NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5428 OF 2013
(Arising out of SLP(C) No. 3009/2012)

Mahanagar Telephone Nigam Limited …Appellant

versus

State of Maharashtra and others ...Respondents

J U D G M E N T

G. S. SINGHVI, J.

1. Leave granted.

2. Feeling dissatisfied with order dated 30.7.2010 read with order dated 13.8.2010 passed by the Division Bench of the Bombay High Court in Writ Petition No.1517/2010 for issue of a mandamus to respondent Nos. 2 to 4 to hand over vacant possession of final Plot bearing No.1088, Town Planning Scheme-IV (City) (Mahim) situated at Kashinath Dhuruwadi, Standard Mill Lane, Rajabhau Desai Marg, New Prabhadevi, Mumbai and for restraining respondent No.5 from carrying out further development on that plot or creating third party rights, the appellant has sought intervention of this Court.

3. By Notification dated 24.9.1973 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') the Government of Maharashtra proposed the acquisition of four plots, Town Planning Scheme as described hereinabove for Posts and Telegraph Offices. After considering the report submitted by the Collector under Section 5A(2), the State Government issued declaration dated 7.11.1975 under Section 6(1) of the Act. The Special Land Acquisition Officer (respondent No.2) passed award dated 31.3.1982 and fixed market value of Plot Nos. 1087 and 1088 as Rs.14,14,282/- and Rs.13,29,897/-, respectively. Assistant Engineer (Phone) (L.A., Mumbai Telephones) deposited the amount of compensation on 9.8.1982.

4. Since some portions of the acquired land were occupied by slum dwellers, respondent No.2 sent letters dated 10.2.1983 and 22.3.1983 to the officers of the Bombay Telephones to rehabilitate the hutment dwellers or pay rehabilitation compensation and deposit the establishment and service charges. Between 9.6.1983 and 3.8.1992 the officers of Bombay Telephones and Posts and Telegraph Department exchanged correspondence *inter se* and sent communications to Bombay Housing and Area Development Board, Department of Housing and Special Assistance, Government of Maharashtra and other functionaries of the State Government for delivery of possession of the two plots but did not get desired response apparently because more and more persons had encroached and occupied the acquired land. After about 6 years, Deputy General Manager (Planning), Mahanagar Telephone Nigam Ltd., sent letter dated

23.6.1998 to respondent No.2 to either hand over vacant possession of the two plots or refund the amount of compensation with interest. That letter reads as under:

"MAHANAGAR TELEPHONE NIGAM LIMITED MUMBAI

O/o Dy. General Manager (Planning)
3rd Flr, Telephone House,
V.S. Marg, Dadar (West),
Mumbai-400 028,

No. PELA-1-166/98-99 Date: 23/6/98

To,
Special Land Acquisition Officer,
Old Custom House, 1st floor,
Fort, Mumbai

Sub: Acquisition of Plot No. 1087 and 1088 in TPS-IV of Mahim, Prabhadevi.

Sir,

Award for the above plot No. 1087 and 1088 declared on 1.6.1979 and 31.3.1982 respectively. Accordingly, this department paid compensation amount of Rs. 14,14,282/- on 26.7.79 and Rs. 13,29,897/- on 30.3.82 totaling to Rs. 27.65 lakhs including establishment charges. Inspite of voluminous correspondences and frequent visuals and meetings with you to get the vacant possession of the plots, the plot is not yet made over to MTNL. At present plot is fully encroached and you are not in a position to give vacant possession of the said plots.

It is once again requested to hand over the vacant possession within three months, failing which you are requested to refund the compensation paid by us with interest.

Sd/-
Dy. General Manager (Plg.)
MTNL, Mumbai"

(underlining is ours)

5. For the next about 8 years the officers of Bombay Telephones, Posts and Telegraph Department and the appellant are not shown to have sent any communication to the functionaries of the State Government including respondent No.2 in the matter of delivery of possession of the acquired land. They woke up from slumber in 2006. Between 1.1.2006 and 4.8.2006, about 20 communications were sent to respondent No.2 and others to deliver possession of Plot No.1088. In those communications, no mention was made about Plot No. 1087 because compensation deposited in respect of that plot had been withdrawn.

