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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 146 OF 2018

Nanasaheb Vasantrao Jadhav } Petitioner
versus
State of Maharashtra and Ors. } Respondents

WITH

INTERIM APPLICATION NO. 631 OF 2021
IN
PUBLIC INTEREST LITIGATION NO. 146 OF 2018

Apex Association of Lavasa }
Property Owners } Applicant

In the matter between
Nanasaheb Vasantrao Jadhav } Petitioner
versus
State of Maharashtra and Ors. } Respondents

WITH

INTERIM APPLICATION NO. 519 OF 2021
IN
PUBLIC INTEREST LITIGATION NO. 146 OF 2018

Janashakti Sanstha and Ors. } Applicants

In the matter between
Nanasaheb Vasantrao Jadhav } Petitioner
versus
State of Maharashtra and Ors. } Respondents

Mr.Nanasaheb V. Jadhav, petitioner in-person.

Mr. Shiraz Rustomjee, Senior Advocate (Amicus Curiae) with Mr. Prateek Pai, Mr. Jai Chhabria and Ms. Shreya Parikh.

Mr. A. A. Kumbhakoni, Advocate General with Mr P. P. Kakade, Government Pleader, Mr. Akshay Shinde, "B" Panel Counsel and Mr. M. M. Pable, AGP for State.

Mr. Aspi Chinoy, Senior Advocate a/w. Ms. Chaitrali Deshmukh for respondents 4 and 5.

Mr. Vishal Kanade with Mr. Dhaval A. Patil, Mr. Arnav Misra i/b. M/s. K.Ashar and Co. for respondent no.6 (SEBI).

Mr Venkatesh Dhond, Senior Advocate with Mr. Anoop Rawat, Mr. Sagar Dhawan, Ms. Salonee Kulkarni, Ms. Kriti Kalyani and Ms. Aishani Das i/b. Shardul Amarchand Mangaldas and Co. for respondent no.9.

Mr. Nachiket Khaladkar for respondent no.10.

Mr. P. K. Dhakephalkar, Senior Advocate with Mr. Joel Carlos for respondent no.12.

Mr. Ravi Kadam, Senior Advocate with Mr. Joel Carlos, Mr. Malhar Zatakia, Mr. Karan Kadam and Mr. Vaibhav Bhure for respondents 11 & 13.

Mr. R. N. Sanghvi for the applicant in IA/519/2021.

Mr. Vikramaditya Deshmukh i/b. Mr. Kayval Shah for Applicant in IA/631/2021.

CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

RESERVED ON : - SEPTEMBER 23, 2021
PRONOUNCED ON : - FEBRUARY 26, 2022

JUDGMENT: - (Per Dipankar Datta, CJ)

1. The petitioner, a legal practitioner, has invoked the 'Public Interest Litigation' jurisdiction of this Court by presenting this writ

petition dated 24th August, 2018 seeking multiple reliefs (the prayer clauses are in excess of 20), which we propose to refer a little later.

2. At the outset, we wish to record that final hearing of this writ petition commenced on 18th February, 2021 and in course thereof, apparently, the petitioner was found to have raised in it a matter of serious concern. The Lavasa Hill Station Project in Pune district was under challenge along with challenges mounted to various statutory provisions and administrative decisions. Given the seriousness of the challenges laid, necessitating the State of Maharashtra to be represented by none other than the Advocate General, and having regard to impleadment of "Very Important Person(s)" (VIPs) in the array of respondents, who were represented by a battery of learned senior advocates of repute, we perceived a bitter contest having the attributes of placing the petitioner in a fair measure of difficulty in appropriately placing his case in the desired manner while communicating with one of us (Chief Justice). Consequently, we considered it just and proper to appoint Mr. Shiraz Rustomjee, senior advocate as Amicus Curiae to assist us in arriving at an appropriate decision in the matter. Mr. Rustomjee (hereafter "the *amicus*", for short) has indeed put forth contentions, propositions and submissions commendably, as is expected from a senior advocate of his stature, with able assistance being provided to him by his associate advocates (names whereof are recorded above). Prior to moving on, we record our sincere appreciation for the effective and valuable assistance rendered by the *amicus* as well as his associate advocates by placing before us a neutral view of the entire matter and to enable us decide the issues arising in this public interest litigation dispassionately.

3. The concern expressed by the petitioner stems from facts, which we prefer to record from the notes prepared by the *amicus* upon consideration of the pleadings on record (not verbatim). The contents thereof, to the extent not disputed by any of the parties, read as under:

3.1 On 26th November, 1996, the Urban Development Department of the Government of Maharashtra (**"GoM"**, hereafter) sanctioned the *"Special Regulations for development of tourist resorts/holiday homes/township in hill station type areas"* (hereafter "the 1996 Regulations", for short) under section 20(4) of the Maharashtra Regional & Town Planning Act, 1966 (**"the MRTP Act"**, hereafter) **[Ptn/Pg. 137]**. The 1996 Regulations were to be inserted in the Development Control Regulations of the sanctioned Regional Plan. Regulation 2 stated that the area under development should not be less than 400 hectares and not more than 1000 hectares. Regulation 25 stated that the *"development shall be treated as if an industry"*.

3.2 On 7th April, 1999, a resolution was passed by the Home Department (Tourism) of the GoM, stating that tourism was accorded the status of an 'industry' **[R2's Reply/Pg. 214]**. This resolution also mentioned 14 types of projects, including the development of hill stations which, it stated, were to be included and treated as an industry for all statutory purposes.

3.3 One Yashomala Leasing and Finance Pvt. Ltd. (**"Yashomala"**, hereafter) purchased 5000-6000 acres of land from farmers in the area subsequently taken over by Lavasa Corporation Limited, the respondent no.9 (**"Lavasa Corporation"**, hereafter) for development as a hill station **[Ptn/Pg. 167]**.

3.4 Lavasa Corporation, incorporated on 11th February, 2000 **[Ptn/Pg. 160]**, was promoted by Hindustan Construction

Company Limited, the respondent no.14 (**"HCC"**, hereafter), a major construction conglomerate, and its wholly-owned subsidiary.

3.5 On 21st June, 2000, Lavasa Corporation addressed a letter to the GoM, requesting that 18 villages mentioned therein be notified as hill station type areas **[Ref. Ptn./Pg. 32]**.

3.6 The GoM (through the Urban Development Department) issued a notification on 30th May, 2001 **[Ptn/ Pg. 141]** amending the 1996 Regulations. It was stated that the amendment was being made considering the experience gained in the implementation of the 1996 Regulations. One of the amendments brought about by the notification was that the ceiling of the area of land prescribed in Regulation 2 of the 1996 Regulations was deleted.

3.7 On 31st May, 2001, the GoM (through the Urban Development Department) modified the said Regional Plan by designating the 20 villages named therein as 'Hill Station' [**R2's Reply/Pg. 218**].

3.8 On 1st June, 2001, the GoM (through the Urban Development Department) issued a notification declaring the 18 villages named therein as being suitable for the purpose of development of hill station [**Ptn/Pg. 148**].

3.9 On 27th June, 2001, the GoM (through the Urban Development Department) addressed a letter to Lavasa Corporation [**Ptn/Pg. 145**], granting it an initial clearance for the development of its hill station project, subject to the conditions mentioned therein, including that the necessary permissions be taken from the Irrigation and Revenue Departments. This letter referred to Lavasa Corporation's letters dated 19th December, 2000, 8th February, 2001 and 3rd March, 2001.

3.10 By its letter dated 4th July, 2001, the Collector, Pune, the respondent no.3, instructed Lavasa Corporation to apply for and obtain the prior permission of the Development Commissioner

(Industries), the respondent no.2, for purchase of lands for the development of hill station [**R2's Reply/Pg. 212**].

3.11 Lavasa Corporation addressed a letter dated 29th October, 2001 to the Maharashtra Krishna Valley Development Corporation, the respondent no.4 (**"MKVDC"**, hereafter), stating that it was undertaking the project for the development of a hill station, and that it was essential to have a water source for the same. Accordingly, Lavasa Corporation stated that it proposed to construct 10 weirs/bandharas on the backwaters of the Varasgaon/ Mose dam to store 900 LCF water. MKVDC was requested to consider this proposal as a special case [**R4 and R5's Reply/Pg. 289**]. The proposal was forwarded to the Irrigation Department, Pune [**R4 and R5's Reply/ Pg. 280**].

3.12 By a report dated 24th December, 2001, the Assistant Superintending Engineer (2), Pune Irrigation Circle recommended Lavasa Corporation's proposal subject to the condition that if in any year the rainfall was inadequate, Lavasa Corporation should release the stored water back into the Varasgaon dam. It was also stated that the payment for the land used for construction should be at market value [**R4 and R5's Reply/Pg. 297**].

3.13 Thereafter, the Superintendent Engineer furnished his report dated 22nd April, 2002 to the Chief Engineer, enclosing the certificates of water availability in respect of 8 weirs. The report concluded that there was no-objection for giving sanction to Lavasa Corporation, subject to the condition that water be released back into the Varasgaon dam if required [**R4 and R5's Reply/Pg. 303**].

3.14 On 29th April, 2002, the Assistant Chief Engineer (Irrigation Department) noted that there was no provision to give permission to construct a dam and that Lavasa Corporation's proposal would

have to be considered as a special case. While noting that the proposed project was commercial, he recommended that the approval be accorded on terms and conditions [**Ptn/Pg. 95**].

3.15 Thereafter, the Section Engineer, in or around 14th May, 2002, provided his report/opinion in respect of Lavasa Corporation's proposal [**Ptn/Pg. 86**]. The report recorded the view of the office of the MKVDC, including numerous concerns. It was, *inter alia*, stated that (i) as per the Krishna Water Arbitration Award, it was not permitted to divert some water in the proposed direction; (ii) there was no provision to give permission to a private company to construct the dam and the same would have to be considered as a special case; (iii) if permission was to be given, there would have to be numerous conditions; (iv) it was necessary to bring to the attention of the GoM that the water security of Pune and Daund was dependent on this particular proposed dam; (v) as it was a commercial project, there would be pollution etc. in the vicinity of the dam, which would affect the water ecosystem; (vi) if a completely commercial project is permitted in the name of tourism, it would be difficult to deny permissions to similar proposals in the future; (vii) there should be co-ordination between various departments such as forest, soil conservation, irrigation, tourism, before notifying the area as a tourism place. Accordingly, it was stated that the GoM was to take its own decision in the matter and the report was placed for further perusal and consideration.

3.16 On 18th May, 2002, Shri Ajit Pawar, the respondent no.12, who was the Minister (Irrigation), and by virtue of that position also the Chairman of MKVDC, sanctioned Lavasa Corporation's proposal [**Ptn/Pg. 93**].

3.17 At its 28th meeting held on 20th June, 2002, the Governing Council of MKVDC approved Lavasa Corporation's proposal as a

special case [**R4 and R5's Reply/Pg. 317**]. Accordingly, ex-post facto sanction was given at this meeting to the proposal given by Shri Ajit Pawar.

3.18 In the meanwhile, Lavasa Corporation also requested that pursuant to the approval of its proposal by MKVDC, the rate in the proposed agreement be on the domestic and irrigation basis, and not on a commercial basis [**Ptn/Pg. 99**]. This request was subsequently acceded to at the meeting of MKVDC, at which time it was resolved that the rate be changed from commercial to 'common', which was itself an approval of the decision taken by Shri Ajit Pawar (as the Chairman of MKVDC).

3.19 On 15th January, 2002, Lavasa Corporation's Board approved the scheme of merger of Yashomala with Lavasa Corporation whereby all the assets, liabilities, etc. were transferred to Lavasa Corporation, and Yashomala was dissolved without winding up. Lavasa Corporation obtained the approval of this Hon'ble Court for the Scheme of Merger on 1st August, 2002. The Scheme of Merger envisaged the transfer of the undertakings, business, investments, etc. from Yashomala to Lavasa Corporation and provided for the manner of vesting and transfer of Yashomala's assets, contracts, etc. to Lavasa Corporation and the continuance of Lavasa Corporation as a party in Yashomala's place in the same, etc.

3.20 Lavasa Corporation addressed a letter dated 22nd August, 2002 proposing to enter into a Memorandum of Understanding in respect of the development of villages in the Mose valley on a commercial basis from the tourism point of view. The Executive Engineer expressed the opinion that there was no necessity to enter into such MoU and that the matter did not fall within the purview of MKVDC, but that an appropriate decision may be taken at MKVDC's level in consultation with the GoM. [**Ptn/ Pg. 127**].

3.21 In the meantime, the Collector, Pune gave its permission on 12th August, 2002 to Lavasa Corporation [**R2's Reply/Pg. 239**].

