2025 INSC 1145

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1479 OF 2006

Divyagnakumari Harisinh Parmar and others ....Appellant(s)

versus

Union of India and others ....Respondents

WITH

Civil Appeal No. 1480 / 2006

Civil Appeal No. 1481 / 2006

Civil Appeal No. 1482 / 2006

Civil Appeal No. 1483 / 2006

Civil Appeal No. 1484 / 2006

Civil Appeal No. 1485 / 2006

Civil Appeal No. 1486 / 2006

Civil Appeal No. 1487 / 2006

Civil Appeal No. 1488 / 2006

Civil Appeal No. 1489 / 2006

Civil Appeal No. 1181 / 2017

JUDGMENT

SURYA KANT, J.

1. The captioned appeals arise from a common judgment dated 11, 15, 16, 17.02.2005 (**Impugned Judgment**) delivered by the High Court of Judicature at Bombay (**High Court**) in several Second Appeals, in an issue pertaining to the recission of land grants relating to properties situated in the Union Territory of Dadra and Nagar Haveli (**Dadra and Nagar Haveli**). The said properties were parcels of land originally vested in the erstwhile Portuguese Government and were granted to the Appellants' predecessors-in-title between 1923 and 1930, subject to certain conditions for agricultural cultivation. These grants were subsequently rescinded by the Collector, Dadra and Nagar Haveli (**Collector**), *vide* an order dated 30.04.1974, thereby setting in motion a protracted legal wrangle between the State and the Appellants that has spanned several decades.

2. What is perhaps most striking about the instant case is not merely that this Court is called upon to adjudicate a dispute originating over half a century ago, rather, it is the deeper irony that, even after seventy-eight years of independence, this Court remains engaged in resolving a controversy arising out of land rights conferred by colonial powers that once exploited this nation's wealth and

resources. Any critique or disquiet this Bench may express regarding the colonial legacy must nevertheless not be construed as a reflection on the legitimacy of the Appellants' claims or the rights they seek to assert.

A. FACTS

3. Given that the Appellants' land rights were conferred under the erstwhile Portuguese legal regime, the matter necessitates a nuanced understanding of the scope and import of those legal provisions as they existed a century ago, examined through the lens of Indian legal principles and established jurisprudence.

4. It therefore becomes imperative to methodically trace the sequence of events from the outset, so as to ascertain the origins of the dispute, the stakes involved for the respective parties, and the legal questions that call for determination and analysis.

4.1. The Portuguese Civil Code, 1867 (**Portuguese Civil Code**) was enforced upon the territories of Goa, Daman and Diu on 01.07.1870. Decree No. 3602 Regimen for the grants of the lands of the State of India (**1917 Law**) came into force thereafter on 24.11.1917. It provided for the grants of lands in the Portuguese-controlled territories of Goa, Daman and Diu, either temporarily or permanently, through a contract of '*emphyteusis*' or '*aforamento*',

for the cultivation of agricultural lands, construction of buildings and other such activities.

4.2. Black's Law Dictionary has defined the term '*emphyteusis*' to be:

> "*A contract by which a landed estate was leased to a tenant, either in perpetuity or for a long term of years, upon the reservation of an annual rent or canon, and upon the condition that the lessee should improve the property, by building, cultivating, or otherwise, and with a right in the lessee to alien the estate at pleasure or pass it to his heirs by descent, and free from any revocation, re-entry, or claim of forfeiture on the part of the grantor, except for non-payment of the rent.*"

4.3. Under Portuguese law, the contract of '*emphyteusis'* involved the transfer of beneficial ownership (possessory rights) by the owner of a property to another individual, subject to the latter's obligation to pay an annual sum—referred to as the '*emphyteutic*' pension or *canon*—to the former. This arrangement effectively meant that the Portuguese State, which then possessed eminent domain rights, conferred conditional ownership upon individuals within its administered territories, while retaining the right to receive annual '*emphyteutic'* payments in recognition of its continuing title to the land.

4.4. Thereafter, Government Regulation No. 985, referred to as the Organic Structure of the Lands of Nagar Haveli or the '*Organizacao Agraria*', was brought into force on 22.09.1919 (**OA**), to regulate the revenue administration of the Portuguese State. Article 1 of the OA

stipulated that, '***all immoveable properties situated at Pragana of Nagar Haveli, which do not belong to either collective bodies or individuals would vest in the domain of the State***'. Pursuant to this OA, agricultural lands were thus granted on the basis of perpetual lease rights known as '*Alvaras*' for indefinite periods of time, subject to the payment of a fixed assessment or 'land revenue'. The rights conferred by way of such '*Alvaras*' were expressly made transferable, inheritable and capable of being partitioned, and the same were accorded recognition by both the former Portuguese Administration as well as the subsequent Indian Administration.

4.5. The Appellants are descendants of original '*Alvara*' holders who had been granted land by the erstwhile Portuguese Government under the OA in the territory of Dadra and Nagar Haveli during the period between 1923 and 1930. These '*Alvaras*' were granted for an indefinite duration, subject to the payment of a fixed assessment as quantified by the OA. Upon the demise of their predecessors, the Appellants became entitled to hold the said lands by virtue of the inheritable nature of '*Alvara*' rights. In certain cases, portions of the '*Alvara*' lands have also been partitioned amongst some of the Appellants. Consequently, each of the Appellants stands

recognised either as a holder of an '*Alvara'* or as having a defined share in the land comprised within the original '*Alvara'*.