6. In the meanwhile, Municipal Corporation of Greater Mumbai sanctioned redevelopment of Plot No. 1088 for rehabilitation of slum dwellers numbering 495, who formed Prabhadevi Cooperative Housing Society (Proposed). The Society signed Development Agreement dated 16.11.2003 with M/s. Shree Ahuja Properties (respondent No.5) for development of Plot Nos. 1087 and 1088. More than 70% of the eligible slum dwellers (352) gave consent affidavits for redevelopment under the Slum Rehabilitation Scheme, which was approved by Additional Municipal Commissioner and competent authority vide order dated 17.9.2004 passed under Section 4(1) of the Maharashtra Slum Areas

(Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'the 1971 Act'). After two months, Executive Engineer-III, SRA issued order dated 6.11.2004 for execution of the scheme by respondent No.5. On 8.4.2005, SRA granted Commencement Certificate to respondent No.5. After about three years, SRA passed order dated 8.8.2008 and directed respondent No.5 to allot built up area measuring 1706 square meters to the appellant free of cost.

7. Respondent No.5 completed rehabilitation building Nos. 1 and 2 on Plot No.1088 sometime in 2009. The Executive Engineer, SRA issued Occupation Certificates dated 1.12.2009 and 4.12.2009 and approximately 600 units were handed over to the slum dwellers for permanent residence. The status of the buildings is revealed from 21 photographs produced by respondent No.5, which have been marked as Annexure R-1.

8. After 37 years of initiation of the acquisition proceedings and 28 years of the pronouncement of award by respondent No.2, the appellant filed writ petition with the prayers about which reference has been made hereinabove. The Division Bench of the High Court disposed of the writ petition vide order dated 30.7.2010. Due to some mistake, that order was recalled on 13.8.2010 and was substituted with the impugned order, the relevant portions of which are extracted below:

> "In this petition under Article 226 of the Constitution of India, the Mahanagar Telephone Nigam Limited has prayed for a writ of mandamus to direct respondent Nos.2 to 4 to hand over vacant possession of the land admeasuring 5723.10 sq. metres situated at Mahim bearing FP No.1088 TPS-IV.

> 2. Learned counsel for respondent No.5, in whose favour the slum development authority has sanctioned the slum rehabilitation scheme in question, states that as per the order dated 8th August, 2008 of the Slum Rehabilitation Authority, the built up area admeasuring 1706 sq, metres is allotted under Item No.10 to MTNL. The said built up area will be handed over to the Appropriate Authority free of costs. It is stated that since the Post and Telegraph Department of the Union of India is not a party to this proceeding, respondent No.1 may not be held liable if the Mahanagar Telephone Nigam Limited is given the above built up area free of costs.
>
> 3. Since the Slum Development Authority itself has indicated in the scheme itself, that the built up area admeasuring 1706 sq. metres is to be handed over to MTNL, no prejudice would be caused if respondent No.5 is directed to hand over the built up area of 1706 sq. metres to MTNL free of costs. We accordingly direct the respondent No.5 to hand over the above built up area to MTNL. A copy of this order be served upon the Post Master General at Mumbai. In case, the Post Master General of Mumbai has any claim over the built up area in question, it will be open to the said authority to take up the matter with MTNL and with Union of India in the concerned ministry. Since the MTNL has been allotted only built up area admeasuring 1706 sq. metres, we are not called upon to examine the claim of 5723.10 sq. metres made by the petitioner-MTNL in this petition. Any further claim of the petitioner-MTNL with regard to additional built up area, the petitioner-MTNL will be entitled to get the same adjudicated by the appropriate authority. The writ petition stands disposed of."

9. Soon after disposal of the writ petition Ms. S.I. Shah, who had appeared on behalf of the appellant before the High Court, on instructions from her client, sent letter dated 12.10.2010 to Wadia Ghandy and Co., advocate for respondent No.5, to execute separate MOU for 1706 sq. mtrs. built up area. That letter reads as under:

> "**S. I. SHAH & CO.**
> **ADVOCATES & NOTARY**

Office :
S. I. SHAH
Advocate & Notary
"Veet-Rag Chambers"
(Old Cama House)
38, Cawasji Patel Street,
Fort, Mumbai -400 001

Resi.:
Navjivan Co-operative
Housing Society Limited
Bldg. No.9 Flat No. 51,
Lamington Road,
Mumbai -400 008
Tel.:23010306, 23010700
Tel.:22022928, 22852759

To

12.10.2010

Wadia Ghandy & Co.,
Advocates & Solicitors,
N. M. Wadia Buildings,
123 Mahatma Gandhi Road,
Mumbai -400 001.