3.22 On 2nd September, 2002, an agreement was executed between MKVDC and Lavasa Corporation, which was applicable to 8 weirs (out of the 10 weirs proposed by Lavasa Corporation) that were falling within MKVDC's purview and was to remain in force for a period of 30 years [**R4 and R5's Reply/Pg. 327**]. While recording that MKVDC had given its permission on 29th May, 2002, subject to certain conditions, this agreement recorded that the construction was to be carried out by Lavasa Corporation, at its own cost. This agreement recorded that the water would be used for commercial purposes; and further, that any lease agreement executed between the parties would form a part of this agreement. A separate lease agreement dated 23rd September, 2002 was thereafter executed between MKVDC and Lavasa Corporation, whereby an area of 141.15 hectares was leased to Lavasa Corporation for a period of 30 years for the construction of 2 bandharas as sought by Lavasa Corporation [**R4 and R5's Reply/ Pg. 359**]. It was recorded that out of the 141.15 hectares leased to Lavasa Corporation, 128.79 hectares was under water and the balance area of 12.36 hectares was the surrounding land above water. The lease rent was to be reckoned at 15% of the cost of the land demised. Clauses 18 and 32 of the lease provided, *inter alia*, that in the event of the lessee/contractor becoming insolvent, the lease agreement may be rescinded.

3.23 Lavasa Corporation, by applications dated 14th August, 2002 and 3rd September, 2002, requested the Development Commissioner (Industries) for its permission to purchase lands for the development of a hill station in the declared tourism zone area across 17 villages [**Ptn/Pg. 65**]. In these applications, Lavasa

Corporation proposed its project on 10,000 acres of land (approximately 4,046 hectares). Shri Aniruddha Deshpande, the Managing Director of Lavasa Corporation, submitted an affidavit dated 3rd September, 2002 in support of these applications.

3.24 On 5th December, 2002, the Development Commissioner (Industries) permitted Lavasa Corporation to purchase lands admeasuring 400 hectares for the development of a hill station on the terms and conditions stipulated therein [**R2's Reply/Pg. 226**].

3.25 On 6th December, 2002, Lavasa Corporation addressed a letter requesting the Development Commissioner (Industries) to issue a corrigendum to his order dated 5th December, 2002, since its proposal was for the purchase of 4000 hectares of land and not 400 hectares of land [**R2's Reply/Pg. 241**].

3.26 On 11th December, 2002, the Development Commissioner issued a corrigendum that the reference to '400 hectares' in the permission of 5th December, 2002 should be read as '4000 hectares' [**Ptn/Pg. 64**].

3.27 In the meantime, on 25th September, 2002, the Joint District Registrar and Collector, Stamps, addressed a letter in response to Lavasa Corporation's application dated 24th September, 2002, recording that under notifications dated 5th May, 2001 and 16th September, 2002, new industries and developments were exempted from the payment of stamp duty [**Ptn/Pg. 135**]. Accordingly, documents falling within these categories would be exempted from stamp duty.

3.28 The construction of the project appears to have commenced some time in 2002 [**Ptn/Pg. 168A**].

3.29 On 9th December, 2003, there was a shareholders' agreement with regard to the shareholding in Lavasa Corporation between (i) HCC, (ii) Hindustan Finvest Ltd., (iii) Hincon Holdings Ltd., (iv)

Lavasa Corporation, (v) Shri Aniruddha Deshpande, (vi) Shri Vinay Maniar, (vii) Shri Sadanand Sule, (viii) Janpath Investments & Holdings Limited and (ix) Venkateshwara Hatcheries Pvt. Ltd. It appears that an adherence deed dated 27th September, 2005 was also executed between the parties [**Ptn/Pg. 161**].

3.30 Between 2004 and 2005, various steps and actions were taken which ultimately resulted in the amendment of the Bombay Tenancy & Agricultural Lands Act, 1948 (**"the BTAL Act"**, hereafter) as also the Maharashtra Land Revenue Code, 1966 (**"the MLRC"**, hereafter) by Maharashtra Act No. XXV of 2005, notified on 19th May, 2005, upon Bill No. XLIII of 2004 being passed by the Maharashtra Legislative Assembly and the Maharashtra Legislative Council.

3.31 The net effect of this enactment, *inter alia*, was that section 63 (1A) of the BTAL Act (which deals with the transfer of land to a non-agriculturist for *bona fide* industrial use) was amended, with retrospective effect from 1st July, 2000. The amendments included an increase in the period contemplated for putting the land to *bona fide* industrial use from 5 to 15 years, and a change to the definition of the expression '*bona fide* industrial use', by providing that it would also mean 'the activity of tourism within the areas notified by the State Government as the tourist place or hill station'. Also, section 44A of the MLRC (which states that no permission is required for *bona fide* industrial use of land) was amended, with retrospective effect from 1st July, 2000. The amendments included a change to the definition of the expression '*bona fide* industrial use', by providing that it would also mean 'the activity of tourism, within the area notified as the tourist place or hill station, by the State Government'.

3.32 The petitioner appeared before the Nashik revenue authorities as an advocate on behalf of some land-owners against Kirloskar Silk Industries Ltd., seeking resumption of the land. [**R12's First Reply/Pg. 207**]. This did not relate to the Lavasa project.

3.33 A meeting was held in respect of the project on 14th July, 2007, at which time the Chief Minister of the time met, *inter alia*, with Shri Sharad Pawar, the respondent no.11 (who was then the Union Minister for Agriculture), Shri Ajit Pawar (who was then the Minister for Irrigation), and one Shri Ajit Gulabchand [**Ptn/Pg. 178**]. It appears that one of the aspects discussed between the parties was the appointment of Lavasa Corporation as a special planning authority for the area.

3.34 On or around 12th June, 2008, the GoM (through the Urban Development Department) appointed Lavasa Corporation as a Special Planning Authority within the purview of the MRTP Act. However, it appears that this status was cancelled by the GoM in 2017 [**Ptn/Pg. 31**].

3.35 An advertisement was published on 2nd September, 2010 in the Times of India by Lavasa Corporation, providing its version of the facts and events with regard to various allegations that had been levelled against it by some sections of the media [**Ptn/Pg. 57**].

3.36 The petitioner claims that the assertions made in the advertisement published on 2nd September, 2010, impelled him to begin inquiring into their correctness, *inter alia*, by making efforts to procure the relevant documents [**Ptn/ Pg. 6**].

3.37 On 14th September, 2010, Lavasa Corporation issued a Draft Red Herring Prospectus (**"DRHP"**, hereafter) [**Ptn/Pg. 159**] for a proposed public issue of capital. The DRHP contained fairly detailed

information with regard to the shareholdings, directors, promoters, capital structure, etc. of Lavasa Corporation and connected entities. Lavasa Corporation, however, did not proceed with the public issue [**R6's Reply/Pg. 245**].

3.38 An interview of Shri Sharad Pawar was published in the newspaper, DNA's edition of 3rd November, 2010 [**Ptn/Pg. 176**]. The petitioner points out that in this interview, Shri Sharad Pawar is reported to have stated, *inter alia*, that:

a) It was true that he had selected the site for the Lavasa project.

b) He introduced the site to Shri Ajit Gulabchand, who wanted to create India's first independent hill station.

c) His daughter, Smt. Supriya Sule, the respondent no.13 and her husband, Shri Sadanand Sule held shares in HCC in the initial stages; that Shri Sadanand Sule was in the business of buying and selling shares.

3.39 Shri Sharad Pawar also published his autobiography, "*Lok Maze Sangati*" (The People Are With Me) in December, 2015, wherein it is, *inter alia*, stated that [**Ptn/Pg. 164**]:

a) The seedling of Lavasa had sprouted in his mind.

b) He constituted a committee of members of legislature, who visited the Lake District in Britain along with the Secretary of Tourism. This committee submitted its report and recommended that a hill station be developed in that particular area of Pune district.

c) He came to know that some people had purchased lands in the area; and that Yashomala had purchased 5000-6000 acres of land. Accordingly, he contacted the owner of Yashomala, one Shri Bhale, and put the proposal before

him to develop a hill station there. However, Shri Bhale indicated that it was not possible for him to do so.

d) Another name before him was Shri Ajit Gulabchand. Both of them visited Varasgaon dam, and he put his idea of developing the hill station before Shri Gulabchand.

e) He suggested that the land could be bought and the project started. Shri Gulabchand appreciated his idea and showed willingness.

f) In a few days, Shri Gulabchand purchased 5000 acres of land from Yashomala alongwith another 3000-4000 acres of land.

g) Shri Gulabchand was a person of vision who transformed his idea in a new way.

h) Promoter of the project is Shri Gulabchand, who is an old friend.

i) No single inch of land belonged to him.

3.40 In 2016-2017, Lavasa Corporation gave possession to over 1250 residential units which include villas and apartments [**Ptn/Pg. 155**]. Lavasa Corporation has lands aggregating to approximately 10,515 acres [**Ptn/Pg. 155**]. This is set out in HCC's 91st Annual Report for the period 2016-2017.

3.41 By an order dated 30th August, 2018, the National Company Law Tribunal, Mumbai Bench was pleased to initiate the Corporate Insolvency Resolution Process (**"CIRP"**, hereafter) against Lavasa Corporation under the Insolvency & Bankruptcy Code, 2016 [**R9's Reply/Pg. 214**]. The CIRP in respect of Lavasa Corporation (which has been consolidated with two other entities) is presently ongoing. As on date, proposals submitted by 3 potential resolution

applicants are being considered by the Committee of Creditors [**R9's Reply/Pg. 210**].

3.42 Lavasa Corporation states that the petitioner had filed PIL (L.) No. 8716 of 2011 before this Hon'ble Court for the same relief, which was dismissed on account of failure to remove office objections [**R9's Reply/Pg. 211**].

3.43 The petitioner filed PIL No. 109 of 2013 before this Hon'ble Court, *inter alia*, seeking that the 2005 Amendment to the BTAL and MRTP Acts and the acquisition of land by Lavasa Corporation be declared as null and void; this was essentially on the ground that the amending Act had not been passed by the State Legislature at all. The writ petition remained pending from 2013 to 2018. By an order dated 13th July, 2018, this Court was pleased to permit the petitioner to withdraw the writ petition with liberty to file afresh in terms of the amendment application filed therein being Civil Application No. 27 of 2017 [**Ptn/ Pg. 56**].

3.44 In or around August 2018, the petitioner filed the present writ petition before this Court. Affidavits in reply have been filed by the respondent nos. 1, 2, 4 and 5, 6, 9, 10 and 12 (two affidavits). No rejoinder has been filed by the petitioner.

3.45 By its order dated 9th December, 2020, this Court while declining to grant interim relief in the present writ petition, as prayed, recorded that the auction and any steps taken in pursuance thereof would abide by the outcome of this writ petition.

4. The case of the petitioner in a nutshell is that the Lavasa Hill Station Project, the brain child of a prominent political personality of Maharashtra (Shri Sharad Pawar), although was conceived on paper to promote tourism and related activities but ultimately, in reality, resulted in advancing extraneous considerations including promotion of real estate business. For facilitating such veiled

project, not only the GoM but also the legislative wing of the State acted in tandem to carve out benefits in favour of a class of persons having sound political connections; and, all these, at the cost of poor farmers, who were compelled to surrender their property rights for peanuts. In the bargain, it was favouritism, nepotism, illegality and arbitrariness that triumphed. The effort of the petitioner is to have the same undone.

5. We may now note the relief that the petitioner has sought for. It would be profitable to quote the prayer clauses below:

"Reliefs prayed for:

10.1 Present petition be admitted as Public Interest Litigation.

10.2 In spite of repetitive written directions by Hon'ble High Court, State Government did not file reply in PIL No.109 of 2013, therefore specific order be kindly passed against State Government and also all other respondents to file detail reply to PIL within reasonable period.

10.3 Special Permission No.DI/Land/permission/255/2002 C-16983 dated 5.12.2002 and Corrigendum No.DI/Land/permission 255/2002 C-17386 dated 11.12.2002 to Lake City Corporation Ltd. to purchase of lands for hill station given by then Development Commissioner (Industries) be declared as void ab initio, arbitrary, unreasonable, undue political favouritism, breach of trust, bad in law, inconsistent with parent BTAL Act 1994 therefore be quashed.

MKVDC Lease Agreement

10.4 Lease Agreement between Executive Engineer, Khadakwasla Irrigation Division, Pune and M/s. Lake City Corporation Limited dated 22nd August 2002 be declared as void ab initio, unreasonable, arbitrary, nepotism, undue political favouritism, breach of trust, bad in law, against Section 23 of Indian Contract Act, inconsistent with the provisions of MKVDC Act and be cancelled/struck down.

And

10.5 Agreement dated 26th August 2002 between Executive Engineer, Khadakwasla Irrigation Division, Pune and M/s. Lake City Corporation Limited be declared as void ab initio, unreasonable, arbitrary, nepotism, undue political favouritism, breach of trust, bad in law, against Section 23

of Indian Contract Act, inconsistent with the provisions of MKVDC Act and be cancelled/struck down.

10.6 Resolution no.29/4 dated 18.09.2002 passed by MKVDC on 25.09.2002 be as arbitrary, undue political favouritism, breach of trust, bad in law, unreasonable, inconsistent with the provisions of MKVDC Act and be cancelled/struck down.

10.7 Resolution no.28/6 dated 20.06.2002 passed by MKVDC be as arbitrary, undue political favouritism, bad in law, breach of trust, unreasonable, inconsistent with the provisions of MKVDC Act and be cancelled/struck down.

10.8 Executive Engineer, MKVDC be directed by order of this Hon'ble High Court to take physical possession of 141.15 Hectors of lands from Lavasa Corporation Ltd.

10.9 Construction made on MKVDC's land be ordered to be demolished as illegal and expenses incurred for the same be kindly ordered to be taken from Lavasa Corporation Ltd.

