THE COMPENSATION STRICTLY IN ACCORDANCE WITH RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.

IN THESE WRIT PETITIONS, ARGUMENTS BEING HEARD, JUDGMENT RESERVED, COMING ON "PRONOUNCEMENT OF ORDERS", THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

The grievance of the petitioners in these writ petitions are that the respondent-authorities have issued two awards with regard to the acquisition made in respect of the subject land and same is impermissible. Hence, petitioners have presented these writ petitions.

2. Since the order impugned in these petitions are one and the same and the question raised in these writ petitions are

identical, they are clubbed together and are disposed of by this common order.

3. In writ petition No.10525 of 2021, it is the contention of the petitioners that the petitioners are the owners in possession of the subject land and the respondent-authorities have issued Preliminary and Final notifications dated 09th January, 2020 and 10th July, 2020 under Section 3-A and 3-D of National Highways Act, 1956 respectively (for short hereinafter referred to as the "the Act") and as such, acquired the land belonging to the petitioners for the purpose of widening of four-lane road in Dakshina Kannada District. The Union Govt has issued Notification dated 27th June, 2014 under Section 3(a) of the Act authorising the competent authority to perform the functions with regard to the National Highway No.13 between Shivamogga and Mangaluru (Annexure-C). Pursuant to the same, the competent authority-respondent No.1, has passed General Award dated 17th December, 2020 under Section 3-G of the Act read with Section 29 of the Right to Fair. Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (for short hereinafter referred to as "2013 Act") , awarding Rs.19,49,25,561/- in respect of Puttige village Annexure-D. The case of the petitioners is that the first respondent, without giving effect to the first award, has passed the second award dated 22nd January, 2021 and being aggrieved by the same, the petitioners have alleged that the officers of the National Highways have influenced respondent No.1 to pass second award by reducing the compensation from Rs.19,49,25,561/- to Rs.7,39,16,505/- and being aggrieved by the same, the present writ petition is filed. The respondent entered appearance and filed detailed statement of objection denying the averments made in the writ petition. It is the case of the respondent that the petitioners having alternative and efficacious remedy to challenge the impugned award passed by the respondent No.1 before the Arbitrator under Section 3-G(5) of the Act and hence sought for dismissal of the petition on the ground of alternative remedy. It is the specific defence of the respondent-authorities that there are two awards as alleged by the petitioners is not correct and the award dated 17th December, 2020 is only a draft award and the General Award

was passed under Section 3-G of the Act on 22nd January, 2021 and accordingly, sought for dismissal of the writ petition.

4. In Writ petition No.10780 of 2021, the petitioners are owners in possession of the subject land and have raised the similar contention, challenging the impugned award dated 27th January, 2021 (Annexure-A) passed by the respondents. The respondent entered appearance and filed detailed statement of objection contending that petitioners have an alternative and efficacious remedy under the Act and accordingly, sought for dismissal of the writ petition.

5. In writ petition No.13547 of 2021, the petitioners claim to be the owners in possession of subject land and have challenged the award dated 22nd January, 2021 (Annexure-A) passed by respondent No.1 under Section 3-G of the Act. The respondents have raised identical objections with regard to the maintainability of the writ petition in their statement of objections and sought to dismiss the writ petition.

6. In Writ petition No.8458 of 2021 the petitioners have challenged the impugned award dated 22nd January, 2021

have pleaded that they are owners in possession of the subject land referred to in the petition and have taken a plea that the first respondent has no authority to issue two awards for same acquisition proceedings and accordingly, sought for quashing of the impugned order. The respondents have taken the contention that the petitioners have alternative and efficacious remedy under the Act, and hence sought for dismissal of the writ petition.

7. Heard Shri G.S. Kannur, learned Senior Counsel for Sri Sachin B.S., and Sri Udaya Holla, learned Senior Counsel Sri Shobith Shetty, learned counsel appearing for the respondent-Highway Authority.