Sub:- High Court Mumbai, O.O.C.J
Writ Petition No. 1517 of 2010

Mahanagar Telephone Nigam Ltd. ...Petitioner
V/s.
State of Maharashtra & Ors. . ..Respondents

Dear Sir,

We are concerned for MTNL in the above matter. You have represented Respondents No. 5, i.e. M/s. Shree Ahuja Properties in the above matter. The above Petition is disposed of vide an order dt. 30th July, 2010 and subsequent order dt. 13th August, 2010 by their Lordships Mr. Chief Justice and Mr. Justice S. C. Dharmadhikari.

Your clients are aware that as per an order dt. 8 August, 2008 of slum Rehabilitation Authority, MTNL is entitled to 1706 sq. mtr. Built up area free of cost.

We are instructed by our clients to inform your clients that the separate building of the said 1706 sq. mtr. Built up area be constructed by your clients with separate gate / Entrance as per the specification to be given by our clients. It is therefore necessary to execute separate MOU for the said purpose. Your clients be informed accordingly and

let our clients know the specific time limit during which the said construction work will be completed and handed over to our client.

Kindly do the needful for execution of MOU in the matter and handover the Draft Agreement to be executed between MTNL and your client.

Thanking you,

Yours faithfully,
Sd/-
S. I. Shah & Co.

C.C.
To.
MTNL"

(underlining is ours)

10. Between 29.12.2010 and 31.10.2011 the officers of the appellant and respondent No.5 exchanged several communications on the issue of construction of separate building on 1706 sq. mtrs. area, which was to be handed over to the appellant free of cost in terms of the order passed by SRA and the direction given by the High Court. Those communications are also reproduced below:

"MAHANAGAR TELEPHONE NIGAM LIMITED,MUMBAI

From: 0/0. D.G.M. Plg.)
3rd Flr., Telephone House,
Veer Savarkar Marg,
Prabhadevi, Dadar (W),
Mumbai - 400028

No.PELA-1-691/F.P. 1088/2010-11 Date: 29/12/2010

To,

M/S. Shree Ahuja Properties,
A-1, Rajpipla,
Opp. Standard Chartered Bank,
Linking Road,

Santacruz (W), Mumbai-400054

Sub: High Court Mumbai O.O.C.J., W.P. No.1517/2010
Mahanagar Telephone Nigam Ltd. .. Petitioner
V/S
State of Maharashtra & Ors. .. Respondents

Dear Sir,

With reference to the above subject, as per an order no. SRA/Eng/940/GS/ML&STG/LOI dtd. 8th August 2008 of SRA, MTNL is entitled to 1706 sq. mtrs. built up area free of cost. Nothing is heard from you after the Honourable High Courts judgement dtd. 13th August 2010.

It is to inform you that a separate building is to be constructed with separate gate/entrance as per the specifications to be given by MTNL. It is therefore necessary to execute a separate MOU for he said purpose.

You are hereby requested to intimate the time limit during which the said construction work will be completed & handed over to MTNL.

Thanking you,

Sd/-
Asst. General Manager (Plg.)
MTNL, Mumbai-28.
(24228977)

End: The order copy dtd. 13th August 2010"

"MAHANAGAR TELEPHONE NIGAM LIMITED,MUMBAI

From: O/O. D.G.M. (Plg)
3rd, Flr. Telephone House,
Veer Savarkar Marg,
Prabhadevi, Dadar (W),
Mumbai - 400028

No.PELA-l-691/F.P.1088/2010-11 Date: 02/02/2011

To,

M/S. Shree Ahuja Constructions,
3rd flr., V.N. SPHERE,
199, Linking Road
Opp. Shoppers Stop
Bandra (W), Mumbai-40005

Sub: High Court Mumbai O.O.C.J., W.P. No.1517/2010

Mahanagar Telephone Nigam Ltd. .. Petitioner
V/S
State of Maharashtra & Ors. .. Respondents

Dear Sir,

With reference to the above subject, as per an order no. SRA/Eng/940/GS/ML&STG/LOI dtd. 8th August 2008 of SRA, MTNL is entitled to 1706 sq. mtrs. built up area free of cost. Nothing is heard from you after the Honourable High Courts judgement dtd. 13th August 2010. It is to inform you that a separate building is to be constructed with separate gate/entrance as per the specifications to be given by MTNL. It is therefore necessary to execute a separate MOU for he said purpose.