10.10 (there is no such paragraph in the petition)

10.11 It be declared that Resp No.12 Mr. Ajit Pawar misused powers and illegally leased public land of MKVDC to Lake City Corporation Ltd.

10.12 Permission No.PMA/CR/2115/2001 dated 4/7/2001 given to Lake City Corporation Pvt Ltd. to purchase the lands by then Collector, Pune be quashed as void ab initio, unreasonable, illegal, arbitrary, undue political favouritism, bad in law, inconsistent with BTAL Act, therefore be quashed.

10.13. Government Notification dated 5.5.2001 No.Mudrank-2000/4229/89-1064/M-1 and Government Notification No. TMC-2001/CR-23/tourism dated 16.9.2002 be quashed as arbitrary, unreasonable, bad in law, undue political favouritism and inconsistent with the parent Maharashtra Stamp Act.

10.14 Special Regulations Dated 26.11.1996 – Special regulations for the development of hill station framed by the Urban Development Department on 26.11.1996 be declared as void ab initio, illegal, arbitrary, unreasonable and inconsistent with Section 159 of Parent MRTP Act 1966 and therefore be quashed.

10.15 Notification No.TPS-1800/1004/CR-106/2000/UD-13 dated 31.05.2001 published by Urban Development Department of Maharashtra declaring project of Resp.No.9 as Hill Station be quashed.

10.16 Lavasa Hill station project be declared as illegal, void ab initio, inconsistent with provisions of Sections 18, 44, 159 of Parent MRTP Act and therefore all residential and commercial construction such as Hotels, malls, villas etc. made by Lavasa Corporation Ltd. be ordered to be

demolished at the cost and expenses by Respondent No.9 Lavasa Corporation Ltd.

10.17 Notification No.TPS-1800/1004/CR-106/I/2000/UD-13 dated 1.06.2001 Urban Development Department of Maharashtra declaring 18 villages in Pune District as suitable for the development of hill station be quashed as inconsistent with MRTP Act 1966.

10.18 The executive approval to the project of Resp.no.9 given by the Urban Development Department dated 27th June 2001 by Notification No.TPS-1800/1004/CR-106-1/2000/UD-13 be quashed.

10.19 Maharashtra Act No.25 of 2005 i.e. Bombay Tenancy and Agricultural Lands (Amendment) Act 2005 be quashed on the ground that,

(a) Act is not passed according to Maharashtra Legislative Assembly and Council Rules which is illegal,

(b) in violation of the Resolution/motion passed unanimously that the Bill be referred to Joint Committee,

(c) arbitrary, unreasonable, misuse of powers by legislature, undue political favouritism, violation of Article 14 of Constitution of India,

(d) amendment carried out only to regularize illegal Lavasa hill station project,

(e) against the provisions of Section 7 of Bombay General Clauses At 1904.

(f) all further permissions given u/s 63(1)(a) of BTAL Act 2005 to Resp No.9 Lavasa Corporation Ltd. be quashed.

10.20 If the Hon'ble High Court of the opinion that Act No.25 of 2005 i.e. Bombay Tenancy and Agricultural Lands (Amendment) Act 2005 cannot be quashed as a whole the petitioner humbly prays that, the retrospective effect given to the amended definition to Bona fide Industrial use from 1st July 2000 be quashed on the ground of misuse of powers by legislature, void ab initio, illegal, unreasonable, arbitrary, undue political favouritism, bad in law, only to save Respondent No.9 Lavasa Corporation Ltd.

MLRC Amendment Act 2005

10.21 Maharashtra Act No.26 of 2005 (Amendment to section 44A of Maharashtra Land Revenue Code 2005) be quashed on the ground that,

a) Act is not passed according to Maharashtra legislative Assembly and Council Rules which is illegal.

b) in violation of the Resolution/motion passed unanimously that The Bill be referred to Joint Committee,

c) arbitrary, unreasonable, illegal, misuse of powers by legislature, undue political favouritism, violation of Article 14 of Constitution of India,
d) only to regularize illegal Lavasa hill station project.

10.22 If the Hon'ble High Court of the opinion that Act No.26 of 2005 (which insert Amendment to Section 44A of Maharashtra Land Revenue Act 2005) cannot be quashed as a whole the petitioner humbly prays that, the retrospective effect given to the amended definition to Bona fide Industrial Use from 1st July 2000 be quashed arbitrary, `unreasonable, illegal, undue political favouritism, only to regularize illegal Lavasa hill station project.

10.23 That this Hon'ble Court be pleased to issue appropriate writ/direction/order to Resp No.6 SEBI not to consider and give sanction to the Initial Public Offer (IPO) to raise capital from share market."

6. We have heard the petitioner (in-person), Mr. Kumbhakoni, learned Advocate General for the respondents 1 to 3, Mr. Chinoy, learned senior advocate for the respondents 4 and 5 (MKVDC and its Executive Engineer), Mr. Kadam, learned senior advocate for the respondents 11 and 13 (Shri Sharad Pawar and Smt. Supriya Sule), Mr. Dhakephalkar, learned senior advocate for the respondent no.12 (Shri Ajit Pawar), Mr. Dhond, learned senior advocate for the respondent no.9 (Lavasa Corporation, since represented by the IRP), Mr. Deshmukh, learned advocate for the intervenors as well as the *amicus* at substantial length.

7. When a public interest litigation is instituted to enforce the rights of the underprivileged or the marginalized section of society or the deprived, it is the duty of all the parties to the proceedings to assist the Court in unearthing the truth so that appropriate relief, as prayed, could be granted wherever possible, or where it is not so possible, to appropriately mould the relief claimed, for securing justice to such a section. The strict procedures applicable to an adversarial litigation do not normally get attracted to proceedings instituted in public interest. Apart from the duty that

the parties owe to the Court, it is also the obligation of the Court exercising writ jurisdiction to enquire into alleged act(s) of omission and/or commission amounting either to subversion of the rule of law or violation of the Constitution or a statute. It needs no reiteration that no single authority/individual, howsoever high and mighty he/it may be, is above the Constitution; therefore, all acts of all authorities/individuals, particularly in the field of public law, must either be traceable to a law, which is the source of power, or must be within the strict confines of such law. In other words, the impugned act has to be justified for being sustained by reference to a law. Assumption of a power which the law does not provide or acting in excess of the power, as conferred, are acts which the Constitution abhors and placed under judicial scrutiny, would inevitably not sustain. Besides, an action would be bad on the ground of colourable exercise of power where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations. The contours of a public interest litigation being substantially different from an adversarial litigation, the Court has to address the concern raised by playing an inquisitorial role and with a positive and activist attitude, and uphold the Constitutional values irrespective of who the party before it is. As against this, relevant paragraphs of the decision in **Dattaraj Nathuji Thaware v. State of Maharashtra,** reported in (2005) 1 SCC 590, referred to by Mr. Chinoy, call for being noticed. The said paragraphs read as follows:

> "4. *** Public interest litigation which has now come to occupy an important field in the administration of law should not be 'publicity interest litigation' or 'private interest litigation' or 'politics interest litigation' or the latest trend 'paise income litigation'. … If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an

adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

***

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly they lose faith in the administration of our judicial system.

> 12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

With these guiding principles in mind, we now proceed to enquire whether the grievance voiced by the petitioner is of substance and what relief, it at all, can be granted on this writ petition.

8. The controversy raised in this public interest litigation and the resultant issues arising therefrom can be conveniently divided into two distinct segments. The first is with regard to the validity of the amendments of the relevant statutes and the introduction of the 1996 Regulations. The statutory amendments would have pan-Maharashtra application and if its provisions, in any manner, adversely affect farmers *in praesenti*, certainly the question of validity can be and should be examined. The other is in regard to the initiative taken to develop the Lavasa Hill Station Project and whether any law has been breached in the course of such development.

9. However, we need to dispose of certain threshold objections to the maintainability of this writ petition. These are raised mainly by Mr. Kadam.

10. The first objection is that of suppression in this writ petition of institution of the first writ petition by the petitioner [PIL (L.) No. 8716 of 2011] to invoke this Court's 'Public Interest Litigation' jurisdiction. It has been held by the Supreme Court in **S.J.S. Business Enterprise (P) Ltd. vs. State of Bihar**, reported in (2004) 7 SCC 166, that the general rule of denial of relief owing to suppression applies only when the suppressed fact is a material one, that is, one which would have an effect on the merits of the case. True it is, in this writ petition there is no disclosure of institution of PIL (L.) No. 8716 of 2011; however, such writ petition stood dismissed for omission to remove the office objections and was not dismissed on merits. It is noted that in PIL No. 109 of 2013, i.e., in the second round of litigation, the petitioner did make a fair disclosure of dismissal of PIL (L.) No. 8716 of 2011. The coordinate Bench, notwithstanding such dismissal, granted liberty to the petitioner to file afresh. In our view, to amount to suppression, there has to be something more than a mere non-disclosure. It is the duty of the Court while hearing a public interest litigation to lift the veil and ascertain whether a scheming litigant, to take the Court for a ride, has suppressed material facts which, if disclosed, would affect the merits of the litigation. Here, upon lifting the veil, neither do we see any ulterior motive of the petitioner to steal a march over the respondents by not disclosing the fact of dismissal of PIL (L.) No. 8716 of 2011 nor can we form an opinion that non-disclosure of dismissal thereof amounts to a material suppression. Accordingly, the objection is overruled.

11. The second objection in based on the decision of the Supreme Court in **Sarguja Transport Service vs. State**

Transport Appellate Tribunal, M.P., Gwalior, reported in (1987) 1 SCC 5. The law laid down therein is that withdrawal of a petition under Articles 226/227 without obtaining leave to institute a fresh petition would bar such fresh petition in the High Court involving same subject matter, except in the case of habeas corpus, though other remedies like a suit or a writ petition under Article 32 before the Supreme Court would be open. Such withdrawal without leave, the Court ruled, should be deemed as abandonment of the remedy under Articles 226/227 in respect of the cause of action relied upon in the petition that is withdrawn. This is on the ground of public policy arising out of extension of the principles underlying Order XXIII Rule 1 of the Code of Civil Procedure (**"the C.P.C.",** hereafter) in the interests of administration of justice.

12. Placing heavy reliance on paragraphs 7 to 9 of **Sarguja Transport Service** (supra), Mr. Kadam contended that the principle underlying Rule 1 of Order XXIII of the C.P.C. is founded on public policy and being different from *res judicata*, is intended to discourage litigants from indulging in bench-hunting tactics. He further contended that the law confers upon a man no rights or benefits which he does not desire; and whoever waives, abandons or disclaims a right, will lose it. According to him, it is immaterial as to the stage at which the abandonment takes place. Non-prosecution by abandonment can be at any stage and the strict language of Rule 1 (3), Order XXIII of the C.P.C. is not applicable. What applies is the underlying principle. The petitioner having decided to pursue his remedy before this Court and, thereafter, the remedy having been abandoned for whatever reason [either by failing or omitting to remove the office objections despite notice or without notice], leading to dismissal of PIL (L.) No. 8716 of 2011, it is contended that such failure or omission is akin to abandonment of the claim raised therein by the petitioner. Having abandoned

such claim, this writ petition instituted by the petitioner founded on the same cause of action ought not to be entertained on extension of the principle of public policy and in the interests of administration of justice.

13. The *amicus* has relied on the decision of the Madras High Court in **M/s. Olympic Cards Ltd. v. Standard Chartered Bank,** reported in 2013 1 LW 385, for the proposition that Rules 3 and 4 of Order IV contain the statutory prescription that the plaint must comply with the essential requirements of a valid plaint and then only the process of filing would culminate in the registration of a suit; and that abandonment before the registration of suit would not constitute withdrawal or abandonment of suit within the meaning of Order XXIII Rule 1, C.P.C., so as to operate as a legal bar for a subsequent suit of the very same nature.

14. There can possibly be no quarrel about the proposition of law advanced by Mr. Kadam based on **Sarguja Transport Service** (supra). However, a deeper scrutiny of the facts here produces a result different from the one in such decision.

15. Insofar as it is relevant for the present discussion, in terms of Rule 1 of Order XXIII of the C.P.C., a sole plaintiff may, at any time after institution of a suit, abandon such suit or part of any claim against all or some of the defendants or may withdraw from the suit or part of a claim. If he so abandons or withdraws and does not seek and obtain liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim, he is precluded from instituting a fresh suit.

16. As observed above, having considered **Sarguja Transport Service** (supra), we are of the opinion that the *ratio decidendi* of such decision has no application on facts and in the circumstances. The said decision was rendered in a civil appeal arising from an order dated 17th January, 1986 passed by the relevant High Court

on MP No.188 of 1986. This was the second writ petition of the petitioner after it had elected to withdraw its earlier writ petition [MP No.2945 of 1985] on the same cause of action and while so withdrawing, had not obtained the liberty to institute a fresh writ petition. The order of withdrawal was recorded in an order of Court dated 4th October, 1985.

17. In the present case, PIL (L.) No. 8716 of 2011 had not even crossed the threshold of the checks that the registry is obliged to conduct prior to such writ petition being placed before the relevant Division Bench.