8. Sri G.S. Kannur, learned Senior Counsel appearing for Sri Sachin B.S., for the petitioners contended that pursuant to the acquisition proceedings initiated by the respondent authorities, the first respondent has passed the award dated 17th December, 2020 determining the compensation as per Annexure-D to the writ petition No.10525 of 2021. He further contended that the said award has been signed by the

competent authority respondent-No.1 and thereafter, issued another award dated 22nd January, 2021, drastically reducing the compensation and the said second award is non-est and cannot be accepted. He further contended that, this Court in the case of NATIONAL HIGHWAYS v. ASSISTANT COMMISSIONER AND COMPETENT AUTHORITY in Writ petition No.25050 of 2010 and connected petitions dated 18th April, 2011, held that the respondent authorities have no authority under law to pass two awards and therefore, he sought for interference of this Court. He also contended that, reducing the compensation is on the behest of the officials of the respondent with ulterior motive to cause injustice to the petitioners.

9. Per contra, Sri Udaya Holla, learned Senior Counsel appearing for Sri Shobith Shetty, learned counsel for of the respondent-National Highway, contended that the relief sought for by the petitioners is not maintainable in view of the availability of alternative and efficacious remedy under National Highways Act. It is his specific defence that award dated 22nd January, 2021 (Annexure-A) is the only award made by the

respondent-authorities and therefore, countered the submission made by the learned Senior Counsel for the petitioners. In this regard, Sri Udaya Holla, learned Senior Counsel refers to the judgment of the Hon'ble Apex Court in the case of NATIONAL HIGHWAYS AUTHORITY OF INDIA v. SAYEDABAD TEA COMPANY LIMITED AND OTHERS reported in (2020)15 SCC 161.

10. In the light of the submission made by the learned counsel appearing for the parties, questions that arise for consideration in these writ petitions are as follows:

(1) Whether the respondent-authorities are justified in issuing award dated 22.01.2021 (Annexure-A)?

(2) Whether the writ petitions deserve to be dismissed on the ground of alternative and efficacious remedy available under National Highways Act?

11. On careful examination of the writ papers, it is not in dispute that the land belonging to the petitioners have been

proposed for acquisition for the purpose of widening of National Highway NH-169 (earlier NH-13) between Shivamoga and Mangaluru under NHDP Phase-III Programme. It is also not in dispute that the respondent-authorities have issued preliminary notification on 09th January, 2020 under Section 3-A of the Act followed by the final Notification dated 10th July, 2020 under Section 3-D of the Act. Competent authority has been authorised to effectuate the acquisition proceedings as per Notification dated 27th June, 2014. The respondent-authorities issued Notification dated 17th December, 2020 (Annexure-D), determining the compensation under Section 3-G of the Act, read with Section 29 of the 2013 Act. In the light of the submission made by Sri Udaya Holla, learned Senior Counsel for the respondent-authority, I have carefully examined the Notification dated 17th December, 2020 produced at Annexure-D in Writ Petition No.10525 of 2020. I have taken note of the fact that the said Notification dated 17th December, 2020 do not mention that the said Notification is a draft award issued by the respondent-authorities and therefore, I do not agree with the arguments of learned Senior Counsel, Sri Udaya Holla and same

has to be considered as an award under Section 3-G of the Act. In this aspect, I find force in the submission made by Sri G.S. Kannur, learned Senior counsel appearing for the petitioners, referring to paragraphs 16 and 17 of the Order passed by this Court in Writ Petition No.25050 of 2010 and connected writ petitions referred to above, which read as under:

> *"16. In the instant case, what is sought to be done is to pass another award in the place of the earlier award by enhancing the compensation adopting a different method by conducting spot inspection and by taking note of other documents made available. If this is permitted, then a question could be asked as to why not a third or fourth or fifth award be passed by the competent authority at the instance of either of the parties. Such a situation, if permitted, will introduce total uncertainty and chaos. In any event, the competent authority cannot usurb such powers when no such provision is made in the Act. Hence, the impugned supplementary awards cannot be sustained in law as respondent No.1 has acted without jurisdiction and without any authority under the provisions of the Act while passing the impugned awards.*

> *17. While this Court is alive to the concern of the land owners that they have to get just and legal compensation payable to their acquired lands and that if any mistake is committed by the competent authority in ignoring the relevant factors while determining the market value, the same deserves to be corrected in accordance with law to enable them to get proper compensation, but such correction has to be made in accordance with law, for which provision is made under the Act as referred to above.*