You are hereby requested to intimate the time limit during which the said construction work will be completed & handed over to MTNL.

MTNL, Mumbai Deputy General Manager (Planning) desires to have a meeting with you regarding the above issue. Please fix a convenient day & time for the meeting at an earliest.

Thanking you,

Sd/-
Asst. General Manager (Plg.)
MTNL, Mumbai-28.
(24228977)"

"Shree Ahuja Properties and Realtors Private Limited
Flat No.301/302/303/304, 3rd Floor, 190 Linking Road, V.N. Sphere Bldg., Bandra (West), Mumbai - 400 050 Tel. 66285000 (10 Lines) Fax: 66285050

Date : 12 July, 2011

To,
The Divisional Manager, MTNL,
MTNL Building
Prabhadevi, Mumbai -400 025

Subject: Submission of MTNL Building Plan

Ref: CTS No. 1087 & 1088, Mahim Division, Rejabhau Desai Marg, Prabhadevi, Mumbaio-400 025

Dear Sir,

We are submitting the MTNL Building Plan for your record and future advice.
Please acknowledge the same. Thanking You,

Yours Faithfully,
For Shree Ahuja Properties & Realtors Pvt. Ltd.

Sd/-

Authorized Signatory

Enclose: MTNL Building Plan"

"Shree Ahuja Properties and Realtors Private Limited
Corporate Office: V.N. Sphere, Level Three, 199 Linking Road, Opp. Shoppers Stop, Bandra (W), Mumbai - 400 050 Tel.: +91 22 66285000 Fax: +91 22 66285050

Date: 14th September, 2011

To,
The Divisional Manager, MTNL,
MTNL Building,
Prabhadevi, Mumbai -400 025

Subject: Submission of MTNL Building Plan

Ref: CTS No. 1087 & 1088, Mahim Division, Rejabhau Desai Marg, Prabhadevi, Mumbai-400 025

Dear Sir,

With reference to the captioned Subject and our letter dated 12th July, 2011, in compliance of condition no.23 of Letter of Intent No. "SRA/Eng/940/GS/ML & STOL/LOI" dated 08/08/2008; please find enclosed the detailed Building Plan showing your building on the same. As per your letter no.PELA/1/691/F.P. No. 1088/2020-11, dated 02/02/2011 where you asked us for separate building compound and access all these requirements are satisfied in our plan.

Please arrange to sent the details of specification and necessary approvals to enable us to take approvals from Slum Rehabilitation Authority at the earliest.

Thanking you,

Yours Faithfully,
For Shree Ahuja Properties & Realtors Pvt. Ltd.

Sd/-

Authorized Signatory

Enclose: MTNL Building Plan"

"MAHANAGAR TELEPHONE NIGAM LIMITED, MUMBAI
(A Govt, of India Enterprise)

O/o. The Dy. General Manager (Plg.) 3Rd, Floor, Telephone House, V.S. Marg, Dadar (W), Mumbai-28.
Tel.No.2436 2333 / Fax 2437 5252

No.PELA-1-691/Standard Mills Compound/2011-12
Date: 31/10/2011

To

M/s. Shree Ahuja Properties and Realtors Pvt. Ltd.
V.N. Sphere, Level Three,
199 Linking Road, Opp. Shoppers Stop,
Bandra (W), Mumbai - 400 050

Sub: Proposed building for MTNL, plan and layout. Ref: Compliance of Condition No. 23 of LOI

Sir,

With reference to your letter dated 14/09/2011, it is brought to kind notice that in compliance of Condition No.23 of Letter of Intent No.SRA/ENG/1940/GS/ML&STOL/LOI dated 8/08/2008, it was required that the planning and specification for the said buildable reservation shall be obtained from us.