18. The text of Rule 1 of Order XXIII of the C.P.C. are very relevant in the context. It begins with "(A)t any time after institution of a suit …", meaning thereby that the provisions of Rule 1 and/or its sub-rules or the other Rules would be attracted at any time after institution of a suit. When do we regard a suit as having been instituted? Guidance flows from the C.P.C. itself. Sub-rule (1), Rule 1 of Order IV of the C.P.C. opens with "(E)very suit shall be instituted (emphasis ours) by presenting a plaint …" in the manner ordained, whereas sub-rule (2) requires every plaint to comply with the rules contained in Orders VI and VII, so far as they are applicable. Sub-rule (3), inserted by an amendment with effect from 6th June, 2002, dispels all doubts as to when a suit is regarded to have been instituted. It posits that "(T)he plaint shall not be deemed to be duly instituted unless (emphasis ours) it complies with the requirements specified in sub-rules (1) and (2)". The Bombay High Court amendments to Order XXIII do not change the complexion of these rules.

19. Principles underlying Order IV leave no room for doubt that presentation of a plaint simplicitor, without complying with the requisites of sub-rules (1) and (2), does not amount to a valid and proper institution of a suit [as per sub-rule (1)] or institution of a

plaint [as per sub-rule (3)]. Orders VI and VII of the C.P.C. do contain procedural provisions, substantial non-compliance whereof may lead to consequences. Here, upon a search being conducted, we have been informed of destruction of the records of PIL (L.) No. 8716 of 2011 on 18th May, 2018. However, a register maintained by the registry reveals that the petitioner despite an undertaking and despite grant of repeated opportunity failed to file an additional affidavit and, therefore, the office objection was not removed. This failure resulted in an order of the registry dated 14th March, 2012 that if the petitioner does not remove the office objections within two weeks, "registration of PIL shall stand refused". In such a case, as per Rule 9 of Chapter V of the Bombay High Court (Appellate Side) Rules, 1960, the petition ought to have been returned to the petitioner or his advocate. Information to such effect is not forthcoming. Be that as it may, it is clear that at the stage of a Lodging No. assigned to PIL (L.) No. 8716 of 2011, the writ petition did not cross the threshold of checks as to whether it complies with the extant rules as regards filing/institution, as a consequence whereof the public interest litigation never came to be registered. Though PIL (L.) No. 8716 of 2011 has erroneously been shown as dismissed in the records, we are inclined to hold that abandoning a claim prior to registration of the public interest litigation, as in the present case, would not attract the principle underlying Rule 1 of Order XXIII of the C.P.C. The stage at which the petitioner in **Sarguja Transport Service** (supra) withdrew its writ petition and the stage when PIL (L.) No. 8716 of 2011 was not registered being wholly different, which is indeed material, coupled with the fact that in the former case there was a judicial order passed by an Hon'ble Judge of the relevant High Court whereas the concerned Registrar dealt with the latter case in its administrative capacity, or at the most in quasi-judicial capacity, the said decision does not

advance the cause of Mr. Kadam.

20. In view of the foregoing discussion, the second objection too stands overruled.

21. The next objection to the maintainability of the public interest litigation is that the writ petition has not been presented *bona fide* and in good faith, and that the petitioner also lacks the *locus standi* to present it. Mr. Chinoy went to the extent of criticizing the petitioner for having brought before the Court a "completely reckless" writ petition, knowing fully well that the Division Bench of this Court has upheld the 1996 Regulations (to be referred later) and also that issues raised in regard to the activities of MKVDC stand finally concluded years back.

22. Insofar as his *locus standi* is concerned, the petitioner has asserted that he has been representing the farmers in proceedings before the judicial or quasi-judicial fora in Nashik. It is in course of conducting such proceedings that he came across the impugned amendments. Although the farmers had succeeded in the first round, they lost out on the second by reason of the amendments whereby tourism was included in 'industry' and the time period extended from 5 to 15 years. We are not persuaded to agree with those respondents, who have objected, that the petitioner lacks the *locus standi* to invoke this court's jurisdiction. A public interest litigation can indeed be instituted by someone who, being an advocate by profession, attempts to secure the interests of farmers; and so long as there is adherence to the guidelines laid down by the Supreme Court in relation to entertainment of public interest litigation, as in **Guruvayoor Devaswom Managing Committee vs. C.K. Rajan**, reported in (2003) 7 SCC 546, and **Balwant Singh Chaufal vs. State of Uttaranchal**, reported in (2010) 3 SCC 402, there could be no reason to throw out a writ petition at the threshold, without looking at the merits of the

challenge. In a case of the present nature, there is no reason as to why the Court ought to desist from entertaining a public interest litigation where the allegation of the petitioner is that injustice has been meted out to a large number of farmers.

23. There being no substance in the argument that the petitioner lacks the *locus standi* to approach this Court, we overrule this objection too.

24. The contention that the writ petition suffers from want of *bona fides* cannot be raised as a threshold objection. Whether this writ petition, instituted in public interest, is *bona fide* and also as too whether the guiding principles laid down in the above decisions have been adhered to are matters which need examination while we proceed to decide the contentious issues raised herein.

25. There are a few other objections, viz. gross delay in approaching the Court, false statements made in the writ petition, vague and general pleadings of *mala fide*, non-joinder of necessary parties, etc., to throw out this writ petition without examining the claim on merits. Of them, the objection as regards delayed approach to the Court has been pressed with vehemence and certainly, delay and/or laches would have a bearing on the relief that could be granted, if at all. However, these objections too cannot be decided without examining the merits of the petitioner's claim, and we propose to deal with the same at a later part of this judgment, if required.

26. Before proceeding any further, it would not be inapt to notice the decisions of the Supreme Court cited before us by the *amicus* on the aspect of delayed challenge to a legislation as well as delay in institution of a public interest litigation, and its effect.

27. Adverting to the point of delay in mounting a challenge to the amendments in the BTAL Act, the *amicus* placed for our consideration the Constitution Bench decision in **Lohia Machines**

vs. Union of India, reported in (1985) 2 SCC 197. According to him, law is well-settled that mere earlier acquiescence in a rule, which is otherwise *ultra vires*, would not give such an *ultra vires* rule immunity from subsequent challenge. Paragraph 13 of such decision, to the extent relevant for the present purpose, is quoted below:

> "13. *** It is undoubtedly true that merely because for a long period of 19 years, the validity of the exclusion of borrowed moneys in computing the 'capital employed' was not challenged, that cannot be a ground for negativing such challenge if it is otherwise well founded. It is settled law that acquiescence in an earlier exercise of rule-making power which was beyond the jurisdiction of the Rule-making authority cannot make such exercise of rule-making power or a similar exercise of rule-making power at a subsequent date, valid. If a rule made by a rule-making authority is outside the scope of its power, it is void and it is not at all relevant that its validity has not been questioned for a long period of time: if a rule is void it remains void whether it has been acquiesced in or not. ***"

It was, therefore, submitted that delay may not be considered to be a valid ground for spurning a challenge to the amendments if such a challenge, on merits, is held to be otherwise well-founded.

28. Referring to the decision of the Supreme Court in **Kazi Lhendup Dorji v. CBI**, reported in 1994 Supp (2) SCC 116, the *amicus* submitted that in view of the seriousness of the allegations, viz. alleged corrupt practices of a Chief Minister, and the need to unearth the truth of such allegations, the Court held that the petitioner in the public interest litigation ought not to be non-suited on the ground of laches. Paragraph 15 was placed, which reads as under:

> "15. As regards delay in filing of writ petition we find that after the issuance of the impugned notification in 1987, efforts were made by the Central Government during the period from 1988 to 1992 to persuade the Government of Sikkim to accord the necessary consent and when the said

attempts failed, the petitioner moved this Court in 1993. Having regard to the seriousness of the allegations of corruption that have been made against a person holding the high public office of Chief Minister in the State which have cast a cloud on his integrity, it is of utmost importance that the truth of these allegations is judicially determined. Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a cloud. It would also be in the interest of Respondent 4 to have his honour vindicated by establishing that the allegations are not true. The cause of justice would, therefore, be better served by permitting the petitioner to agitate the issues raised by him in the writ petition than by non-suiting him on the ground of laches."

29. **Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group,** reported in (2006) 3 SCC 434, was next placed by the *amicus* where **Lohia Machines** (supra) was considered. It would be appropriate, for drawing guidance, to quote below three paragraphs from such decision reading as follows:

"341. Delay and laches on the part of the writ petitioners indisputably have a role to play in the matter of grant of reliefs in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/or laches on the part of the writ petitioners the parties altered their positions and/or third-party interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretobefore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance.

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345. However, we do not intend to lay down a law that delay or laches alone should be the sole ground for throwing out a public interest litigation irrespective of the merit of the matter or the stage thereof. Keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms. We do not accept the explanation in this regard sought to be offered by the writ

petitioners. We have no doubt in our mind that the writ petitioners are guilty of serious delay and laches on their part.

346. *Lohia Machines* whereupon the High Court placed strong reliance, was not a case where a third-party interest was created. Therein, the validity of Rule 19-A of the Income Tax Rules, 1962 was in question. It may be true that therein the validity of the rule was challenged after 19 years but the plea of dismissing the writ petition on the ground of delay was negatived holding that the challenge in regard to the constitutionality of the said rule was otherwise well founded. It was not a case where during the interregnum, the parties altered their position and third-party interest was created. It is in that situation this Court observed that if a rule made by a rule-making authority is found to be outside the scope of its power, it is void and it is not at all relevant that its validity has not been questioned for a long period of time; if a rule is void it remains void whether it has been acquiesced in or not.

30. Having noticed these decisions, let us now deal with the first segment comprising of challenges to the statutory provisions and the 1996 Regulations (dated 26th November, 1996).

31. Insofar as the first segment is concerned, it can be conveniently broken into two parts. The petitioner's contention has been as follows:

a. The amendments in the BTAL Act and the MLRC were brought about not in accordance with the Rules of Business of the Maharashtra Legislative Assembly Rules, framed under Article 208 of the Constitution. That apart, the amendments are *mala fide* in the sense that the same were introduced to sanctify illegal permissions, earlier granted, for developing the Lavasa Hill Station Project. Such amendments with retrospective effect are also not tenable in law.
b. The 1996 Regulations (dated 26th November, 1996) have been framed by the GoM in exercise of power conferred by section 20(4) of the MRTP Act but such section has been incorrectly invoked. Power to frame Regulations can be traced to sections 158 and 159 of the MRTP Act and in terms thereof, it is only a Planning Authority that can frame Regulations and not the GoM. Although GoM is authorized to frame regulations in terms of sub-section (2) of section 159

> of the MRTP Act, such provision was not in existence till 22nd April, 2015 when it was brought into the statute vide section 17 of Amendment Act No.43 of 2014.

32. The *amicus*, while referring to Article 212 of the Constitution, submitted that proceedings in the Legislature of a State cannot be called in question on the ground of any alleged irregularity of procedure. According to him, the petitioner is plainly aggrieved by non-adherence to Rule 157 of the Rules of Business; but if there were any merit in his contention, Article 212 would operate as a bar for judicial invalidation of proceedings suffering from an alleged irregularity of procedure.

33. The Constitution Bench decision in **Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha**, reported in (2007) 3 SCC 184, was placed before us by the *amicus*. We consider it appropriate to quote relevant paragraphs from such decision hereinbelow:

> *"**Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions***
>
> **431.** We may summarise the principles that can be culled out from the above discussion. They are:
>
> (p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;"
>
> "652. It may be stated that initially it was contended by the respondents that this Court has no *power* to consider a complaint against any action taken by Parliament and no such complaint can *ever* be entertained by the Court. Mr Gopal Subramanium, appearing for the Attorney General, however, at a later stage conceded (and I may say, rightly) the jurisdiction of this Court to consider such complaint, but submitted that the Court must always keep in mind the fact

> that the power has been exercised by a coordinate organ of the State which has the jurisdiction to regulate its own proceedings within the four walls of the House. Unless, therefore, this Court is convinced that the action of the House is unconstitutional or wholly unlawful, it may not exercise its extraordinary jurisdiction by reappreciating the evidence and material before Parliament and substitute its own conclusions for the conclusions arrived at by the House.
>
> 653. In my opinion, the submission is well founded. This Court cannot be oblivious or unmindful of the fact that the legislature is one of the three organs of the State and is exercising powers under the same Constitution under which this Court is exercising the power of judicial review. It is, therefore, the duty of this Court to ensure that there is no abuse or misuse of power by the legislature without overlooking another equally important consideration that the Court is not a superior organ or an appellate forum over the other constitutional functionary. This Court, therefore, should exercise its power of judicial review with utmost care, caution and circumspection.
>
> 654. The principle has been succinctly stated by Sir John Donaldson, M.R. in *R.* v. *Her Majesty's Treasury, ex p Smedley (1985 QB 657*, QB at p. 666 thus:
>
> > 'It … behoves the courts to be ever sensitive to the paramount need to refrain from trespassing on the province of Parliament or, *so far as this can be avoided, even appearing to do so'*."
>
> (emphasis in original)

34. The *amicus* further submitted that although *mala fide* against the Legislature as a general principle cannot be alleged, nothing would preclude the Court from examining, on the touchstone of Article 14, whether the legislative act complained of suffers from arbitrariness, which would include nepotism, improper purpose and unequal treatment, or colourable exercise of power. In any case, it was his submission that the challenge to amend the laws in the present case is part of the whole challenge and despite amendments of the relevant statutory enactments, the same would not extend to protect permissions unlawfully granted. However, conscious of the significant delay in approaching the Court, it was

also his submission that the Court would have to consider its impact on third party interests.