4.6. The Appellants and their predecessors, as holders of these '*Alvaras*' were bound by the conditions of '*emphyteusis*' as set out in Chapter IV of the OA. Notably, Article 7 of the OA put forth that the contracts of '*emphyteusis*' would be governed by the Portuguese Civil Code, subject to certain modifications. Article 7 was to the following effect:

> *"**Art.7.** The contracts of concessions are governed by the Civil Code with the following changes:*
>
> *1) The rent shall always be in cash.*
> *2) The contract shall be made administratively.*
> *3) In case of default in payment of rent, the state has a right to produce of the land by virtue of No.1 of Article 880 of the Civil Code and subsequently to the immovable property as stipulated in No.1 of the Article 887 of the above cited Code, in lieu of the tax due to the National Revenue Department.*
> 4) *A concession holder is bound to preserve ways tracks and other existing only after his application to that effect has been granted by the Governor-General."*

4.7. Similarly, Article 8 of the OA stated that '*emphyteutic pensions would have to be paid in the revenue office of the taluk from November 1 to March 31 of each year*'. Whereas Article 11 of the OA elucidated that the '*Alvara*' holder or '*emphyteuta*' could transfer and mortgage his beneficial ownership or encumber it with any burdens or easements. However, the transferee *vis-à-vis* the lands granted in '*emphyteusis*' would nonetheless stand subrogated in the same rights and obligations of the '*emphyteuta*' towards the State.

4.8. In this vein, Article 12 of the OA imposed a clear obligation upon '*Alvara'* holders to cultivate the land in accordance with the mandates prescribed therein. Non-compliance with this obligation empowered the Administration to rescind the contract of '*emphyteusis*'. To explain further, Article 12 of the OA provided that:

> "***Art. 12. A contract of concession shall be rescinded without any right for indemnity (compensation) and without any formal procedure****:*
>
> *a) When the agricultural works have not been started within one year from the date of the contract;*
>
> *b) When at the end of a period of two years from the date of the contract one fourth of the cultivable land has not been brought under regular cultivation;*
>
> *c) When during every year, after the one fourth of land has been brought under cultivation the area under cultivation has not been increased by at least one fifth of the half of the remaining area, except due to uncontrollable circumstances duly proved the remaining half being free to be reserved for irregular cultivation, pasture or have;*
>
> *d) When, the land has been conceded for building purposes, and when within one year from the date of the contract no foundation has been laid, and within three years the remaining work has not been completed save due to uncontrollable circumstances duly proved.*
>
> *#1. For the purpose of the first three sub-clauses of the present Article all that has been laid down in table according to the classification of land is considered to be regular cultivation as also that of shrubs and bushes yielding produce economically planted methodically in a line keeping in between them necessary distance for their regular growth.*
>
> *#2. In the cases foreseen in the sub-clauses the land which has not been brought under cultivation shall be conceded a fresh, with the necessary mutations in the original Alvaras (sanads) and a notice shall be published in the official Gazette regarding the land to be conceded.*"

4.9. Article 16 of the OA, in turn, stipulated the treatment of any buildings or materials belonging to the grantees that remain on the land in the event of rescission under Article 12:

> *"**Art. 16.** In case of the rescission of the grants in terms of the preceding articles, the grantee is permitted to remove all the building material from the land within thirty days from the day he has been informed of the annulment of the contract save when the Governor General has made it known to the grantee within the said period that the state intends to acquire for the price to be determined according to the purpose of general law all or part of such building (construction)."*

4.10. Reverting to the factual developments, in purported compliance with the obligations set forth under Article 12, the Appellants' predecessors are stated to have undertaken considerable efforts to bring 5/8th of the land under regular cultivation. However, the land was allegedly of such poor quality that even the cultivation of low-yield indigenous food grains such as *Nagli*, *Kodra*, and *Varai* proved unviable. The question of whether the land was, in fact, brought under cultivation remains fraught with contradictions and shall be addressed in detail in the analysis segment of this judgment.

4.11. Be that as it may, the territories of Dadra and Nagar Haveli were liberated from Portuguese domination in 1954 and were subsequently integrated into the Union of India pursuant to the Constitution (Tenth Amendment) Act, 1961. The territory of the

newly freed Dadra and Nagar Haveli was designated as a Union Territory with effect from 10.08.1961. Following this integration, the newly established Indian administration undertook a comprehensive land survey in Dadra and Nagar Haveli, during which the total area of land held by each of the Appellants was recorded in the revenue registers and assigned distinct survey numbers. It is the Appellants' specific contention that, prior to the assumption of control by the Indian administration, they had been regularly paying land revenue assessments to the then Portuguese administration in respect of the lands held under the '*Alvaras*'.

4.12. In fact, following the death of the Appellants' predecessor, namely Harisinh Mohansinh Parmar, a partition of the '*Alvara*' land had been effected. Pursuant to an application made in this regard, the Collector *vide* order dated 24.09.1965 had even accorded sanction for the mutation of '*Alvara*' lands in favour of the members of the family, in accordance with the terms of the partition deed dated 14.10.1960.