12. That apart, the letter dated 22nd January, 2021 (Annexure-S) issued by the first respondent to the Project Director, National Highways Authority of India, whereby the first respondent has revised the award under Section 3-G of the Act in respect of the land situate in Puttige village of Mudabidri taluk which would clearly substantiate the arguments advanced by the learned Senior Counsel appearing for the petitioners that the award dated 22nd January, 2021 (Annexure-A) is a second award made by the respondent-authorities in the absence of specific provision under the National Highways Act, providing for making second award with respect to the land acquired pursuant to Notifications under 3-A and 3-D of the Act. It is also pertinent to

take note of the similar contents in Annexure-R dated 21st January, 2021 whereby the Regional Officer of NHAI addressed letter to Project Director of NHAI, referring to the award dated 22nd January, 2021 as Review 3-G Award and in that view of the matter, I am of the view that the writ petitions deserve to be allowed by setting aside the award dated 22nd January, 2021 passed by the respondent-authority as one without jurisdiction and contrary to law.

13. Though the learned senior counsel Sri Udaya Holla, argued on the premise that the petitioners have to exhaust the alternative remedy provided under the Act, and judgment of the Hon'ble Apex Court in the case of SAYEDABAD TEA COMPANY LIMITED (supra), the said submission cannot be accepted for the reason the impugned award dated 22nd January, 2021 said to have been issued by the respondent-authorities under section 3-G of the Act upon issuing the earlier award dated 17th December, 2020 (Annexure-D), which creates rights in favour of the petitioners claiming compensation under the Act, and in that view of the matter, reviewing the very same award by way of

impugned award dated 22nd January, 2021 (Annexure-A) does not arise at all and the same is without jurisdiction and therefore, this Court is having jurisdiction to exercise powers under Article 226 of the Constitution of India to set right the jurisdictional error on the part of the respondent-authority while issuing second award. Therefore, I am of the view that the impugned award dated 22nd January, 2021 (Annexure-A) is liable to be quashed in these writ petitions. If the instrumentality of the State, acted in contravention of the statutory provisions which affect the rights of the parties concerned, such illegal and arbitrary action, on the part of authorities, has to be nipped in the bud and cannot be perpetuated since the very action of such authorities is not only an irregularity in nature but also amounts to illegality which cannot be accepted under Article 14 of the Constitution of India. In that view of the matter, even if the alternative remedy is available for the petitioners to approach the competent authority under the provisions of the Act, however, the same cannot be said to be an efficacious remedy to nullify such erroneous decision on the part of the respondent-authorities.

14. Though the learned Senior Counsel appearing for the respondents urged about the existence of alternative remedy, I do not find acceptable ground to disallow these petitions as it is trite law that this Court is having jurisdiction to entertain writ petition, if the impugned orders are passed in derogation of principles of natural justice and the action taken by the respondent-Authority is contrary to the law declared by the Hon'ble Apex Court. In the case of L K VERMA v. HMT AND ANOTHER, reported in (2006)2 SCC 269, at paragraph 20 of the judgment, it is held as follows:

> *"20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar.*

[See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 1 SCC 1, Sanjana M. Wig (Ms.) v. Hindustan Petroleum Corpn. Ltd., (2005) 8 SCC 242, State of H.P. and Others v. Gujarat Ambuja Cement Ltd. and Another."

15. It is well settled principle in law that administrative or judicial orders must be supported by reasons. It is the duty of the respondent-Revenue being an instrumentality of state under Article 12 of the Constitution of India to give reasons for its conclusion. Recording of reason is the hallmark of a valid Order, while exercising administrative action or judicial review to disclose reasons and recording reasons, has always been insisted upon as one of the fundamentals of sound administration of justice delivery system, to make known that there have been proper and due application of mind by the authorities, which is an essential requisite of principles of natural justice. Reasons introduces clarity in Order and absence of such reasons would render the decision making process null and void.