35. On the point of alleged irregularity of procedure, Mr. Kumbhakoni placed before us a short note indicating chronology of events right from 17th May, 2004 when the process for amendment commenced. Since the petitioner has not taken exception to its contents, we reproduce the same after slight editing as under:

> **"17th May, 2004**: - Maharashtra Ordinance No.XI of 2004 [the Maharashtra Tenancy and Agricultural Laws (Amendment) Ordinance, 2004], was promulgated by the Governor of Maharashtra, to amend the BTAL Act and other similar statutes. *Inter-alia*, section 2(d) thereof shows that the explanation to section 63-IA of the BTAL Act has been amended with effect from 1st July, 2000.
>
> **28th May, 2004**: - The said Ordinance was laid before the State Legislature and a Bill, viz. L. A. Bill No. VIII of 2004, for converting the said Ordinance into an Act, was also introduced in the Maharashtra Legislative Assembly.
>
> **11th June, 2004**: - Owing to the aforesaid Session of the Legislature being prorogued, the Bill could not be passed.
>
> **3rd July, 2004** : - As the aforesaid Ordinance would have ceased to operate on 4th July, 2004, due to expiration of six weeks from the date of re-assembly of the State Legislature, as provided by Article 213(2)(a) of the Constitution, and as it was considered expedient to continue the operation of the provisions of the said Ordinance, in exercise of powers conferred by clause 1 of Article 213 of the Constitution of India, the Governor of Maharashtra was pleased to promulgate Maharashtra Ordinance No. XVI of 2004 [the Maharashtra Tenancy and Agricultural Laws (Amendment and Continuance) Ordinance, 2004], to amend the BTAL Act and other concerned statutes, as aforesaid.
>
> **4th November, 2004**: - A short session of the legislature was convened which, however, ended/prorogued on 6th November, 2004.
>
> **6th December, 2004**: - Bill No. XLIII of 2004 for converting the said Maharashtra Ordinance No. XVI of 2004 into an Act, was introduced in the Maharashtra Legislative Assembly **(Page 183).** On the same date, i.e. 6th December, 2004, one of the members of the Assembly, Mr. Narasayya Adam, representing Solapur City – South constituency, moved a motion for rejection of the aforesaid Bill **(Page 184)**. Detailed discussion took place in that regard. Ultimately, it was suggested by the

then Hon'ble Chief Minister that the said Bill be referred to the Joint Select Committee. A resolution was passed for referring the Bill, with the concurrence of the Maharashtra Legislative Council, to 19 members, Joint Select Committee. Consequently, Mr. Narasayya Adam proposed to withdraw his motion for rejecting the said Bill. Finally, with the permission of the House, the motion for rejecting the said Bill was withdrawn. However, the Joint Select Committee, could not be constituted and in the meanwhile, on 17th December, 2004, the Ordinance lapsed.

16th April, 2005 (Page 197) : - A motion was moved for recall of the decision to refer the aforesaid L. A. Bill No. XLIII of 2004 to the Joint Select Committee and for consideration of the said Bill by the House. The said motion was unanimously approved by the Maharashtra Legislative Assembly. Accordingly, the said Bill was considered and was unanimously approved by the Maharashtra Legislative Assembly. On the same day, i.e., on 16th April, 2005, the said Bill was placed before the Legislative Council and the same was considered, and approved by the majority despite opposition from some members.

5th May, 2005: - The Law and Judiciary Department sought assent of the Governor vide its letter **(Page 259)**, which clearly sets out the fact that the said Bill has been passed, both in the Legislative Assembly as also the Legislative Council. The Bill so passed in both the houses along with the minutes of both the houses, in that regard, were annexed with the said communication.

16th May, 2005: - The Governor of Maharashtra, granted his assent to the said Bill.

19th May, 2005: - Act No. XXV of 2005 [the Maharashtra Tenancy and Agricultural Laws (Amendment) Act, 2004], was published in the Gazette."

36. The *amicus* fairly submitted that he did not find any procedural infirmity in the process that was adopted.

37. However, not to be cowed down, the petitioner invited our attention to Rule 157 of the Rules of Business and contended that if a Bill is rejected by the Assembly, a Bill relating to the same subject shall not be introduced or moved within a period of 6 (six) months from the date of its rejection. In his reading of the factual

matrix, the Bill had been rejected and, therefore, within 6 (six) months of such rejection could not have been introduced or moved.

38. According to Mr. Kumbhakoni, the contention of the petitioner is factually and legally incorrect. The facts would clearly reveal that a Bill was moved for conversion of the Ordinance into the Act, whereupon rejection was prayed for by a member of the Legislative Assembly. Once it was decided to send the Bill to a Joint Select Committee for consideration, the said member withdrew the motion for rejection. However, the Joint Select Committee could not be constituted and by efflux of time the Ordinance lapsed. Finally, a motion was moved for withdrawing the Bill from the Joint Select Committee, which was approved and then the Bill was passed on the floor of the Assembly. On the same day, the Legislative Council too passed the Bill by majority. At no point of time, was there a rejection of the Bill. To attract Rule 157, the Bill had to be rejected. In the present case, the motion for rejection was withdrawn. In view thereof, Rule 157 has no application.

39. Mr. Kumbhakoni highlighted that proceedings of the Legislature are substantive as well as procedural. While the former is justiciable, the latter is not. Assuming that there is some substance in the argument of the petitioner that there has been some irregularity of procedure, on the facts of this case no illegality has been caused, far less patent, substantive or *ex facie* illegality, warranting interference. The decision of the Full Bench of the Madras High Court in **K. A. Mathialagan vs. P. Srinivasan**, reported in AIR 1973 Mad 371, was placed in support of the contention that over its own internal proceedings, the jurisdiction of the House is exclusive and absolute and cannot be interfered with by the courts, and that the power to frame a rule under Article 208 implies a power to deviate from the rule if the exigencies of circumstances so require. Relying on the decision in **Raja Ram Pal**

(supra), Mr. Kumbhakoni urged that the Court may not trespass into the province of the Legislature.

40. On alleged *mala fide* of the Legislature in amending the relevant enactment with retrospective effect, Mr. Kumbhakoni contended that the contention is wholly without any basis. He asserted that the Legislature's power to amend a provision with retrospective effect is beyond any cavil of doubt, so also the power to make the law applicable to certain situations contemplated by it; and law is well settled that even though the choice of the Legislature may be shown to be erroneous, the judiciary has no power to substitute its own wisdom for the legislative wisdom. The GoM had framed the 1996 Regulations, which came into effect from 26th November, 1996. Regulation 25 itself says that tourism shall be treated as a part of industry. From 1st July, 2000, the new tourism policy was framed which was to operate till 31st March, 2005. According to him, this was the reason for amending section 63(1-A) of the BTAL Act with retrospective effect and there is no infirmity, much less arbitrariness or unreasonableness, in such legislative action.

41. Our decision would be incomplete if a brief reference to the pleadings of the petitioner is not made.

42. Paragraph 6.25 is titled **"Maharashtra Act No. 25 of 2005 was not passed according to Maharashtra Legislative Assembly and Council Rules"**. In the 8 (eight) sub-paragraphs following it, the petitioner has averred what transpired in the Assembly. The main point urged therein is that once it was resolved to send the Bill to the Joint Select Committee unanimously, such decision could not have been cancelled and the Hon'ble Speaker neither should have accepted the motion moved by the then Revenue Minister of the State, Shri Rajendra Shingane, of the Nationalist Congress Party, seeking such cancellation nor

should he have allowed the Bill to be moved for amending the BTAL Act. The Bill is alleged to have been "passed in chaos", and it is also asserted that not only are such acts illegal and unconstitutional but is also a mischievous attempt to save the Lavasa Hill Station Project. The last sentence of the last sub-paragraph is to the effect that "(T)herefore Maharashtra Act No. XXV of 2005 (*sic*, is) liable to be quashed on the ground that mandatory procedure of Assembly was not followed while passing Maharashtra Bill No. XLIII of 2004".

43. The next paragraph, i.e., 6.26 is titled **"Retrospective Effect is arbitrary, illegal, under political influence and is only to legalize Lavasa project"**. Its 4 (four) sub-paragraphs refer to the amendment w.e.f. 1st July, 2000 being brought in force only to legalize Lavasa, since between 1999 and 2005 no other hill station was developed. Asserting that Legislature misused its power by acting illegally and unconstitutionally to save a private limited company, the petitioner has proceeded to quote a couple of Latin maxims and has then referred to certain decisions of the Supreme Court in relation to service matters, holding that right or benefit that has accrued in favour of an employee as per existing rules cannot be taken away by retrospective amendment of the rules.

44. Having noted the relevant pleadings in the writ petition, the rival contentions as well as the submission of the *amicus*, we next consider it prudent to look at some decisions of the Supreme Court directly on the point as to whether malice can be attributed to the legislature.

45. In **K. Nagaraj vs. State of Andhra Pradesh**, reported in (1985) 1 SCC 523, the Court held:

> "36. The argument of mala fides advanced by Shri A.T. Sampath, and adopted in passing by some of the other

> counsel, is without any basis. The burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these writ petitions. Besides, the Ordinance-making power being a legislative power, the argument of mala fides is misconceived. The Legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This fund of 'transferred malice' is unknown in the field of legislation."
>
> (emphasis ours)

46. The next decision is **State of West Bengal vs. Terra Firma Investment and Trading (P) Ltd.**, reported in (1995) 1 SCC 125. It was held therein that a legislative provision could be held to be invalid either on the ground of legislative incompetence or if the same violates any Constitutional provision, but no malice can be imputed to the Legislature (emphasis ours).

47. Yet again, the Supreme Court in **State of Himachal Pradesh vs. Narain Singh**, reported in (2009) 13 SCC 165, following the law laid down in **K. Nagaraj** (supra) held as follows:

> "19. An argument was, however, made before the High Court that the aforesaid amendment is actuated by a mala fide motive and is a piece of colourable legislation. The aforesaid contention was, however, not accepted by the High Court in the impugned judgment. In fact such contention is not tenable on principle."
>
> (emphasis ours)

48. Not too long ago, the Supreme Court in **Manish Kumar v. Union of India**, reported in (2021) 5 SCC 1, taking note of **K. Nagaraj** (supra) and **Narain Singh** (supra) reiterated the law in the following words:

> "62. It has been urged that the law was created by way of pandering to the real estate lobby and succumbing to their pressure or by way of placating their vested interests. Such an argument is nothing but a thinly disguised attempt at questioning the law of the legislature based on malice. A law is made by a body of elected representatives of the people. When they act in their legislative capacity, what is being rolled out is ordinary law. Should the same legislators sit to amend the Constitution, they would be acting as members of the Constituent Assembly. Whether it is ordinary legislation or an amendment to the Constitution, the activity is one of making the law. While malice may furnish a ground in an appropriate case to veto administrative action it is trite that malice does not furnish a ground to attack a plenary law. ***"
>
> (emphasis ours)

49. The Legislature's power to legislate within its field, both prospectively and retrospectively, is unquestionable. The jurisdiction of judicial review to interfere with legislative acts can be exercised in a limited manner, where the plinth of the challenge is legislative incompetence or unreasonable classification/manifest arbitrariness, thereby infringing Article 14 of the Constitution. A Legislature being the supreme law-making body, of course within the field earmarked for it, Courts have to be necessarily cautious while entertaining such challenges. However, the challenge to Maharashtra Act No. XXV of 2005 need not detain us for long since the challenge is based on an entirely different ground and which, in view of the bar of Article 212, is not entertainable. Article 212 ordains that:

> "**212. Courts not to inquire into proceedings of the Legislature**.—(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.
>
> (2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

50. **Raja Ram Pal** (supra) is an authority for the proposition that internal proceedings of the Legislature cannot be called into question on the ground of mere procedural irregularity. What the petitioner has alleged is that the proceedings leading to passage of Maharashtra Act No. XXV of 2005 were not carried on in accordance with the Rules of Business. This is a rather tenuous ground for our interference, which we have no hesitation to decline.

51. What remains of the challenge to Maharashtra Act No. XXV of 2005 is the aspect of retrospectivity. What is 'retrospectivity'? Since we find guidance from the decision in **Manish Kumar** (supra), we reproduce the same hereunder :

> "408. What then is retrospectivity? It is ordinarily the new law being applied to cases or facts, which came into existence prior to the enacting of the law. A retrospective law, in other words, either supplants an existing law or creates a new one and the legislature contemplates that the new law would apply in respect of a completed transaction. It may amount to reopening, in other words, what is accomplished under the earlier law, if there was one, or creating a new law, which applies to a past transaction."

52. After referring to several previous decisions, the Court in **Manish Kumar** (supra) held that every sovereign legislature is clothed with competence to make retrospective laws. It is open to the legislature, while making retrospective law, to take away vested rights. If a vested right can be taken away by a retrospective law, there can be no reason why the legislature cannot modify the vested rights.