4.13. On 28.10.1969, however, the Collector, exercising powers under the OA, issued orders rescinding the grants made in favour of the Appellants' predecessors and directed that the lands stand reverted to the Administration, free from all encumbrances. This action was taken on the grounds of an alleged breach of the conditions

attached to the '*Alvaras*', as contemplated under Article 12 of the OA. The Appellants sought to challenge the Collector's order before the High Court through various Writ Petitions, contending that '*Alvara*' holders had been denied an opportunity of being heard prior to the issuance of the impugned order.

4.14. In the meantime, the President of India by powers conferred under Article 240 of the Constitution, promulgated the Dadra and Nagar Haveli Land Reforms Regulation, 1971 (**1971 Land Reforms Regulation**) on 08.12.1971, which in turn provided for: (***i***) the abolition of '*Alvara*' and 'Terem' tenures; (***ii***) to confer occupancy rights on '*Alvara*' and 'Terem' holders and their tenants; (***iii***) to impose a ceiling on the possession of agricultural lands; (***iv***) to provide for the acquisition and distribution of land in excess of such ceiling; and (***v***) to regulate the relation of landlords and tenants, in Dadra and Nagar Haveli. Section 4 of the 1971 Land Reforms Regulation specifically adduced that lands in the possession of '*Alvara*' holders would be deemed to have been granted to such holders. More pertinently, it prescribed a cut off period of two years from the date of such vesting, within which the land was required to be brought under cultivation.

4.15. Before the High Court, the Appellants contended that in the year 1972, owing to the failure of monsoon, no crops could be cultivated

on the lands in question. In the subsequent year, 1973, the Government is stated to have deputed certain officers who, according to the Appellants, conducted only a perfunctory enquiry and submitted a report founded on such limited examination.

4.16. The High Court *vide* its common judgment dated 17.07.1973 disposed of some of the Writ Petitions preferred by the Appellants, quashed the order of recission of contract passed by the Collector and remanded the matters back to the Collector. It, however, granted liberty to the Collector to take action under Article 12 of the OA after giving a fair and reasonable opportunity to the Appellants herein. A similar order was passed by the High Court on 18.07.1973 in respect of the remaining Writ Petitions.

4.17. Consequently, it seems that the Collector proceeded to issue show-cause notices to the Appellants on 20.09.1973, calling upon them to explain why the '*Alvaras*' in respect of their lands should not be rescinded under Article 12 of the OA. The Appellants *vide* letter dated 08.10.1973 replied to the Collector's notice remonstrating that the land was '*full of weeds and absolutely uncultivable*'. They stated that despite spending substantial sums of money, they could not cultivate grains or other crops because of the quality of the land and soil, and that only grass could be cultivated by sowing seeds and exerting substantial manual labour.

They further stated that from the date of grant of '*Alvara*' until 1968, the Government had neither taken any steps nor issued notice to the Appellants, who, in turn, having held the lands continuously and uninterruptedly for more than thirty years, had become absolute owners by right of prescription, thus rendering rescission impermissible.

4.18. Pursuant to these replies, the Collector *vide* order dated 23.10.1973, directed an inspection of these lands to ascertain whether the grass claimed to be growing thereon was the result of cultivation or merely natural growth. The inspection was proposed to be carried out by the Mamlatdar, Dadra and Nagar Haveli, along with the Agriculture Officer, Dadra and Nagar Haveli, in the presence of the concerned '*Alvara*' holder or their representative. The Collector seems to have also expressly noted that there was no prescribed procedure for such circumstances and observed that the procedure adopted will be one that does not deny natural justice to the '*Alvara*' holders and affords them a fair and reasonable opportunity to present their case and produce evidence to safeguard their interests.

4.19. The Appellants once again addressed a letter to the Collector on 20.11.1973, objurgating the proposed procedure. They assailed the invocation of Article 12 of the OA as being wholly inapplicable to

the facts of their case and asserted that no action could be undertaken pursuant to that provision. A few days later, on 24.11.1973, the Collector passed another order rejecting the contentions asserted by the Appellants and directing that action would continue to be taken in accordance with the order dated 23.10.1973.

4.20. An inspection was accordingly conducted, and the Collector, on 30.04.1974, issued a consolidated order holding that the subject lands could not be treated as uncultivable. It was further held that the lands, having been classified as cultivable lands requiring improvement, the Appellants had failed to undertake the requisite measures envisaged under Article 12 of the OA. Consequently, the Collector held that the Appellants had not complied with the clear conditions prescribed therein and, on that basis, directed the rescission of the '*Alvaras*' for breach of the terms embodied in Article 12. It is clarified that some of the Appellants before us have challenged the subsequent orders of recission passed by the Collector dated 23.05.1974 and 05.07.1974.

4.21. At this stage, it is pertinent to highlight a parallel instance concerning land held by one Dhanraj Quimchand, who was recorded as the holder of Lot Nos. 964, 965, 968 and 969, together with three-fourths of Lot No. 967. By an order dated 13.03.1952,

the then Government directed reversion of these lands on the basis of an inspection conducted in that year, even though the original grant had been made in 1923. Quimchand challenged this order before the Overseas Council at Lisbon, which came to be allowed *vide* judgment dated 26.07.1964. The Overseas Council set aside the order of 13.03.1952, having construed that Article 12 of the OA had been invoked incorrectly. This decision has been heavily relied upon by the Appellants, and its applicability in the present scenario has been considered more in depth further in the analysis segment herein.