However, the building plan and layout proposed by you indicates that the proposed building for MTN is sandwiched between SRA and saleable building. The building is not suitable with regard to its size mentioned, apart from the other difficulties such as separate building compound, a good and proper access for the members of public to proposed MTNL building. Thus the proposed dimensions in the layout building is not acceptable to us.

In view of the above, kindly re-examine the case and submit your proper proposal to have easy access, prominence and a good ands usable layout for the proposed MTNL building.

Sd/-

Sr. Manager (LA)
MTNL, Mumbai"

11. After having virtually agreed to take 1706 sq. mtrs. built up area free of cost, the appellant filed special leave petition questioning the order of the High Court. It also filed an application for condonation of 401 days' delay.

12. We have heard Shri Harin P. Raval, learned senior counsel for the appellant, S/Shri Mukul Rohatgi, P.P. Rao, Gopal Subramanium, Dr. A. M. Singhvi and Shri Shekhar Naphade, learned senior counsel appearing for the State of Maharashtra and others and carefully scrutinized the records including the files made available by the counsel assisting Shri Raval. Shri Rohatgi argued that the appellant's prayer for condonation of delay should not be entertained because it has not approached the Court with clean hands and the explanation given for condonation of more than one year's delay is wholly unsatisfactory. He pointed out that Shri Dnyaneshwar Konde, who has filed affidavit in support of the special leave petition, has verified the contents of the special leave petition, synopsis and list of dates and interlocutory applications on the basis of knowledge derived from the records and an attempt has been made to show that Senior Management was not aware of the High Court's order till November, 2011 but the appellant has deliberately omitted to make a mention of the letter sent by its own advocate to the advocate of respondent No.5 and the correspondence exchanged between the officers of the appellant and respondent No.5 on the issue of providing 1706 sq. mtrs. built up area free of cost. Shri Rohatgi submitted that even though the officers of the rank of Assistant General Manager (Planning), Divisional Manager and Senior Manager (LA) were very much aware that Writ Petition No.1517/2010 had been disposed of by the High Court vide order dated 30.7.2010, which was corrected on 13.8.2010 and direction was given to respondent No.5 to deliver 1706 sq. mtrs. of built up area

free of cost, but a misleading and false statement has been made in paragraphs 2 and 3 of the application for condonation of delay that Shri V.T. Dhere, Senior Manager (LA) did not bring the High Court's order to the notice of the Senior Management till his retirement on 31.5.2011 and the order came to the knowledge of the Senior Management during the pendency of SLP(C) No.22747/2010 filed by three occupants of tenement Nos. 591, 592 and 593 in respect of the adjoining plot. Learned senior counsel emphasised that the theory of the Additional Solicitor General becoming aware of order dated 13.8.2010 from the file summoned on 7.11.2011 is clearly an afterthought and a patently incorrect statement has been made to persuade this Court to entertain the special leave petition by condoning the unexplained delay of more than one year. Shri Rohatgi also invited the Court's attention to paragraph 5(vii) of the rejoinder filed by the appellant to the counter affidavit of respondent No.5 to show that as early as in February, 2011 officers of the appellant became aware about the order passed by the High Court. Shri Rohatgi submitted that the conduct of the appellant in seeking the intervention of the Court with unclean hands is sufficient for non-suiting it. In support of his submissions, Shri Rohatgi relied upon the judgments of this Court in Dalip Singh v. State of U.P. (2010) 2 SCC 114, Oswal Fats and Oils Ltd. v. Commr. (Admn.) (2010) 4 SCC 728 and Postmaster General v. Living Media India Ltd. (2012) 3 SCC 563 and order dated 16.2.2012 passed in IA Nos.3-5 in SLP(C) No.4810/2012.

13. Shri P.P. Rao, Shri Gopal Subramanium and Dr.A.M. Singhvi, learned senior counsel appearing for other respondents supported Shri Rohatgi and argued that the appellant is not entitled to be heard on the merits of the case because it deliberately withheld several facts from this Court. Shri P.P. Rao relied upon the judgment in Hari Narain v. Badri Das (1964) 2 SCR 203 (at 207, 208 and 209). Dr. Singhvi relied upon the judgment in Udai Chand v. Shankar Lal (1978) 2 SCC 209.