53. It follows that whenever the Legislature amends an existing law and the amendments are made to operate retrospectively, it is not an exercise which is completely forbidden in law. In a case of the present nature, where a claim is raised of a vested right being

abrogated by retrospective operation of laws, the Court is duty bound to examine a valid plea based on the factors delineated in paragraph 411 of **Manish Kumar** (supra) reading as follows:

> "411. When a statute made by the sovereign legislature is found to have retrospective operation and the challenge is made under Article 14 of the Constitution, (*i*) the Court must consider whether the law, in its retrospectivity, manifests forbidden classification. (*ii*) Whether the law, in its retrospectivity, produces manifest arbitrariness, (*iii*) If a law is alleged to be violative of Article 19(1)(*g*), firstly, the Court, in an action by a citizen, would, in the first place, find whether the right claimed, falls, within the ambit of Article 19(1)(*g*). The Court will further enquire as to whether such a law is made, inter alia, by way of placing reasonable restrictions by looking into the public interest. In the case of law, which is found to be not unfair, it would also not fall foul of Article 21."

54. The said decision proceeds further to hold that where the law is challenged on the ground that it is violative of Fundamental Rights under Article 14, necessarily the court must enquire whether it is capricious, irrational, disproportionate, excessive and, finally, without any determining principle.

55. It is here that the objection of the respondents with regard to lack of pleadings appears to us to carry much substance. There is not a single direct pleading that by retrospective operation of the amendments, any vested right has been taken away. It seems that the words "vested right" are conspicuous by their absence in the entire writ petition. We are called upon to assume such a situation by reason of the petitioner's reference to certain decisions of the Supreme Court in paragraph 6.26.4 of the writ petition.

56. Law is well settled that when a challenge to a statute is proposed to be laid on the ground that it violates Article 14 of the Constitution, allegations that are specific, clear and unambiguous have to be made in that behalf and the Court has to be shown how

the impugned statute is discriminatory, i.e., without being referable to any classification that is rational and having a nexus with the object intended to be achieved thereby, or that the statute is manifestly arbitrary, being based on no discernible policy or principle. In the absence of adequate pleadings and grounds of challenge in support thereof, the respondents are right in their contention that no case for declaring Maharashtra Act No. XXV of 2005 has been set up. We accept such contention.

57. We also reject the petitioner's contention that the Legislature succumbed to pressure lobbies and hurriedly went about in bringing in laws to save the Lavasa Hill Station Project based on the contents of afore-quoted paragraph 62 of the decision in **Manish Kumar** (supra).

58. Insofar as the second part of the first segment is concerned, the petitioner's contention has been that the 1996 Regulations have been framed by the GoM in exercise of power conferred by section 20(4) of the MRTP Act but such section has been incorrectly invoked. Power to frame Regulations can be traced to sections 158 and 159 of the MRTP Act and in terms thereof, it is only a Planning Authority that can frame Regulations and not the GoM.

59. Mr. Kumbhakoni has vociferously argued that challenge to the 1996 Regulations is no longer *res integra*. He has referred to the decision of a coordinate bench of this Court in **Bombay Environmental Action Group and Anr. V. State of Maharashtra and Ors.**, reported in **1999 (2) Mh. L.J. 747**, where the validity of such regulations was examined and upheld. He has also referred to the fact that the schedule to the regulations included 8 (eight) villages of Mulshi taluka.

60. Mr. Kadam took serious exception to the casual approach of the petitioner in drafting the present petition. Despite claiming in the writ petition to have conducted thorough research (**para**

3.7/pg. 12), he feigned ignorance in considering the decision of this Court in **Bombay Environmental Action Group** (supra), which squarely covers the entire thrust of the petitioner's case. According to him, the said judgment was explicitly mentioned and relied upon by Lavasa Corporation, as respondent no.2, in its reply affidavit dated 28th August, 2013 filed in PIL No.109 of 2013 at paragraph 12, yet, the petitioner seeks to have the said judgment revisited without laying any foundation for the same.

61. We have perused the decision in **Bombay Environmental Action Group** (supra). We have also gathered from Lavasa Corporation's reply affidavit filed in the earlier round of litigation that reference to such decision was made, yet, the petitioner, has not referred to it anywhere in this writ petition. Had Mr. Kumbhakoni not drawn our attention to it, we would have examined the challenge to the 1996 Regulations as if it were a point not governed by any decision. Mr. Kadam is perhaps right in saying that no foundation has even been laid for revisiting such decision.

62. **Guruvayoor Devaswom Managing Committee** (supra) is a decision which cautions in paragraph 50 that

> "Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule."

We are not oblivious of decisions of Constitution Benches of the Supreme Court striking down Constitutional amendments as *ultra vires* the basis structure of the Constitution while hearing litigation initiated in public interest. It is, therefore, not the law that issues of Constitutional validity can never be examined in a public interest litigation. However, reading all the decisions on the point, we are persuaded to adopt the view that when the Supreme Court has used the word "ordinarily", what it connotes is that issues of

Constitutional validity of a statute or statutory rule urged in course of a public interest litigation may not be examined by the High Court in all cases but only in certain exceptional cases. We may not engage ourselves in any exercise of delineating what would amount to an exceptional case, but would venture to add that those issues of Constitutional validity which have not been previously pronounced upon could attract judicial review despite lapse of time in laying the challenge based on the ratio of the decision in **Lohia Machines** (supra); but certainly not in a case of this nature, where we find that the law laid down in **Bombay Environmental Action Group** (supra) has never been doubted and has stood the test of time over two decades. There are no clear, compelling or substantial reasons for its reconsideration or for taking a view different from it. Based on the rule of *stare decisis*, the decision in **Bombay Environmental Action Group** (supra) does not call for being revisited and we apply the law laid down therein to spurn the petitioner's challenge to the 1996 Regulations.

63. The issues emanating from the first segment of the petitioner's challenge having been addressed, we now move on to the second segment.

64. Several important points, forming part of this segment, have been raised by the *amicus*. First, despite being directly, if not indirectly, interested in the contract entered into by or on behalf of MKVDC with Lavasa Corporation for developing the Lavasa Hill Station Project, Shri Ajit Pawar, acting in the capacity of *ex-officio* Chairman of MKVDC did not in terms of section 7(3) of the Krishna Valley Development Act, 1996 (**"KVD Act"**, hereafter) disclose the nature of his interest to MKVDC and on the contrary, by his active participation and persuasion, ensured that Lavasa Corporation is the ultimate beneficiary. Secondly, no tender was invited by MKVDC prior to granting rights in respect of natural resources to

Lavasa Corporation and there appears to be no disclosure of any special reason as to why the circumstances did not call for a tender to be floated. Thirdly, permissions were issued left, right and centre without bestowing due care and attention to notes prepared in the relevant file by some right-thinking officers expressing doubt about the fairness of the proposal. Fourthly and finally, rates were changed from 'commercial' to 'common' although tourism is industry according to the policy adopted by the GoM and exemptions in respect of stamp duty were given which appear to be quite unusual.

65. Coupled with all these is the petitioner's additional contention that Shri Sharad Pawar and Smt. Supriya Sule having chosen not to file reply affidavits, the allegations levelled by the petitioner against Shri Pawar and Smt. Sule must be deemed to have been admitted by them. We may immediately deal with this part of the petitioner's submission before dealing with the contentions of the *amicus*.

66. While contending that the Lavasa Hill Station Project is totally illegal and *void ab initio*, the petitioner has levelled allegations against Shri Sharad Pawar, Shri Ajit Pawar and Smt. Supriya Sule. According to the petitioner, but for the influence that was exerted by these three political personalities, officials of the State Government and MKVDC would not have succumbed and taken decisions contrary to law and prejudicial to public interest.

67. Shri Ajit Pawar in his reply affidavit has denied the material allegations against him. However, Shri Sharad Pawar and Smt. Supriya Sule, despite opportunity extended to them have chosen not to file reply affidavits.

68. The *amicus* has referred to the decisions in **Shriram Surajmal vs. Shriram Jhunjhunwalla**, reported in ILR Vol. XL 788, **Asha vs. Pt. B.D. Sharma University of Health Sciences**, reported in (2012) 7 SCC 389, and **V.K.M. Kattha Industries**

Private Limited vs State of Haryana, reported in (2013) 9 SCC 338, to emphasize that an averment of a party is required to be specifically denied by the opposite party and if there is no specific denial, then such averment is deemed to have been admitted by the opposite party. The Constitution Bench decision in **C.S. Rowjee vs. The State of Andhra Pradesh**, reported in AIR 1964 SC 962, was also cited to contend that allegations of *mala fide* and improper motive levelled against the Chief Minister of the State not having been controverted by the Chief Minister by filing an affidavit personally, the Court observed that with uneasiness it was tasked to decide whether it would be reasonable to draw the inference of *mala fide* on the part of the Chief Minister in the absence of an effective answer to the propriety of drawing the inference which the appellants in that case desired. Ultimately, in paragraph 22, the Court was constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill-will against the appellants, stood unrebutted.

69. Based on such decisions, the *amicus* contended that what the petitioner had alleged against Shri Sharad Pawar and Smt. Supriya Sule, in the absence of any denial by them of such allegations in the writ petition by placing their version and/or by denying the allegations, stand unrebutted and the statements could be accepted by the Court. At the same time, he reminded us that the petitioner had not filed any rejoinder.

70. Apart from **C.S. Rowjee** (supra) there are two other decisions of the Supreme Court of the contemporary era where non-denial of averments was regarded as a factor in determining the issues before the Court. The first is **Bira Kishore Deb vs. State of Orissa**, reported in AIR 1964 SC 1501, and the second is **Hazara Singh Gill vs. State of Punjab**, reported in AIR 1965 SC 720. In the latter case, the Court ruled as follows:

> "5. In the absence of any specific denial on the part of the State, the Chief Minister and the Superintendent of Police concerned, we must reluctantly go by the affidavit filed by the petitioner. In proceedings of this kind, it should be known that the Court does not examine witnesses in support of allegations of fact made by either side. Ordinarily, the Court acts upon the affidavit of one side or that of the other. But if one side omits to make an affidavit in reply the affidavit of the other side remains uncontroverted."

71. Mr. Kadam, however, spared no effort to distinguish the decision in **C.S. Rowjee** (supra) and the other decisions relied on by the *amicus*. According to him, the allegations of misuse of power, undue favouritism, nepotism and arbitrariness have been levelled by the petitioner in a most casual manner. The autobiography of Shri Sharad Pawar would reveal that he had neither done any wrong nor did he hide any fact. There is nothing on record to suggest that Shri Sharad Pawar took any action or decision at any time that could amount to favouritism, nepotism, undue influence or any of the colourful adjectives liberally used by the petitioner in the writ petition. Development of Mulshi Taluka where Lavasa is situated has been the object of the State through successful governments, irrespective of who was in power. Since 1993 when, admittedly, neither Lavasa Corporation nor HCC were on the scene. It was his further contention that the allegations against Shri Sharad Pawar and Smt. Supriya Sule are speculative, without any factual foundation, reckless and sensationalist, and that no inference ought to be drawn from incomplete facts, particularly when there is no specific case with particulars pleaded requiring an answer.

72. Paragraph 92 of the Constitution Bench decision in **E.P. Royappa vs. State of Tamil Nadu**, reported in (1974) 4 SCC 3, was referred to in support of the contention that the Court should be slow to draw dubious inference from incomplete facts placed

before it by a party, particularly when the imputations are vague and they are made against the holder of an office having high responsibility in the administration. Next, the decision in the **State of Madhya Pradesh and others vs. Nandlal Jaiswal**, reported in (1986) 4 SCC 566, was referred to and paragraph 39 thereof placed, to drive home the point that unless material facts with necessary particulars in the pleadings are presented before the Court, no adverse finding ought to be recorded by the Court.

73. In the absence of a specific case of proven *mala fide* evidenced by the documents/record, Mr. Kadam contended that there was no case for Shri Sharad Pawar and Smt. Supriya Sule to answer. The decision in **Hem Lal Bhandari vs. State of Sikkim**, reported in (1987) 2 SCC 9, was relied on for the proposition that where the allegations are vague in nature, it is not necessary to file a counter affidavit; and that, to necessitate a person placed in high position to controvert allegations made against him by filing an affidavit, the allegations need to be specific, pointed and necessary to be controverted.

74. The decision in **C.S. Rowjee** (supra) was sought to be distinguished by Mr. Kadam by submitting that Shri Sharad Pawar and Smt. Supriya Sule were not in power or part of the government to confer any benefit on any one. Also, the petitioner urges this Court to draw inferences behind the back of the alleged beneficiaries on the basis of vague and incomplete particulars and with no specific allegations; hence, there is no case to meet in the writ petition as framed and filed, and there lies the difference. According to Mr. Kadam, the petitioner goes to the extent of presuming that the entire government machinery as well as the legislature of the State acted with a motive of favouritism and nepotism. Such allegations are general, wild and of reckless nature, which do not deserve to be entertained.