4.22. Turning back to the sequence of events, it is significant to note that one day after the Collector's order dated 30.04.1974, the 1971 Land Reforms Regulation came into force on 01.05.1974. Thereafter, on 15.07.1974, the Appellants issued statutory notices under Section 80 of the Code of Civil Procedure, 1908 (**CPC**) to the Respondents, calling upon them to recall and cancel the order dated 30.04.1974 rescinding the '*Alvaras*', and to refrain from giving effect to or taking any further steps pursuant to the said order.

4.23. The Appellants' predecessors subsequently assailed the order of rescission dated 30.04.1974 by instituting a civil suit bearing RCS No. 13/1974 (**Suit**) on 19.09.1974 before the Court of the Civil Judge, Dadra and Nagar Haveli at Silvassa (**Trial Court**). Other

similarly situated landholders also filed suits on substantially identical grounds and seeking analogous reliefs. In the Suit, the plaintiffs (Appellants herein), *inter alia*, contended: (***i***) that the lands granted under Article 12 of the OA could not be rescinded due to the operation of the principles of condonation or waiver; (***ii***) that Article 12 of the OA, under which the impugned order had been passed, was inapplicable to the plaintiffs' lands inasmuch as the seven-year period from the date of the original grant had long since elapsed, and there was no material on record indicating non-cultivation during that period; (***iii***) that the Collector and the Administration could not retrospectively apply Article 12 by assessing the lands' then-current condition; and (***iv***) that the defendants (Respondents herein) were estopped from invoking such provisions to rescind the land grants. Accordingly, the Suit prayed for a declaration that the Collector's order dated 30.04.1974 was *mala fide*, void, and illegal, and that the plaintiffs were entitled to continue holding and possessing the lands covered under their respective '*Alvaras*'. A permanent injunction was also sought to restrain the defendants from initiating or continuing any action pursuant to the impugned order.

4.24. The Trial Court, by its order dated 12.06.1976, granted an *ad interim* injunction in favour of the plaintiffs. Subsequently, upon

detailed examination of the documentary evidence and witness depositions, the Trial Court *vide* Judgment and Decree dated 19.06.1978 arrived at the following findings: (***i***) that the rights conferred under the '*Alvaras*' constituted occupancy rights, encompassing the right to cultivate, transfer, mortgage, and peacefully possess the lands for an indefinite duration, subject to payment of fixed annual assessment; (***ii***) that the rights under the '*Alvaras*' were heritable and perpetual in nature; (***iii***) that the conditions attached to the '*Alvaras*' of each plaintiff had either been duly fulfilled or 'stood condoned' by the erstwhile Portuguese administration; (***iv***) that such condonation amounted to a 'waiver', precluding the defendants from initiating any action for alleged breaches of the '*Alvaras*'; and (***v***) that the plaintiffs were entitled to the reliefs of declaration and injunction as prayed for.

4.25. The Trial Court accordingly held that each plaintiff therein was entitled to retain possession of the lands covered under their respective '*Alvaras*', and that the Collector's order dated 30.04.1974 was illegal and void. The interim injunction was made absolute, and the defendants, including their officers, agents, and subordinates, were permanently restrained from taking any steps pursuant to the said order and from interfering with the plaintiffs' possession of the suit lands.

4.26. The Respondents herein assailed the judgment and decree of the Trial Court by way of Civil Appeal No. 3/1978 before the District Judge, Dadra and Nagar Haveli (**First Appellate Court**). The First Appellate Court *vide* judgment dated 08.06.1983 dismissed the appeal and affirmed the findings of the Trial Court, particularly with respect to the 'condonation' and 'waiver' of conditions under the '*Alvaras*'. It further recorded that on account of long inaction, an inference of acquiescence could be drawn. However, the First Appellate Court also observed that it would not be open to the Appellants to contend that the lands were uncultivable at the time of the original grant.

4.27. The Respondents once again challenged the decision of the First Appellate Court before the High Court. Upon consideration of the rival contentions and the material placed on record, the High Court *vide* the Impugned Judgment allowed the second appeals, holding *inter alia* that:

(i) Mere inordinate delay does not give rise to an inference of 'implied consent' or 'acquiescence', and that such a plea could not have been entertained for the first time at the appellate stage;

(ii) The High Court, in a second appeal, is not barred from drawing inferences from established facts, particularly where

the First Appellate Court has failed to apply the law correctly to the proven facts—such action does not amount to reappreciation of evidence by the High Court;

(iii) The judgment of the Overseas Council at Lisbon cannot be said to lay down a binding ratio that would govern the present case;

(iv) There can be no estoppel against the Government in the exercise of its legislative, sovereign, or executive powers. Mere inaction, without a clear intention to waive rights, is insufficient to establish a plea of waiver. Consequently, the First Appellate Court's affirmation of the Trial Court's decree on the basis of waiver and acquiescence is unsustainable;

(v) The argument that the administration failed to exercise its statutory powers within a reasonable time was not raised before the courts below and therefore cannot be entertained for the first time in second appeal;

(vi) Contentions regarding non-application of mind or arbitrariness on the part of the Collector and inspecting authorities were similarly not urged before the lower courts and cannot be examined at the stage of second appeal; and

(vii) In light of the foregoing, the judgments of the courts below were held to be legally unsustainable and were accordingly quashed and set aside.