16. In the case of THE COLLECTOR (DISTRICT MAGISTRATE) ALLAHABAD v. RAJARAM, reported in AIR 1985 SC 1622, Hon'ble Supreme Court has held that where power is

conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. It is useful to refer to paragraph 26 of the said judgment, which reads thus:

> *"26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides In such a situation there is no question of any personal ill- will or motive. In Municipal Council of Sydney v. Compbell(1) it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In State of Punjab v. Gurdial Singh and Ors. acquisition of land for constructing a grain market was challenged on the ground of legal malafides Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept*

of legal malafides in his hitherto inimitable language, diction and style and observed as under:

> *"Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat-that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people. all springs, and all must exist." After analysing the factual matrix, it was concluded that the land was not needed for a Mandi which was the ostensible purpose for which the land was sought to be acquired but in truth and reality, the Mandi need was hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine. The notification was declared invalid on the ground that it suffers from legal mala fides. The case before us is much stronger, far more disturbing and unparalelled in influencing official decision by sheer weight of personal clout. The District Magistrate was chagrined to swallow the bitter pill that he was forced to acquire land even though he was personally convinced there was no need but a pretence- Therefore, disagreeing with the High Court, we are of the opinion that the*

power to acquire land was exercised for an extraneous and irrelevent purpose and it was colourable exercise of power, namely, to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which it vowed to destroy. Therefore, the impugned notification has to be declared illegal and invalid for this additional ground."

17. In the case of SRI BUDHIA SWAIN AND OTHERS v. GOPINATH DEB AND OTHERS, reported in AIR 1999 SC 2089, Hon'ble Supreme Court, at paragraphs 8 and 9 of the judgment, held as follows:

"8. In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to

seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni Vs. Sri Kali Nath AIR 1962 SC 199, it was held :-

> *".....The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."*

18. It is to be mentioned here that the acceptance of writ petitions, despite having alternative remedy, is a rule of practice and not of jurisdiction and in this regard, the Division Bench of

this Court in the case of U.M. RAMESH RAO AND OTHERS v. UNION OF INDIA reported in 2021(3) AKR 345 at paragraphs 40 and 41 of the judgment has observed thus:

> *"40. The following judgments of the Hon'ble Supreme Court on the aspect of maintainability of a writ petition under Article 226 of the Constitution in the face of an alternative remedy are referred to as under:*
>
> *(a) In Veerappa Pillai vs. Raman and Raman Ltd.., [AIR 1952 SC 192], it was observed that where a particular statute provides a self-contained machinery for determination of questions arising under the Act, the remedy that is provided under the Act should be followed except in cases of acts, which are wholly without jurisdiction or in excess of jurisdiction, or in violation of principles of natural justice or refusal to exercise jurisdiction vested in them or there is an error on the face of the record and such act, omission, error or excess has resulted in manifest injustice.*
>
> *(b) Further, alternative remedy is no bar where a party comes to the Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the legislature which enacted it and as such void, vide Bengal Immunity Co. vs. State of Bihar [AIR 1955 SC 661].*
>
> *(c) Similarly, when a fundamental right is infringed, the bar for entertaining the writ petition and granting relief on the ground of alternative remedy would not apply, vide State of Bombay vs. United Motors Ltd. [AIR 1953*

SC 252] and Himmat Lal vs. State of M.P. [AIR 1954 SC 403].

(d) *The rule of alternate remedy being a bar to entertain a writ petition is a rule of practice and not of jurisdiction. In appropriate cases, High Court may entertain a petition even if the aggrieved party has not exhausted the remedies available under a statute before the departmental authorities, vide State of West Bengal vs. North Adjai Cooi Company [1971 (1) SCC 309].*

(e) *Further, alternative remedy must be effective. An appeal in all cases cannot be said to have provided in all situations, where an appeal would be ineffective and writ petition in such a case is maintainable, vide Ram and Shyam Company vs. State of Harayana [AIR 1985 SC 1147].*

(f) *Where an authority has acted without jurisdiction, High Court should not refuse to exercise its jurisdiction under Article 226 on the ground of existence of alternative remedy vide Dr. Smt. Kuntesh Gupta vs. Management H.K. Mahavidyaya [AIR 1987 SC 2186]. Thus, an alternative remedy is not an absolute bar to the maintainability of a writ petition.*