14. Shri Harin P.Raval, learned senior counsel appearing for appellant invited our attention to affidavit dated 17.2.2012 filed by Executive Director of the appellant and some portions of the rejoinder filed to the counter affidavits of respondent Nos. 5 and 6 and argued that the appellant cannot be accused of concealment of material facts because none of the senior officers was aware about the disposal of the writ petition by the High Court till November, 2011. Shri Raval emphasised that the correspondence exchanged between the counsel for the appellant and counsel for respondent No.5 or between respondent No.5 and officers of the rank of Assistant General Manager, Divisional Manager and Senior Manager (LA) cannot lead to an inference that Senior Management of the appellant was having knowledge about the High Court order. Shri Raval relied upon the judgment in State of Karnataka v. Y. Moideen Kunhi (2009) 13 SCC 192 and argued that in matters like the present one in which larger public interest is involved, this Court should overlook small aberrations in the pleadings or delay in filing the special leave petition.

15. We have considered the respective submissions. In paragraphs 2 and 3 of the application for condonation of delay, the appellant has tried to explain the delay by making following averments:

> "2. That it is submitted that the writ petition was being pursued by the Land Acquisition Department of MTNL, Mumbai and was entrusted to Shri V.T. Dhere, Sr. Manager, (Land Acquisition), ST No.71898. The said officer attended the court hearings regularly during pendency of the petition before the Hon'ble High Court. However, the passing of the order dated 13.08.2010 by the Hon'ble High Court was not brought to the knowledge of the Sr. Management of the petitioner by Mr. V.T. Dhere, Sr. Manager. In the meanwhile, Shri V.T.Dhere retired from the services of the petitioner w.e.f. 31.5.2011.
>
> 3. That the order dated 13.8.2010 came to the knowledge of the Sr. Management of the petitioner during the pendency of SLP (C) No.22747/2010 filed by three occupants of the tenement No.591, 593 and 592 in respect of adjoining plot No.FP No. 1087 TPS IV Mahim, Mumbai, before this Hon'ble Court. While defending the said SLP, the Ld. ASG, called for the file from the Legal Cell pertaining to the impugned order in the present case relating to plot No. 1088 on 7.11.2011. On perusing the file the Ld. ASG became aware of the order dated 13.08.2010 passed in respect of plot no. 1088 in WP No. 1517/2010 and sought the comments from the Ministry regarding order dated 13.08.2010. On this the petitioner came to know about the order dated 13.08.2010 and it was advised to the petitioner to take appropriate steps for challenging the order dated 13.8.2010 in Writ petition No. 1517/2010. It is also relevant to note that the Ministry of Environment and Forest and the Ministry of Communication & Information Technology had vehemently defended SLP (C) 22747/2010 before this Hon'ble Court and had vehemently opposed the action of the State Govt, of Maharashtra in taking away the land bearing plot no. 1087 and 1088 under the 'Slum Rehabilitation Scheme', which belongs to the petitioner and was acquired for public purposes of the petitioner. However, the said SLP was dismissed as withdrawn in view of settlement of disputes between the petitioners in that SLP and the concerned Developer. However, while allowing the petitioners in the said

> SLP the Hon'ble court had observed that the rights of the Ministry of Communication and Information Technology and the Ministry of Environment and Forest would not be effected and they were granted liberty to take appropriate steps. It is submitted, that the present case is being filed on the ground that public interest and exchequer has been defrauded to benefit private individuals."

16. At the cost of repetition, we deem it proper to observe that the averments contained in the application for condonation of delay have been verified by Shri Dnyaneshwar Konde, who filed affidavit in support of the special leave petition, on the basis of knowledge derived by him from the record. He is an officer of the rank of Divisional Engineer. Therefore, it is reasonable to presume that before filing the affidavit he must have gone through the entire record including letter dated 12.10.2010 sent by Ms. S.I. Shah, Advocate for the appellant to Wadia Ghandhy & Co., who represented respondent No.5 before the High Court and the correspondence exchanged between the officers of the appellant and respondent. A reading of that letter shows that Ms. S.I. Shah had written to the advocate for respondent No.5 on the basis of the instructions given by the concerned officers that separate MoU is required to be executed in respect of 1709 sq. mtrs. constructed area, which was handed over to the appellant. This inference is strengthened by the letters of Assistant General Manager (Planning), Divisional Manager and Senior Manager (L.A.), which were sent to respondent No.5.