4.28. The aggrieved Appellants have preferred the instant appeals. By order dated 12.09.2005, this Court issued notice in the matter and directed that *status quo* be maintained between the parties. Subsequently, by order dated 24.02.2006, the earlier *status quo* order was modified to specifically restrain the parties from alienating the property in question or altering the '*property in question as well as the user of it*'.

B. CONTENTIONS ON BEHALF OF THE APPELLANTS

5. Mr. Aryama Sundaram and Mr. Gopal Subramaniam, learned Senior Counsel, along with Mr. Shivaji Jadhav, Advocate on Record, appearing on behalf of the Appellants, vehemently contended that the High Court exceeded its jurisdiction in interfering with the concurrent findings of fact and law rendered by both the Trial Court and the First Appellate Court. They further submitted that the actions of the Respondents were in direct contravention of the objectives sought to be achieved by the 1971 Land Reforms Regulation. In this context, we have briefly summarised their submissions as follows:

(a) The core issue that arises for consideration is whether, for the purpose of rescission of the grant, any default on account of alleged non-cultivation could relate only to the initial seven-year period from the date of grant, and not to any alleged non-cultivation thereafter. Once this seven-year period lapsed, the 1917 Law and the OA did not contemplate rescission on such grounds. In the absence of any finding of non-cultivation within this period, the order of rescission is manifestly bad in law, illegal, and unsustainable.

(b) As per Article 307 of the 1917 Law, the Directorate of Survey and its officers were under a statutory obligation to conduct periodical inspections and prepare reports to initiate action if the conditions of the grant were not fulfilled. No such proceedings were undertaken in the present case, which clearly indicates that cultivation had been carried out and the grantees had complied with the conditions. Even assuming that cultivation was not undertaken, the failure to conduct such inspections amounts to intentional abandonment or waiver of the statutory power by the Respondents.

(c) Notwithstanding the above, by virtue of Decree No. 27:135 dated 20.10.1936, the provisions of Article 12 of the OA, particularly clauses (b) and (c), ceased to be available to the

Collector as a basis for divesting the Appellants of the lands vested in them under the OA. The said Decree expressly contemplated that the properties were to be treated as concessions on '*emphyteusis*' and, therefore, could not be alienated except in circumstances of expropriation for public utility or in cases envisaged under Article 7(3) of the OA.

(d) The High Court went beyond the scope of Section 100 of the CPC in reversing the concurrent findings of fact recorded by the courts below, and that too without framing any substantial question of law. The jurisdiction of the High Court in a second appeal is narrowly confined, and where there are concurrent findings of fact, with no substantial question of law decipherable, it is impermissible to reappreciate evidence merely on the basis that an alternative view is possible.

(e) That being so, the Respondents cannot invoke Article 12 long after the expiry of this period, thus rendering the Collector's order clearly arbitrary. This position is reinforced by the decision of the Overseas Council of Lisbon in Appeal No. 2923 dated 26.07.1964, wherein the order of rescission of the grant was set aside. This judgment further makes it clear that the recission of an '*Alvara*' could be an action only undertaken by

the Governor General and not an inferior authority such as the Collector.

(f) There was a failure to reasonably exercise power by the Collector, as the enquiry into whether the lands were brought under cultivation within seven years from the grant of the '*Alvaras*' was conducted in 1973, nearly fifty years after the grant. No scientific method was employed to ascertain cultivation within that period, and the order dated 30.04.1974 was passed by the Collector based upon superfluous inquiry done by eight officers, without any supporting evidence, expert opinion, or disclosure of search reports to the Appellants. This conduct amounts not only to arbitrariness but also to a colourable exercise of the powers vested in the Collector.

(g) At the time of the enquiries conducted by the appointed officers, there were no standing crops on the lands, and hence a mere visual inspection could not constitute a reliable basis for the preparation of a report. It was not possible to reasonably infer whether the grass observed was naturally growing or the result of systematic cultivation. In fact, the Appellants had invested significant effort in cultivating improved varieties of grass such as *Phool*, *Rohida*, *Musi*, *Baradi*, and *Bhelsel*.

(h) In fact, the Appellants made genuine efforts to comply with the conditions of the '*Alvaras*' by attempting to cultivate the lands during the Portuguese regime, incurring substantial labour and expense. However, due to the poor quality of the lands, even inferior food grains such as *Varia*, *Nagali*, and *Kodra* could not be cultivated. In view of these difficulties, the Portuguese administration 'condoned' and 'waived' the requirement of the cultivation of these lands.

(i) The burden of proof to establish that the lands were not brought under cultivation within the first seven years from the date of grant rested entirely upon the Respondents. No oral or documentary evidence has been adduced by them in this regard, and on this ground alone, the High Court ought to have dismissed the Respondents' appeal.

(j) The plea of 'waiver' or 'acquiescence' is further strengthened when the scheme under Article 307 of the 1917 Law is considered. A combined reading of Articles 12 and 146 of the OA, along with Article 307 of the 1917 Law, reveals a structured mechanism for the rescission of '*Alvaras*'—where Article 12 stipulates the grounds for rescission and Article 307 prescribes the mandatory procedure. By virtue of Article 146 of the OA, the procedure under Article 307 becomes applicable.

The intent of this scheme contemplated prompt action upon finding land uncultivated, as opposed to measures being initiated nearly fifty years later, based solely on presumptions. Thus, without prejudice, there was 'waiver' if not 'acquiescence' on the part of the Respondents.