41. On the issue of maintainability of the writ petition, learned counsel for the appellants relied upon the following decisions:

(a) *In Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others, [(1998) 8 SCC 1], (Whirlpool Corporation), at paragraph 15, it was observed that under Article 226 of the Constitution, the High Court, having regard to the facts of the*

case, has a discretion to entertain or not to entertain a writ petition. But, the High Court has imposed upon itself certain restrictions, one of which is, if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But, the availability of an alternative remedy has been consistently held not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the said decision, reliance was also placed on Rashid Ahmad vs. Municipal Board, Kairana, [AIR 1950 SC 163], (Rashid Ahmad), to observe that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 of the Constitution could still be entertained in exceptional circumstances.

Reference was also made to State of U.P. vs. Mohd. Nooh, , [AIR 1958 SC 86], (Mohd. Nooh), wherein it was observed that the rule requiring the exhaustion of statutory remedies before the writ will be granted, is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

Ultimately, in paragraph 20 of Whirlpool Corporation, the Hon'ble Supreme Court observed as under: "Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

In the said case (Whirlpool Corporation), it was also observed that the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show

cause notice issued to the appellant was wholly without jurisdiction.

In the said case, the Registrar of Trade Marks issued to the appellant therein a notice under Section 56(4) of the Trade and Merchandise Marks Act, 1958 to show cause against the proposed cancellation of appellants' Certificate of renewal. It was held that the issuance of such a notice by the Registrar was without authority and it was quashed by the High Court.

(b) *In State of H P. and others vs. Gujarat Ambuja Cement Limited and Another, [(2005) 6SCC 499], (Gujarat Ambuja Cement Limited), a detailed discussion on the plea regarding alternative remedy was made. It was held that the principle of alternative remedy is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of the fact that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate, efficacious, alternative remedy. If somebody approaches the High Court without availing the*

alternative remedy, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere.

However, there are well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is, when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. Also, that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition. Where under a statute there is an allegation of infringement of fundamental rights or when on the

undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained.

But, normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. But, if the High Court had entertained a petition despite availability of an alternative remedy, it would not be justifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies, unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

In the said case, the question was liability to pay purchase tax on the royalty paid by the respondents, i.e., the holder of mining lease, where there was a price for removal of minerals and thus, attracted liability to pay purchase tax. The Hon'ble Supreme Court in the said decision rejected the plea that the High Court should not have entertained the writ petition. Thereafter, the question relating to liability to pay purchase tax on

royalty paid was taken up for consideration by discussing on the meaning of the words "royalty", "dead rent", "mining lease". It was observed that royalty paid by the holder of a mining lease under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 was not the price for removal of minerals and hence, did not attract liability to pay purchase tax.

(c) *In Embassy Property Developments Private Limited vs. State of Karnataka, [2019 SCC Online SC 1542], (Embassy Property), one of the preliminary questions that arose was whether the High Court ought to interfere under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal (NCLT) in a proceeding under the Insolvency and Bankruptcy Code, 2016 (IBC), ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal (NCLAT) and if so, under what circumstances.*

In the said case, there is an exposition on the well recognised exceptions to the self-imposed restraint of the High Courts, namely, in cases where a statutory alternative remedy of appeal is available, or there is lack of jurisdiction on the part of the statutory/quasi-judicial authority against whose order judicial review is sought. It was observed

that an "error of jurisdiction" was always distinguished from "in excess of jurisdiction", tili the judgment of the House of Lords in Anisminic Ltd. Vs. Foreign Compensation Commission [(1969) 2 WLR 163] (Anisminic). In Anisminic, the real question was not, whether, an authority made a wrong decision but whether they enquired into and decided a matter on which they had no right to consider. It was observed by the Hon'ble Supreme Court that just four days before the House of Lords delivered the judgment in Anisminic, an identical view was taken by a three judge Bench of the Hon'ble Supreme Court in West Bengal & Others vs. Sachindra Nath Chatterjee & Another, [(1969) 3 SCR 92], (Sachindra Nath Chatterjee) wherein the view taken by the Full Bench of Calcutta High Court in Hirday Nath Roy vs. Ramachandra Barna Sarma, [ILR LXVIII Calcutta 138], (Hirday Nath Roy) was approved. It was held therein that "before a Court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for." This would mean that the jurisdiction must include (i) the power to hear and decide the questions at issue and (ii) the power to grant the relief asked for. Ultimately, in paragraph 24, it was observed as follows: "Therefore, insofar as the question of exercise of the power conferred by Article 226 of