17. However, with a view to keep this Court in dark about the correspondence exchanged on the issue of allotment of 1706 square meters of built up area by

respondent No.5 to the appellant free of cost, the concerned officer made a patently incorrect statement that order dated 13.8.2010 was not brought to the knowledge of the Senior Management of the appellant by Mr. V.T. Dhere. In our view, Ms. S.I. Shah could not have written letter to the Advocate of respondent No.5, on her own, on the issue of signing of MoU for transfer of 1706 square meters of built up area by respondent No.5. Any person of ordinary prudence is entitled to assume that she must have done so under the instructions of the concerned officers. The three officers who exchanged letters with respondent No.5 were Class-I Officers of the appellant. They must have written to respondent No.5 on the basis of instructions given by the higher officers. Therefore, the mere fact that the file notings do not contain a corresponding entry cannot lead to an inference that the senior management of the appellant was not aware of the High Court's order. If Ms. S.I. Shah and three officers of the appellant had exceeded their brief and unauthorisedly exchanged communications with respondent No.5 and its Advocate, then the senior officers of the appellant would have certainly taken action against them. However, it is neither the pleaded case of the appellant nor it has been suggested that Ms. S.I. Shah and three officers had acted unauthorisedly. The averments contained in paragraph 5(vii) of the rejoinder filed by the appellant to the counter of respondent No.5 clearly shows that as early as in February, 2011, the officers of the appellant knew that the High Court had disposed of the writ petition by directing respondent No.5 to hand over 1706 sq. mtrs. built up area to the

appellant free of cost. Therefore, the assertion contained in the application for condonation of delay that the Senior Management did not know of the direction given by the High Court till November, 2011 cannot but be treated as a deliberate attempt to mislead the Court and on that ground alone the prayer for condonation of delay is liable to be rejected.

18. In Hari Narain v. Badri Das (supra), this Court considered the prayer made by the respondent for revocation of leave granted to the appellant who was a tenant in the suit premises. The respondent had sued the appellant for eviction on the ground of default in payment of rent and house tax. The trial Court dismissed the suit. The appellate Court set aside the judgment of the trial Court and decreed the suit. The second appeal filed by the appellant was dismissed by the High Court. In the petition for special leave, the appellant made inaccurate statement about his status as a statutory tenant and on the issue of payment of rent. Shri M.C. Setalvad, appearing on behalf of the appellant submitted that he had not urged the particular grounds at the time of grant of leave. While agreeing with Shri Setalvad, this Court refused to accept the explanation given by the appellant for the inaccurate statement made in the special leave petition and revoked the leave. This is evinced from the following observations made in the judgment:

> "It is true that in the present case, special leave was granted on 26th September, 1962 and it is possible for Mr Setalvad to recall what he argued before the Court when special leave was granted. But it is necessary to bear in mind that the appeal may

> come on for hearing long after special leave is granted, that counsel appearing at the stage of admission may not be the same as at the stage of final hearing, and the Bench that granted special leave may not necessarily deal with the appeal at with final stage. Therefore, it is no answer to the respondent's contention that though the material statements in the special leave petition may be substantially inaccurate, though not wholly untrue, those statements may not have influenced the Court in granting special leave. Mr Setalvad has also invited our attention to the fact that the impugned statements and grounds are substantially copied from the averments made in the appeal before the High Court. That may be so, but the fact still remains that two important statements which, if true, may have been considerable assistance to the appellant in invoking the protection of Section 13(1)(a) even on the construction placed by the High Court on that section are found to be untrue, and that, in our opinion, is a very serious infirmity in the petition itself. It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading."
>
> (emphasis added)

19. In Dalip Singh v. State of Uttar Pradesh (supra), this Court considered the question whether relief should be denied to the appellant who did not state correct facts in the application filed before the Prescribed Authority and who did not approach the High Court with clean hands. After making a reference to some of the precedents, the Court observed:

> "while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward

> with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct."