(k) There was also no consideration of the implications of Article 11 of the OA, under which concession holders enjoyed rights to transfer and mortgage their beneficial ownership in terms of Portuguese law. Given the creation of such third-party rights, forfeiture of land without any compensation is directly violative of Article 300A of the Constitution. It was thus impermissible for the Respondents to rescind the '*Alvaras*' after a lapse of forty years. Reliance was placed in this regard, on the judgments of this Court in ***Godrej and Boyce Mfg. Co. Ltd. V. State of Maharashtra***,[1] and ***Santoshkumar Shivgonda Patil v. Balasaheb Tukarama Shevale***.[2]

(l) As already espoused, the Respondents are estopped from invoking the provisions of the OA, as their predecessors, namely the Portuguese Administration, had acquiesced in and condoned the use of the lands during and after the expiry of

[1] (2014) 3 SCC 430.
[2] (2009) 9 SCC 352.

the period stipulated under the original *Alvaras*. It was therefore not open to the Respondents to now deprive the Appellants of their holdings at a highly belated stage. Since neither Article 12 nor Article 16 of the OA envisages any policy or guidelines for the exercise of such power, the Collector's order is manifestly arbitrary and devoid of jurisdiction.

(m) The Respondents acted in a *mala fide* manner, as is evident from the fact that although the 1971 Land Reforms Regulation were promulgated in 1971 to take effect from 01.05.1974, the Collector issued show cause notice(s) on 20.09.1973 for rescission of the contract, and the order of rescission was passed on 30.04.1974—just one day before the Regulation came into force.

(n) This *mala fide* exercise of power was further evident from the fact that the 1971 Land Reforms Regulation *vide* Sections 3 and 4 abolished the '*Alvara*' system; granted 'occupancy rights' to landholders, with a two-year period for cultivation; and further provided for compensation for any land taken in excess of the prescribed ceiling. The order of rescission, passed just one day prior to the Regulation coming into force, was clearly intended to deprive the Appellants of these statutory benefits.

(o) The issuance of show cause notices by the Collector on 09.01.1974 was in direct contravention of the 1971 Land Reforms Regulation, which had already come into force on 15.12.1973 (specifically Section 21 of Chapter V and the entirety of Chapter VIII). Section 57 of the Regulation categorically provided that ***"the provisions of this Regulation shall have effect notwithstanding anything to the contrary contained in any other law, custom or usage or agreement or decree or order of Court."*** Accordingly, the proceedings culminating in the order dated 30.04.1974 were wholly without authority of law and vitiated by the express mandate of the 1971 Land Reforms Regulation.

(p) The order of recission is protected under Section 57 of the 1971 Land Reforms Regulation, which is a 'saving clause' akin to Section 6 of the General Clauses Act, 1897. This savings clause, entrenched in the 1971 Land Reforms Regulation, cannot be read in a manner that defeats the very purpose of the statute and prevents its true objectives from being achieved. It could not have been the intent of the legislative drafters to take away through Section 57(2) what was granted by virtue of Sections 3 and 4, that too on the ground of non-cultivation, which the Regulation had itself deemed irrelevant.

C. *CONTENTIONS ON BEHALF OF THE RESPONDENTS*

6. Mr. Tushar Mehta, Learned Solicitor General of India, and Ms. Aishwarya Bhati, Learned Additional Solicitor General of India, opposed the assertions proffered by the Appellants and advanced the following contentions:

(a) The Appellants derive their rights under the OA, which governs concessions or leases, and their reliance on the 1917 Law through Decree No. 27:135 is an entirely new plea raised for the first time before this Court. Similarly, the contention that the grants in question amounted to '*emphyteusis*' is also a freshly coined contention never urged earlier. In any event, Article 146 of the OA provides for the application of the 1917 Law only in situations of *casus omissus*, whereas the present case falls squarely within the ambit of Article 12 read with Article 16 of the OA, leaving no scope for recourse to the 1917 Law.

(b) In both the Trial Court and the First Appellate Court, the issue of 'waiver' was specifically framed. The Trial Court, however, erred in accepting such a plea by placing undue reliance on the oral testimony of PW3, who claimed that he, along with other '*Alvara*' holders, had approached the then Administrator; represented the impossibility of cultivation; and were orally

communicated condonation of breach of '*Alvara*' conditions, thereby being permitted to retain possession. Crucially, when invited to reduce this claim into writing, PW3 declined to do so, rendering his testimony unreliable. Moreover, reliance placed on the judgment of the Overseas Council of Lisbon as well as on the alleged inaction of State Officials to infer 'waiver' or 'acquiescence' was wholly misplaced, and the findings of the courts below on this score were unsustainable.

(c) In this backdrop, the High Court was fully justified in interfering with the concurrent findings of the courts below, which were founded upon the misreading of various provisions and the material on record. The High Court correctly appreciated the evidence and considered the applicable legal framework, and its conclusions are based on a proper application of law to the facts on record.

(d) The contention that the Portuguese Government had 'acquiesced' or 'waived' the mandatory conditions of grant under Articles 12 and 16 of the OA is untenable. It is a settled principle that mandatory statutory requirements, particularly those grounded in public interest or public policy, cannot be waived by any individual or authority. In this regard, reliance is placed on ***Waman Shriniwas Kini v. Ratilal Bhagwandas***

and Co.[3] and ***Shri Lalchoo Mal v. Shri Radhey Shyam***.[4] Hence, even if it is assumed, without admitting, that the Portuguese Government purportedly waived compliance, such waiver would be legally untenable as it would exceed the authority vested in it.