75. We are not persuaded to agree with Mr. Kadam's particular line of reasoning that since in **C.S. Rowjee** (supra) the Chief Minister was in a position to exercise power and influence whereas, according to him, Shri Sharad Pawar was not in a position to so exercise as he was not a minster at the relevant time, could be a valid ground for holding that the principle on which such decision was rendered would not apply here. The law laid down in **C.S. Rowjee (supra)** proceeds on the premise that allegations of *mala fides* and of improper motives on the part of those in power are frequently made and that such frequency having increased in recent times it had become the duty of the Court to scrutinize such allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact; and in this task which is thus cast on the Courts, it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of *mala fides* on the part of the authorities of the status of those concerned in the appeal have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. Since an allegation of bias, hostility and personal ill-will of the Chief Minister against the appellants had been levelled and despite the incumbent Chief Minister being arrayed *eo nomine* as a respondent he did not controvert the allegations levelled against him by filing a counter affidavit, the question that the Court had to decide was regarding the inference to be drawn from the facts alleged which, in the absence of their denial, had to be taken as

true. There being no denial, the allegations were held to be unrebutted. Although not referred to in the decision, it was the doctrine of *non-traverse* that came to be applied. In our view, there are two reasons for not accepting the distinction that is sought to be made. First, it cannot be and is not disputed that Shri Sharad Pawar has been an important political personality for years. Although he may not have occupied any high public office in the State in 1999, history reveals that his party, the NCP, was part of the coalition Government in Maharashtra in 1999 and the Deputy Chief Minister was from the NCP. That apart, he was the Union Minister of Agriculture from 2004 to 2014. Being an all-powerful political personality from Maharashtra, he cannot be immune to the rigours of the law laid down in **C.S. Rowjee** (supra). Secondly, it matters little as to who the respondent is. He could be anybody, the Chief Minister, a minister, a bureaucrat, a police officer, a corporator or even a private party. Smt. Supriya Sule cannot also claim immunity in view of the decisions on the point relied on by the *amicus*. An allegation remaining uncontroverted, it is ultimately for the Court to examine the materials on record and upon consideration of all relevant facts as well as the surrounding circumstances decide what would be the effect and impact of the non-denial/non-rebuttal and the worth to be placed on such an admission. Any absurd claim made by a party cannot succeed by applying the doctrine of *non-traverse* only because the other party has not contested the claim. It is for the Court to satisfy itself how far the admission could advance the case of the party claiming the relief.

76. Let us now examine whether Shri Sharad Pawar and Smt. Supriya Sule can be deemed to have admitted what was alleged against them in the writ petition. While so examining, right now we dispose of a side argument of Mr. Kadam that the petitioner wants

us to draw inferences without making the alleged beneficiaries as parties. That the beneficiaries have not been impleaded as parties would not stand in the way of throwing out the contention raised by the petitioner at the threshold. As would be evident from the discussions that follow, the Lavasa Hill Station Project was the brainchild of Shri Sharad Pawar. In view of his failure and/or omission to rebut the allegation that he exerted his influence and clout to push the Government machinery to ensure that his dream comes true, we do not consider that disposal of the point under consideration would require the presence of the beneficiaries. The argument, thus, stands rejected.

77. Statements/allegations made by the petitioner against Shri Sharad Pawar and Smt. Supriya Sule are found in several paragraphs of the writ petition. We give hereinbelow a gist of what is stated/alleged in each of such paragraphs:

- 2.3g. Shri Sharad Pawar claimed that he had chosen the site of Lavasa and that his daughter Smt. Supriya Sule. was a shareholder of Lake City Corp. (Lavasa Corp. Ltd.) Shri Sharad Pawar himself asked the Chairman and MD of HCC to develop the hill station. The father-in-law of Smt. Supriya Sule was Director of HCC from 1993 to 2006.
- 2.3.(i). Smt. Supriya Sule was shareholder in Lake City Corp. She represents Baramati parliamentary constituency under which all the 18 villages (of Lavasa city) were included in the year 2009.
- 6.8.4. While responding to criticism when Lavasa Hill Station Project work started in 2004, Shri Sharad Pawar played an important role to defend such a project through various media reports that Lavasa is a legal project and nothing is illegal in it and he himself selected the site for Lavasa and asked his friend Shri Ajit Gulabchand, Chairman and MD of HCC to develop the hill station.
- 6.8.5. Considering the political positions of Shri Ajit Pawar, Shri Sharad Pawar and Smt. Supriya Sule, it seems that MKVDC was under large pressure to extend all types of

cooperation to fulfill the devil desire of Lake City Corp. Pvt. Ltd.

- 6.9.1. Shri Ajit Pawar called for tenders, without publicity, and granted public land on lease in violation of powers under MKVDC Act to Lake City Corp. Pvt. Ltd. in which his sister Smt. Supriya Sule was shareholder.
- 6.13.4. "It seems that Lake City Copr. Pvt Ltd. got near about all necessary permissions by hook or crook in 2000 and thereafter. It seems that there is a large Political influence of Mr. Ajit Pawar, Mrs. Supriya Sule, Mr. Sharad Pawar over all scenario of this controversial ... project in which father in law of Mrs. Supriya Sule i.e. Mr. Bhalchandra Sule was director in HCC for long period. As they were in power in the State and Centre, their status and statements caused to create atmosphere and impression that 'Lavasa' is a government venture. From the above permissions, without any provision of law, it seems that Lavasa project is well pre-planned conspiracy of various govt officers and developer Lavasa. This is best example of breach of trust, nepotism, undue political favouritism, arbitrariness in the state."
- 6.15.1. Restructuring of Baramati parliamentary constituency and the whole area covered by Lavasa Hill Station for the first time having been brought within such constituency, shows the keen interest of Smt. Supriya Sule to keep control over the area where Lavasa is being developed. Considering this in the background of the permissions given to Lake City Corp Pvt Ltd/Lavasa Corp Ltd. this could not be a coincidence.
- 6.20.6. The preceding statements show a nexus between Lavasa and the State Government project and this would not have happened if Shri Sharad Pawar and Shri Ajit Pawar were not in power. This is breach of trust conferred on minister while taking oath of secrecy.
- 6.23.2. According to Shri Sharad Pawar, 500 acres of land purchased by Yashomala was transferred to Lake City in which Smt. Supriya Sule and her husband were shareholders.
- 6.23.3. Yashomala was owned by close associates of Shri Sharad Pawar. Statements have been made to show how individuals (non-parties to the writ petition) were closely associated with Shri Sharad Pawar and his family, and that

intention to develop a private hill station in 18 villages of Mulshi, Velhe, etc. taluka of Pune district was made known to all the persons mentioned therein by the Government before official announcement.

- 6.23.5. The statement of Shri Sharad Pawar in his autobiography that Lavasa Hill Station is his own idea and that "all four persons mentioned above" are his close associates shows that he is main source of inspiration behind Lavasa project.
- 6.24.2. Shri Sharad Pawar, ex Chief Minister of Maharashtra in an interview admitted having selected the site for Lavasa and introduced the site to his close friend Shri Ajit Gulabchand, Managing Director of HCC. Shri Sharad Pawar also admitted that his daughter Smt. Supriya Sule was prominent shareholder in the Lavasa project in its initial stage.
- 6.24.3. Members of the Pawar family influenced the government machinery, officers of Resp. No.1 and Legislature and caused them to favour Lavasa. Shri Sharad Pawar and Smt. Supriya Sule defended time to time this Lavasa project through media saying nothing is illegal in Lavasa. Hence, they were being made parties to the writ petition so that they could file a reply and defend the allegations if they so desire.
- 6.24.3. (same paragraph no. as above, by mistake) A meeting was held on 14th July 2007 to understand the Lavasa Hill Station Project and discuss the problems encountered in its implementation (Ext. 'X') which was attended, *inter alia*, by Shri Sharad Pawar as Union Minister for Agriculture, the Chief Minister of Maharashtra and Shri Ajit Pawar. This shows direct involvement/interest of Shri Sharad Pawar and Shri Ajit Pawar family in Lavasa … project
- 6.25.3. When L.A Bill No. XLIII of 2004 was introduced, it was strongly opposed by the then opposition leader on the ground that the bill was introduced "only to save one strong political person and one industrialist and their project indicating Mr. Sharad Pawar and Mr. Ajit Gulabchand".

78. The *amicus* had handed over to us a second note providing information about the three of the Pawar family who, according to

him, played significant roles in the development of Lavasa. An edited reproduction of the same, to have a broad overview of the plea of the petitioner and how the members of the Pawar family could be linked to the development of the Lavasa Hill Station Project, may not be inapt and hence is given hereunder for facility of convenience:

1. Shri Sharad Pawar (R-11)

a. Senior politician of the Nationalist Congress Party ("NCP"), which was a member of the coalition State Government at the relevant time. He was an NCP Member of the Lok Sabha from Baramati Constituency between 1991 and 2014, and was the Minister for Agriculture in the Central Government between 2004 and 2014. He has been a Member of the Rajya Sabha from 2014 till date. The area of the 'Lavasa' project falls within the Baramati Constituency.

b. He claims to have had the idea of developing the area as a hill station, to have identified the site, and to have involved his old friend, Ajit Gulabchand, in the project. He also stated that Yashomala had purchased 5000-6000 acres of land in the area. *[See: Interview with DNA newspaper (Ptn./Pg. 176) and his Autobiography, "Lok Maze Sangati" (Ptn./Pg. 164)]*.

c. His daughter, Smt. Supriya Sule and son-in-law, Shri Sadanand Sule, were shareholders in Yashomala. Yashomala merged into Lavasa Corporation pursuant to this Court's approval on 1st August, 2002, as a consequence of which the assets and liabilities of Yashomala became those of Lavasa Corporation. Supriya and Sadanand Sule jointly received equity shares and redeemable preference shares in Lavasa Corporation, by virtue of the merger.

d. Shri Sadanand Sule was also a party to a Shareholders Agreement dated 9th December, 2003 and Deed of Adherence dated 27th September, 2005 regarding the shareholding in Lavasa

Corporation. The other parties to these agreements were (i) HCC (R14), (ii) Hindustan Finvest Ltd., (iii) Hincon Holdings Ltd., (iv) Lavasa Corporation (R9), (v) Shri Aniruddha Deshpande, (vi) Shri Vinay Maniar, (vii) Janpath Investments & Holdings Limited and (viii) Venkateshwara Hatcheries Pvt. Ltd. *[DRHP @ Ptn/ Pg. 161]*.

e. Shri Vithal Maniar, the father of Shri Vinay Maniar, is a trustee of at least three trusts which are connected with the Pawar family, being, Vidya Pratishthan, Pawar Public Charitable Trust, and Pawar Vidya Charitable Trust *[See (i) Ptn./ Para 6.23, and (ii) DRHP @ Ptn./ Pg. 162]*.

f. His nephew, Shri Ajit Pawar was the Minister for Irrigation and ex-officio Chairman of the MKVDC at the relevant time. Shri Ajit Pawar approved the grant of a lease of 141.15 hectares of land (largely submerged) by MKVDC in favour of Lavasa Corporation.

g. He attended a meeting at the project site in 2007 in respect of the 'Lavasa' Project, which was also attended by the then Chief Minister of Maharashtra, Shri Ajit Pawar, Shri Ajit Gulabchand, and other officers of Lavasa Corporation; at this time, he was the Union Minister for Agriculture.

2. Shri Ajit Pawar [R12]

a. He is the nephew of Shri Sharad Pawar [R11].

b. He was the Minister for Irrigation and ex-officio Chairman of the MKVDC at the relevant time.

c. He granted an approval on 18th May, 2002 to Lavasa's Corporation's proposal for construction of bandharas/weirs on the backwaters of the Varasgaon/Mose dam. This approval was thereafter given *ex post facto* sanction by MKVDC's Governing Council on 20th June, 2002.

d. Pursuant to this decision, an agreement dated 2nd September, 2002 and a Lease Agreement dated 23rd September, 2002 were executed between MKVDC and Lavasa Corporation whereby land

admeasuring 141.15 hectares (largely submerged) was leased to Lavasa Corporation for a period of 30 years.

e. He also gave his approval for a change of the rate payable by Lavasa Corporation for the water from the commercial rate to the domestic/common rate, which decision was also approved by MKVDC's Governing Council.

f. He was present in 2007 at the meeting attended, *inter alia*, by the then Chief Minister, Shri Sharad Pawar and Shri Ajit Gulabchand, to discuss the 'Lavasa' Project.

3. Smt. Supriya Sule [R13]

a. She is the daughter of Shri Sharad Pawar [R11] and the cousin sister of Shri Ajit Pawar [R12].

b. She is a Member of Lok Sabha from Baramati Constituency from 2009 till date. The area of the 'Lavasa' project falls within the Baramati Constituency.

c. She is the wife of Sadanand Sule.

d. As stated above, she and Shri Sadanand Sule were initially shareholders in Yashomala and thereafter jointly received equity shares and redeemable preference shares in Lavasa Corporation by virtue of the merger of Yashomala with Lavasa Corporation.