20. In Oswal Fats and Oils Limited v. Additional Commissioner (Administration) (supra), relief was denied to the appellant by making the following observations:

> "It is quite intriguing and surprising that the lease agreement was not brought to the notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on lease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act and the same vested in the State Government. In the list of dates and the memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15-10-1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreement and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in the order dated 30-5-2001. In that event, the High Court or for that reason this Court would have non-suited the appellant at the threshold. However, by concealing a material fact, the appellant succeeded in persuading the High Court and this Court to entertain adventurous litigation instituted by it and pass interim orders. If either of the Courts had been apprised of the fact that by virtue of lease deed dated 15-10-1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court or this Court to entertain the writ petition or the special leave petition.

> 20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."
>
> (emphasis supplied)

21. By applying the ratio of the above noted judgments to the facts of this case, we hold that the appellant is guilty of not coming to this Court with clean hands and the explanation given by it for 401 days' delay has to be treated as wholly unsatisfactory and the prayer for condonation of delay is liable to be rejected.

22. The judgment in State of Karnataka v. Y. Moideen Kunhi (supra) on which reliance has been placed by Shri Harin P. Raval contains reiteration of the settled principles of law that the Court should be liberal in exercising power under Section 5 of the Limitation Act and cognizance can be taken of the impersonal character of the Government as also inefficiency, lethargy and tardiness in the functioning of the State and its agencies which, at times, results in delay and that while deciding the application for condonation of delay, the Court should keep in mind the larger public interest. However, that proposition cannot be invoked in

the appellant's case because it has been found guilty of suppression of facts and making misleading statement.

23. Notwithstanding the above conclusion, we have considered the appellant's challenge to the order of the High Court, the tenor of which gives an impression that counsel appearing for the parties had agreed to the transfer of 1706 sq. mtrs. built up area by respondent No.5 to the appellant. If this was not so, the appellant's counsel would not have written letter dated 12.10.2010 to her counterpart for execution of separate MoU and to indicate the time limit for completion of the construction and handing over of possession and the officers of the appellant would not have entered into correspondence with respondent No.5 for construction of separate building and providing independent access. Therefore, the appellant cannot be heard to make a grievance against the impugned order.

24. The matter deserves to be considered from another angle. If the appellant was of the view that the High Court had disposed of the writ petition without examining its prayer for issue of a mandamus to the concerned respondents to deliver possession of the acquired land, then it would have filed a petition for review of the impugned order by asserting that even though the grievance made in the writ petition in the matter of non-delivery of possession of the acquired land had been highlighted during the course of hearing, the same has not been decided by the High Court. However, the fact of the matter is that no such

petition was filed. The reason for the appellant's omission to adopt that course is not far to see. The appellant knew that it was on a weak wicket. It had filed the writ petition after almost three decades of pronouncement of the award by respondent No.2 and there was no tangible explanation for the delay. We have no doubt that if the appellant had pressed its prayer for issue of a mandamus to the official respondents to deliver possession of the acquired land after evicting the slum dwellers, the High Court would have non-suited it on the ground of laches by taking cognizance of total inaction between 23.6.1998, i.e., the date on which Deputy General Manager (Planning) had written letter to respondent No.2 to hand over vacant possession of the acquired land or refund the compensation, and January, 2006, when exchange of correspondence again started. The High Court would have also taken note of the fact that while the appellant was sleeping over its rights, the Municipal Corporation had sanctioned Slum Rehabilitation Scheme, the Cooperative Society formed by the slum dwellers had entered into development agreement with respondent No.5 and the latter had constructed buildings and handed over 600 units to the slum dwellers for permanent residence and dismissed the writ petition by applying the ratio of the judgment of the Constitution Bench in State of Madhya Pradesh v. Bhailal Bhai AIR 1964 SC 1006, the relevant passages of which are extracted below:

> "It has been made clear more than once that the power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Court rightly take into consideration in the exercise of that discretion is

> the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the Court for relief under Art. 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.
>
> Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable."
>
> (emphasis supplied)

25. Shri Harin P. Raval made valiant attempt to persuade us to consider the appellant's prayer for directing the respondents to hand over possession of that portion of the acquired land on which construction has not been raised so far, but we are not felt impressed. The delay of almost 3 decades stares in the face of the

appellant and we do not find any justification for entertaining the prayer for issue of a mandamus at this belated stage by ignoring the developments which have taken place in the intervening period.

26. In the result, the appeal is dismissed as barred by time and also on merits.

.....J.
(G.S. SINGHVI)

.....J.
(V. GOPALA GOWDA)

New Delhi;
July 11, 2013.