(e) It is well settled that non-compliance with the conditions stipulated under Article 12 of the OA entails repudiation of the concession itself. The requirements prescribed therein are mandatory, and failure to comply would unjustly enrich the grantees while frustrating the very object of the enactment. The underlying purpose of granting '*Alvaras*' was to ensure agricultural development, not to permit the land to remain barren or to be diverted for construction or other non-agricultural uses. Any such deviation undermines the public interest and defeats the policy rationale that enriches the provision.

(f) In view of the settled legal position, the conditions prescribed under Article 12 of the OA are rooted in considerations of public interest and policy. Accordingly, strict compliance is

[3] 1959 SCC OnLine SC 120.
[4] 1971 (1) SCC 619.

indispensable, and any condonation or waiver of such mandatory requirements is impermissible in law.

(g) The contention of 'abrogation' raised by the Appellants is misconceived, since abrogation does not arise where a law is expressly saved. Under Section 6 of the General Clauses Act, 1897, the effect of repeal is that the repealed enactment ceases to form part of the body of law unless expressly preserved by a saving clause. In the case in hand, Section 57 of the 1971 Land Reforms Regulation embodies such a saving clause, which specifically preserves the operation of prior law in certain cases, including pending proceedings. Accordingly, Clause (d) of Section 57 of the 1971 Land Reforms Regulation squarely applies, and the instant proceedings are fully protected thereunder.

(h) The Collector was fully empowered to invoke Articles 12 and 16 of the OA and rescind the grants on the ground of non-cultivation. The authority to exercise such powers under the OA stood delegated to him by virtue of Section 3(1) of the Dadra and Nagar Haveli (Delegation of Powers) Regulation, 1964 (No. 10 of 1964), whereby the Administrator conferred power upon the Collector to act in this regard.

(i) The orders passed by the Collector are neither *mala fide* nor arbitrary but are reasonable, fair, and in due compliance with the directions of the High Court dated 17.07.1973. While the Appellants contended that they had been cultivating grass as nothing else was cultivable, the Collector, after due consideration, found that they had failed to make the requisite investments for cultivating harvestable crops. The order thus reflects adherence to due process and the principles of natural justice.

D. ISSUES

7. We have minutely scrutinised the factual background, the submissions advanced by the parties and the legal provisions governing the controversy. In our considered view, the following issues arise for determination in the instant appeals:

i. What is the true nature of the rights in the land granted to the Appellants?

ii. Whether the High Court was justified in interfering with and reversing the concurrent findings of the Courts below?

iii. Whether the recission of the grant on the ground of non-cultivation under Article 12 of the OA could be vitiated on the ground of waiver, acquiescence, delay or condonation?

iv. Whether the order of the Collector dated 30.04.1974 is vitiated by *mala fides*, arbitrariness, or otherwise unsustainable in law?

E. ANALYSIS

E.1 Issue No. 1: The true nature of the rights in the land granted to the Appellants

8. At the very threshold, it becomes exigent to examine the nature of the rights in the subject lands conferred upon the Appellants' predecessors under the Portuguese regime, and to determine the body of law from which such rights emanate and by which they are regulated.

9. It is pertinent to highlight that the courts at all prior stages have examined the matter exclusively through the prism of the OA. Their analysis has proceeded on the footing that the concessions or '*Alvaras'* granted by the Portuguese administration were governed by the provisions of the OA, particularly Article 12. As already discussed in paragraph 4.8, Article 12 categorically required the grantees to bring the lands under cultivation within the stipulated period, failing which the grant was liable to be rescinded without payment of compensation. There is also no divergence of judicial opinion on the purpose underlying such grants, namely, the promotion of cultivation and the enhancement of agricultural

productivity. Consequently, the validity of the Collector's order dated 30.04.1974 came to be tested solely with reference to Article 12 of the OA.

10. The Appellants, however, have directly asseverated the very invocation of Article 12 of the OA in the Collector's order dated 30.04.1974. Their case rests on the assertion that the rescission of the grants could have only been effected in accordance with: (***a***) the procedure prescribed under Article 307 of the 1917 Law; and (***b***) the mandate of Decree No. 27:135 dated 20.10.1936, which, according to them, the Collector's order plainly fails to comply with.

11. With respect to the 1917 Law, the Appellants contend that the *Alvaras* conferred upon them under the OA are, in substance, governed by the said Law. Their argument proceeds on the premise that, by virtue of Article 1 of the OA, the lands in question had originally vested in the Portuguese Administration under the 1917 Law, and were thereafter granted to the Appellants. They further assert that Article 146 of the OA explicitly provides that, in matters not expressly covered under the OA, the provisions of the 1917 Law would apply, thereby attracting the operation of the 'doctrine of statutory incorporation'.

