

ITEM NO.1501.1

COURT NO.6

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 757-760/2013

D.P.C.C.

Appellant(s)

VERSUS

LODHI PROPERTY CO. LTD.ETC.

Respondent(s)

WITH

C.A. No. 1977-2011/2013 (XIV-A)

Date : 04-08-2025 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ATUL S. CHANDURKAR

For Appellant(s) : Mr. Pradeep Misra, AOR
Mr. Ninad Laud, Adv.(A.C.)

For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

1. We have delivered our judgment in the case of DPCC v. Lodhi Properties today.
2. While considering the matter, certain amount of asymmetry in the governing statutes, the Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981, and Environment (Protection) Act 1986, has come to light. This asymmetry seems have been aggravated with the advent of the amendments introduced in 2024 to the Water and Air Acts.
3. The Water Act, 1974 was amended through the Water (Prevention and Control of Pollution) Amendment Act, 2024. The

amendments to the Water Act have come into force only in the States of Himachal Pradesh and Rajasthan and the Union territories on 15.02.2024, and will come into force in other states as and when suitable resolutions are passed by the State Legislatures. Through the passage of the Jan Vishwas (Amendment of Provisions) Act, 2023, the Air Act was amended, and the amendments came into force on 01.04.2024.

4. Significant part of the amendments has been the substitution of imprisonment with fines for a large number of offences and the introduction of a civil adjudicatory process. This is in line with the objective stated in the preamble of the two amending statutes. The preamble to the Water (Prevention and Control of Pollution) Amendment Act, 2024 declares the purpose of the amendment as, *“AND WHEREAS it is considered necessary to make certain amendments thereto for decriminalising and rationalising minor offences to further enhance trust-based governance for ease of living and doing business;”*

5. The Jan Vishwas Act 2023, similarly introduced amendments to the Air Act and the Environment (Protection) Act 1986, with the same purpose declaring, *“An Act to amend certain*

enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business.”

6. After amendments, several offences under Chapter VII and VI of the Water and Air Acts respectively can be addressed through a monetary penalty and not by way of imprisonment. The maximum penalty that may be imposed is fifteen lakh rupees. Punishment by way of imprisonment is however retained only for a limited number of contraventions, such as failure to comply with requirements of obtaining consent and failure to pay penalty or the additional penalty amount.¹

7. To determine the penalty under the amended provisions, the Central government has to appoint officers not below the rank of Joint Secretary to the Government of India, or a Secretary to the State Government as Adjudicating Officers.² Once a complaint is filed, the Adjudicating Officers are expected to hold an inquiry to determine whether the contravention has taken place and if it has, to impose and collect the penalties. In case of contravention or non-compliance of directions issued under Section 33A of the

¹ Section 45E of Water Act and Section 39D of Air Act.

² Section 45B of Water Act and Section 39A of Air Act.

Water or Section 31A of the Air Act, the Adjudicatory Officer has jurisdiction to decide a complaint. An appeal against the order of an Adjudicating Officer lies before the National Green Tribunal.³

8. To guide the adjudicatory process, the Central Government has issued the Water (Prevention and Control of Pollution) (Manner of Holding Inquiry and Imposition of Penalty) Rules, 2024 on 11.11.2024. Similar Rules have been issued under the Air Act on 12.11.2024.

9. It is important to note that Section 33A of the Water Act and Section 31A of the Air Act have not been amended. At the same time, the legal regime regarding offences and consequent penalties under the two Acts, that were identical, are now in variance. The reason is that the amended Water Act has not come into effect in all the states.

10. *Statutory framework lacks clarity* - The Water Act, the Air Act, and the Environment (Protection) Act, were legislated in 1974, 1981 and 1986 respectively, in a very different environment from the one we inhabit now. There has been a persistent demand to amend these laws and to reform the environmental

³ Section 45C of Water Act and Section 39B of Air Act.

regulatory framework to cope with the rapidly changing environmental demands. Impact of climate change is bound to bring about transformative changes and our regulations need to be one step ahead of times. We need to augment and redesign our regulatory capacity in ways that help us adapt to these transformations and minimize damage to the environment and protect public health.

11. The statutory framework lacks clarity, for instance–

- i) Under the Water Act, any person aggrieved by an order of the State Board under Section 25, 26 and 27 has to approach the Appellate Authority constituted under the Water Act by the State Government. However, the Appellate Authority under the Air Act has jurisdiction over *all* orders passed by the State Boards.
- ii) The State Governments have revisional powers under Section 29 of the Water Act, but do not have similar powers under the Air Act.
- iii) An appeal against directions issued by the State Boards under Section 33A of the Water Act lies before the NGT under Section 33B. However, there is no statutory appeal

against directions issued by the State Boards under Section 31A of the Air Act.

12. Quite often common orders invoking provisions of both laws are issued against polluting entities. To have such variation in the appellate process under the two laws is not desirable. This Court in *Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Ltd.*⁴, highlighted the distinction between the Water Act and the Air Act with respect to the appeal process against State Board's directions –

“36. ... What is important to note is that whereas Section 33-B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. ... In the present case, we have seen that so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a “direction” under Section 31-A of the Air Act is nothing but an “order”, and would, therefore, be appealable as such under Section 31-B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. ... Also, “directions” that are issued under

4 (2019) 19 SCC 479.

Section 31-A of the Air Act are of a different quality from “orders” referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the Explanation to Section 31-A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to P. Ramanatha Aiyar’s Law Lexicon and Black’s Law Dictionary, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited Kanhiya Lal Omar v. R.K. Trivedi [Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628], and relied upon para 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a “direction” may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.”

13. There is no logic or justifiable reason for variation in the two laws.

14. Given the undisputed reality that climate change is no longer a mere threat for the future as well as present generations, it is compelling to have an effective and efficient legal regime in place. Inconsistencies and lack of certainty about the powers and duties of the statutory regulators will not only delay the process but also generate unnecessary litigation.

15. In order to examine the legal position, it is necessary to hear the Union of India, through the Ministry of Environment, Forest and Climate Change. We, therefore, implead the MoEFCC as a party respondent. Mr. Pradeep Misra, learned counsel for the appellant, will file the necessary application for impleadment. Upon filing of such application, let notice be issued to the Union of India. The Registry will accordingly amend the cause title confining the Union of India as the sole respondent.

16. We also appoint Ms. Shibani Ghosh and Mr. Ninad Laud, Advocates of this Court, as *amici curiae* to assist the Court.

17. List on 15.09.2025.

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 757-760/2013

D.P.C.C.

Appellant(s)

VERSUS

LODHI PROPERTY CO. LTD.ETC.

Respondent(s)

[HEARD BY : HON. PAMIDIGHANTAM SRI NARASIMHA AND HON. MANOJ MISRA,
JJ.]

WITH

C.A. No. 1977-2011/2013 (XIV-A)

Date : 04-08-2025 These appeals were called on for pronouncement of
judgment today.

For Appellant(s) : Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
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Mr. Angad Kochhar, Adv.
Ms. Sakshi Agarwal, Adv.

Mr. Mohit D. Ram, AOR
Ms. Nayan Gupta, Adv.

Mrs. Priya Puri, AOR
Mr. Navin Prakash, AOR
Mr. Umesh Kumar Khaitan, AOR

1. Hon'ble Mr. Justice Pamidighantam Sri Narasimha pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Manoj Misra.

2. The appeals stand allowed in terms of the signed reportable judgment.

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

(Signed Reportable Judgment is placed on the file)