79. On perusal of the allegations made by the petitioner against Shri Sharad Pawar and Smt. Supriya Sule and the broad overview available from the contents of the preceding paragraph in the light of the surrounding circumstances, we are not persuaded to agree with Mr. Kadam that all the allegations are either vague or too general in nature, without being backed by any evidence annexed to the writ petition, so that such allegations could be deemed as admitted. Although the writ petition may not have been too elegantly drafted, the nature of allegations levelled therein are comprehensible to suggest, to a reasonable extent, of what the case of the petitioner has been which the respondents were

required to meet. It is the cardinal principle that by enforcing the rules of pleading, what the Court intends is to narrow down the controversy between the parties as well as to give notice to the parties that a particular point raised by a party to the proceedings in a pleading could be raised by him and that the other party must be ready to meet such point. In other words, the parties should not be taken by surprise in the midst of the proceedings. If Shri Sharad Pawar and Smt. Supriya Sule perceived that no clear, specific and direct allegations had been levelled against them by the petitioner and that they were not required to answer the same by filing a reply affidavit, it is perfectly open to them not to file it. Tongue-tied they might remain, but at their risk and peril for, after all, it is ultimately for the Court to examine the allegations and proceed to draw inferences if there is an evasive denial or a total absence of denial. The crux of the petitioner's case, as can be gathered from the factual narrative above, is that the Pawars by reason of their political standings are very powerful and influential people and it was the political clout and enormous influence exercised by the Pawars on the Government machinery that led to development of the Lavasa Hill Station Project. In the absence of an effective answer by Shri Sharad Pawar and Smt. Supriya Sule to the propriety of drawing the inference that the petitioner desires by referring to the complete absence of denial and the surrounding circumstances (of the petitioner alleging that the Government machinery worked unusually fast to give effect to the wishes of Shri Sharad Pawar resulting in the grant of permissions, otherwise unlawful, involvement of a company in which Smt. Supriya Sule held shares, as well as Shri Ajit Pawar's initial decision to approve Lavasa's Corporation's proposal for construction of bandharas/weirs on the backwaters of the Varasgaon/Mose dam on 18th May, 2002 allegedly without disclosing his direct/indirect interest, followed by

ex post facto sanction by MKVDC's Governing Council on 20th June, 2002 and subsequent execution of agreements which were again followed up by Shri Sharad Pawar by having a meeting with the Chief Minister, Shri Ajit Pawar, etc. in regard to problems being encountered to implement the project), all with a view to give shape to Shri Sharad Pawar's dream project of Lavasa ~ it cannot be said that exertion of influence and clout by Shri Sharad Pawar and Smt. Supriya Sule is an unreasonable inference that cannot be drawn from the facts. The unrebutted allegations have given rise to a situation where we are constrained to observe that the petitioner having laid a challenge to Shri Sharad Pawar and Smt. Supriya Sule to file reply (in the first of the two 6.24.3. numbered paragraphs in the writ petition) and the challenge not having been countered, we are left to judge the veracity of the allegations on tests of probability without anything more substantial by way of answer. Shri Sharad Pawar and Smt. Supriya Sule being personally interested in the project of the hill station, it is proved by preponderance of probability that the allegations are true. However, to what extent the same would aid the petitioner's claim for relief is altogether a different question.

80. That there was a failure to follow a fair and transparent procedure consistent with Constitutional norms and ethos is also clearly noticeable, which we now propose to discuss. While dealing with the first contention of the *amicus* encapsulated in paragraph 64 supra, and indeed having regard to the turn of events that have been noticed thus far, we wonder whether, in the absence of any indication to the contrary in the relevant records that were produced, Shri Ajit Pawar can ever be held to have been justified in taking active part in the decision-making process for setting up the Lavasa Hill Station Project without disclosing his direct or indirect interest in such project before the Governing Council of MKVDC

emerging from his blood relationship with Shri Sharad Pawar and Smt. Supriya Sule (being personalities having sufficient interests in the project); however, importantly, although we do not find any direct case in the writ petition that Shri Ajit Pawar breached a duty he owed in terms of section 7(3) of the KVD Act, in a PIL it is for the State and the official respondents to bare all details in respect of transactions which fall for scrutiny of the Court. As the Minister for Irrigation and holder of a Constitutional office by virtue of which he was the Chairman of the MKVDC, it was the solemn duty of Shri Ajit Pawar to disclose his direct or indirect interest in the matter; but there is nothing on record to suggest that he did disclose his interest and thereby discharged the duty enjoined on him by section 7(3) of the KVD Act. Limited to that extent, Shri Ajit Pawar is found to be remiss in his duty. Also, having filed reply affidavit to the writ petition and there being no rejoinder thereto filed by the petitioner, the contents of the reply by applying the doctrine of *non traverse* stand unrebutted by the petitioner.

81. While countering the second point of the *amicus* that no tender/auction was called for, the respondents have heavily relied on the decisions in **Kasturi Lal Lakshmi Reddy vs. State of Jammu & Kashmir**, reported in (1980) 4 SCC 1, **Sachindanand Pandey vs. State of West Bengal**, reported in (1987) 2 SCC 295, **Netai Bag vs. State of West Bengal**, reported in (2000) 8 SCC 262, and **J.S. Luthra Academy vs. State of Jammu & Kashmir**, reported in (2018) 18 SCC 65, to support their contention that inviting tenders or conducting auctions while the Government distributes largess in all cases is not the Constitutional mandate of Article 14. We record that the *amicus* has aptly cited the Constitution Bench decision in **Natural Resources Allocation, In Re, Special Reference No.1 of 2012**, reported in (2012) 10 SCC 1, to contend that each State action, to escape the wrath of

Article 14, has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment, and that even if in a given case the procedure for auctioning natural resources is deviated from, there have to be compelling reasons which must satisfy the test of fairness and strict compliance with the aforesaid inherent principles of Article 14. It is the further submission of the *amicus* that no reason, much less compelling reasons, appear to have been advanced by MKVDC for not following the just and fair procedure of a tender/an auction which would have been in conformity with the demands of Article 14, or why it was required to consider the proposal of Lavasa Corporation as a special case. Also, the file notes do not reflect the nature of discussion that preceded the allotment in favour of Lavasa Corporation. The answer that is advanced on behalf of MKVDC while dealing with this part of the *amicus's* submission is that MKVDC considered and approved the proposal of Lavasa Corporation for grant of water/land and permission to construct bhandaras/weirs, on the basis that Lavasa Corporation had been granted permission dated 1st June 2001 under the 1996 Regulations to develop a hill station and that it was essential to have a water source for tourism, boating, plantation and domestic use. As the permission to develop the hill station in that area had been given to Lavasa Corporation by the GoM, there was no question of MKVDC being required to call for tenders from other parties, or of MKVDC allotting the water and land to any third party.

82. The *amicus* referred to the decisions in **M.C. Mehta vs. Kamal Nath**, reported in (1997) 1 SCC 388, and **Fomento Resorts and Hotels Ltd. vs. Minguel Martins**, reported in (2009) 3 SCC 571, for enlightening what the doctrine of 'public

trust' means and how it is relevant in the present case. Referring to paragraph 25 of **M.C. Mehta** (supra), it is highlighted that the 'public trust' doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to the *amicus*, the manner in which the Chairman of MKVDC and those public officers responsible for taking decisions acted, to dole out favours to Lavasa Corporation, amount to betrayal of the trust reposed in them by the public with regard to discharge of their duties in larger public interest.

83. The submissions of the *amicus* are indeed of great relevance. The Government as well as public bodies are trustees of the powers vested in them by the people of India. It is, thus, their paramount duty to discharge the trust reposed in them by acting in a manner that sub-serves public interest best. Power that is conferred has to be exercised in a manner which satisfies the tests of fairness, reasonableness, objectivity, and equality. Exercise of such power in conformity with law under the over-arching duty to serve public interest in good faith is a facet of the Rule of Law.

84. With a deep sense of pain and remorse, we feel compelled to take judicial notice of the malaise of looting of India and its natural resources by its own people in the recent past. The roots of such malaise have, without doubt, set in deep. The country is faced with a situation where uprooting of this malaise seems to be difficult, if not impossible. For this to happen, first and foremost, the mindset

of the people needs to change. The need of the hour is awakening of the collective consciousness of 'we the people of India'. Greed, dishonesty, hatred, revenge, insensitivity, selfishness, jealousy and anger must give way to an unwavering faith in the Constitution, unadulterated love and affection, unlimited compassion, unflinching mutual trust, and unceasing sacrifice for the greater benefit of the nation. Above all, concern for the welfare of the people and zero tolerance for corruption must override all other considerations. If the greed and dishonesty for power and money continue unabated, the future does not augur too well for the country. We are conscious that it is a tall order to bring about an overhauling of the system to restore purity in governance of the people by the administration. Although by the mechanism of public interest litigation and through interventions of the Supreme Court and the High Courts there have been several instances of judicial invalidation of *ultra vires* acts, a 'PIL', it is well-known, is not a panacea for all ills. Despite judicial independence forming a part of the basic structure of the Constitution and despite power conferred under Article 226 of the Constitution on the high courts being vast and pervasive, the high courts cannot act like the proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226 of the Constitution. The high courts have to regulate writ proceedings abreast of certain guidelines and self-imposed limitations that have evolved through pronouncements of the Supreme Court. Even when some defect is found in the decision-making process, the high courts have to exercise discretionary powers with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The larger public interest has to be borne in mind while deciding whether intervention is called for or not; and only when the court forms an opinion that overwhelming public interest

requires interference should it interfere, is the law.

85. It is, thus, axiomatic that we have to keep to the broad and fundamental principles that regulate the issuance of writs, lest the exercise of jurisdiction becomes rudderless and unguided. In all cases that come before the Court, judicial discretion must follow set legal principles. As can be seen from the facts of the present case, setting up of the Lavasa Hill Station Project commenced in 2002 and this litigation in public interest has been instituted in August, 2018. Much water has since flown under the bridge, which is a material circumstance and perhaps cannot be ignored.

86. Tested on the anvil of the principles laid down in **Natural Resources Allocation** (supra), **M.C. Mehta** (supra) and **Fomento Resorts and Hotels Ltd.** (supra) and the doctrine of public trust, we are inclined to the view that MKVDC would have done better to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few. Also, if the petitioner were to implead the other members of the Governing Council of MKVDC who were parties to the decision dated 20th June 2002 and allege *mala fide* against them, the same would have certainly changed the whole complexion of the matter.

87. However, such view of ours notwithstanding, but considering the nature of pleadings as well as the above contentions as advanced by the *amicus* and the petitioner and in the way the same have been countered by the respondents, we only observe that this judgment could have had a different script if the petitioner were vigilant and sought for redress with promptitude. At this distance of time, when even Lavasa Corporation's existence is under a cloud, the contentions as raised by the *amicus* as well as the petitioner as regards inertia to call for tender/auction, unlawful permissions and unauthorized change of rates, in the facts of this

case, are reduced to mere academic interest rather than of practical importance. The objection relating to gross delay assumes importance in view of several subsequent or intervening events after accrual of the cause of action to move the Court. Although the cause of action arose from 1996, the petitioner approached the Court for the first time in 2011, and thereafter in 2013 and finally in 2018.

88. We are mindful that the petitioner knocked the doors of this Court twice before filing of this petition. We are also conscious that to espouse the cause of the nature as raised in the present petition, involving some powerful respondents, is neither so easy nor common and more particularly considering the issues as raised. The petitioner nonetheless has shown a serious concern and commitment to take up the cause as espoused in the writ petition. However, the law would require us to outweigh the cause on delay for the reasons we discuss now.

89. It is the ordinary rule of litigation that the rights of parties would stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the Court. This public interest litigation having been instituted on 24th August 2018, that would be the relevant date and not the dates when he invoked the writ jurisdiction earlier (in 2011 or 2013). The events between the cause of action and the date of commencement of this litigation ought to lead to denial of relief in equity by efflux of time. Delay defeats equity. Indubitably, third-party interests have been created and granting relief to the petitioner, as prayed, would most certainly result in unsettling settled matters on account of events happening in-between. The *amicus* very fairly submitted that the delay is a circumstance which cannot be simply brushed aside but a view either way could be taken. According to him, some leeway

could be given considering that the petitioner had been representing farmers of Nashik, and in appeals the farmers lost out because of the amendments in the BTAL Act and the MLRC. Although relief may not be denied solely on account of time lost in prosecuting proceedings, we are clear in our mind that ultimately, the inequities pitted against equities have to be weighed and if the balance tilts against the petitioner, relief has to be declined to him notwithstanding that in law, he had set up a very strong case therefor.

90. Although this public interest litigation is designed to espouse a definite public purpose and intended to serve a noble public cause of standing by the farmers, we feel that a 'judicial hands-off' approach is perhaps best suited in the present case having regard to the intervening delay between the alleged acts of violation of Constitutional guarantees and institution of this public interest litigation. If at all interference were an option upon weighing the factors for and against interference, in our considered opinion, the harm that interference at this belated stage would cause is likely to far out-weigh the benefit that could, if at all, accrue to the farmers on whose behalf the petitioner has instituted this writ petition. It has been almost more than a decade that Lavasa has come into existence. By this time, the farmers have lost rights in respect of their properties, which have since been developed and third-party interests created in respect thereof. The lands may not be conducive for farming any more. There is no claim by a farmer that he has not received adequate compensation. We cannot lose sight that not all farmers in India are illiterate or without resources to assert their rights. If there has not been a single foray to this Court at the instance of the farmers to protect their properties, it would not be unreasonable to assume that they were/are happy and satisfied with whatever bargain they were able to make. Property

right, though no longer a Fundamental Right, is still a Constitutional right and could have been enforced by any disgruntled farmer. In such circumstances, we feel that at this late stage, public interest is not likely to be served by our interference. The matter is allowed to rest, making it clear that no observation made above is intended to prejudice or influence any other connected/related proceedings that are pending before this Court.

91. The writ petition, accordingly, stands disposed of with the aforesaid observations. No costs.

92. In view of the aforesaid order, no further/other order is required on the interim applications for intervention; the same too are disposed of keeping all contentions open. No costs.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**