the Constitution, despite the availability of a statutory alternative remedy, is concerned, Anisminic cannot be relied upon." The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction should certainly be taken into account by High Courts, when Article 226 of the Constitution is sought to be invoked bypassing a statutory, alternative remedy provided by a special statute.

In the said case, the question was, as to, whether, the NCLT lacked the jurisdiction to issue a direction in relation to a matter covered by Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Statutory Rules issued thereunder; or, there was mere wrongful exercise of a recognised jurisdiction, for instance, asking a wrong question or applying a wrong test or granting a wrong relief. On a detailed discussion, it was held that the NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since, NCLT chose to exercise jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice. In the instant case, the State of Karnataka had invoked the jurisdiction of the High Court under Article 226

of the Constitution without taking recourse to the appellate remedy under NCLAT. It was held that the judicial review was permissible and the High Court was justified in entertaining the writ petition assailing the order of the NCLT, directing execution of a supplemental lease deed for the extension of the mining lease.

(d) *Learned Senior counsel appearing for the respondent in Writ Appeal No.538 of 2020 placed reliance on Authorised Officer, State Bank of Travancore and another vs. Mathew K.C. [(2018) 3 SCC 85], (Mathew K.C.) wherein it was observed that SARFAESI Act is a complete Code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions. The remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18 was adequately provided under the Act. Therefore, the High Court ought not to have entertained the writ petition in view of the adequate alternative statutory remedies available. In that case, an interim order granted by the High Court in exercise of jurisdiction under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the SARFAESI Act, on certain deposit to be made was questioned. It was observed that the writ petition ought not have been*

entertained and interim order granted for the mere asking without assigning special reasons, that too, without even granting opportunity to the other side to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. In the said case, it was also observed that the discretionary jurisdiction under Article 226 of the Constitution is not absolute but had to be exercised judiciously in the given facts of a case and in accordance with law.

The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal, [(2014) 1 SCC 603], (Chhabil Dass Agarwal). In the latter decision, it has been held that the exceptions to the rule of non-interference when efficacious, alternative remedy is available are as under which are illustrative and non-exhaustive:

(i) where remedy available under statute is not effective but only mere formality with no substantial relief;

(ii) where statutory authority not acted in accordance with provisions of enactment in question, or;

(iii) *where statutory authority acted in defiance of fundamental principles of judicial procedure, or;*

(iv) *where statutory authority resorted to invoke provisions which are repealed, or;*

(v) *where statutory authority passed an order in total violation of principles of natural justice.*

(e) *In United Bank of India vs. Satyawati Tondon and others, [(2010) 8 SCC 110], (Satyawati Tondon) it was observed that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective, alternative remedy by filing an application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*

(f) *Of course in ICICI Bank Limited vs Umakanta Mohapatra and others, [(2019) 13 SCC 497], (Umakanta Mohapatra), it was held, the writ petition was not maintainable and therefore, allowed the appeals.*

(g) *In Authorised Officer, State Bank of India vs. Allwyn Alloys Private Limited and others, [(2018) 8*

SCC 120], the Hon'ble Supreme Court opined that Section 34 of the SARFAESI Act clearly bars filing of a civil suit. No civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under the Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act."

19. Following the aforementioned law declared by this Court and the Hon'ble Supreme Court referred to above, I am of the view that the impugned awards dated 22nd January, 2021 (Annexure-A) impugned in Writ Petitions No.10525, 13547 and 8458 of 2021 and Order dated 27th January, 2021 (Annexure-A) passed in Writ Petition No.10780 of 2021 are liable to be quashed, accordingly quashed. In the result, writ petitions are allowed.

Sd/-
JUDGE

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