12. In consequence, the Appellants contend that the foundation for rescission, as recorded in the Collector's order dated 30.04.1974,

could not have been Article 12 of the OA. Rather, they argue, the governing provision was Article 307 of the 1917 Law, which specifically delineates the conditions attached to *Alvaras*, prescribes the grounds for rescission, and stipulates the procedure to be followed for such action. For clarity, Article 307 is extracted hereinbelow:

> *"307. It is incumbent upon the Directorate of the Land Survey, aided by the authorities concerned, to supervise whether or not the emphyteutas fulfil the conditions of the contracts referred to in the previous articles, for which purpose periodically and whenever such condition may be necessary, it should be directed to be verified through their staff whether such conditions are fulfilled or not.*
>
> *1. When the conditions referred to in the preceding article are not fulfilled, a report shall be drawn signed by the employee of the Land Survey office, by the Administrator of Taluka or Patel of the locality, where the land is situated. and by two witnesses; such report, shall be immediately forwarded to the General Secretariat and it shall serve as a basis for the reversion, which, when finally ordered, shall be published by way of notification in the Government Gazette.*
>
> *2. Before the publication referred to in the preceeding para, the interested party shall be intimated within 10 days to take notice of the ground or grounds which are given rise to reversion."*

13. The Appellants' alternative line of defence rests upon their reliance on Decree No. 27:135 dated 20.10.1936, which introduced modifications in the regime governing immovable properties granted on '*emphyteusis*' under the OA. Significantly, Article 2 of the said Decree stipulated that properties so conceded by way of '*emphyteusis*' were rendered inalienable, save in two limited

contingencies—*first*, where expropriation was necessitated on grounds of public utility, and *second*, in circumstances envisaged under Article 7(3) of the OA, namely, default by the concessionaire in the payment of emphyteutic pension.

14. On the strength of the aforesaid Decree, the Appellants contend that the recourse to Article 12 of the OA stood foreclosed, and that the Collector was divested of any authority thereunder to annul the grants. It was urged that, post-promulgation of Decree No. 27:135, the rights vested in them under the OA could not be defeated on the basis of Article 12.

15. The Respondents, on the other hand, have urged that the reliance placed by the Appellants on the 1917 Law and Decree No. 27:135 is wholly misconceived, as such grounds have been advanced for the first time in the present proceedings and did not form part of their case before the courts below. It is contended that at no earlier stage had the Appellants asserted that the grants were in the nature of '*emphyteusis*'. On the contrary, their consistent position was to trace their rights exclusively to the OA, which governed concessions or leases. The invocation of the 1917 Law, being in essence a Land Revenue Code, is, according to the Respondents, a new and inadmissible ground that has been sought to be raised at the appellate stage.

E.1.1. Contentions raised afresh at the appellate stage

16. Having considered these arguments, we are constrained to observe that although the submissions advanced by the Appellants may, at first blush, appear to carry some force, a closer perlustration of the pleadings and grounds urged before the courts below makes it evident that such claims are being canvassed for the very first time before this Court. The Respondents are, therefore, correct insofar as they are asserting that these contentions had neither been pleaded nor pursued at any prior stage of the proceedings.

17. These assertions advanced by the Appellants find no trace in the pleadings before any of the courts below, be it the Trial Court, or in the subsequent appellate proceedings. Neither the issues framed, nor the written submissions filed, nor the oral arguments addressed at those stages make any reference to such contentions. Indeed, the claims appear to have surfaced for the very first time before this Court. Notably, the plea concerning the applicability of Decree No. 27:135 has been raised only through an application filed before this Court on 13.07.2023 seeking leave to urge additional grounds, being I.A. Nos. 132155 and 132156 of 2023.

18. In this regard, we place our reliance on the well-entrenched principle of law that no relief can be granted on a case not founded

in the pleadings.[5] This Court cannot entertain an entirely new case at the appellate stage at the behest of either party and is strictly confined to adjudicate the issues arising from the suit as framed by the pleadings of the parties.

19. This rule has been consistently affirmed across time and is rooted in the very purpose of pleadings—namely, to define the scope of the dispute and enable the court to adjudicate upon the rights of the parties. Pleadings, together with the issues framed thereon, serve to crystallise the points of conflict, ensure that each side is apprised of the case it has to meet, and afford both parties a fair opportunity to lead evidence and advance submissions.[6] To allow a party to depart from this framework at a belated stage would not only prejudice the opposite side but also undermine the principles of predictability and consistency that the adjudicatory process seeks to avow.

20. This position also finds statutory expression in Order XLI Rules 1 and 2 of the CPC. Nonetheless, in exceptional circumstances contemplated under Order XLI Rule 27, an appellate court may permit the production of additional evidence—such as where the trial court has wrongly refused to admit evidence, or where, despite

[5] National Textile Corporation Limited v. Nareshkumar Badrikumar Jagad, (2011) 12 SCC 695.
[6] Kalyan Singh Chouhan v. CP Joshi, (2011) 11 SCC 786; Trojan and Co. v. Nagappa Chettiar, AIR 1953 SC 235.

the exercise of due diligence, the party concerned was genuinely unaware of the existence of such evidence and therefore could not produce it earlier.

21. In the present case, however, no such impediment or hindrance is discernible which would justify permitting the Appellants to raise fresh pleas or grounds at this belated stage. Having regard to the prolonged history of these proceedings, it is inconceivable that any circumstance beyond the Appellants' control could have prevented them from advancing these submissions or from leading evidence in support thereof before the courts below. The Appellants, in their application seeking to incorporate these additional grounds, have also failed to make out a case to entertain such a plea at this belated stage. Further, there is nothing on record to suggest that the Appellants had in fact produced this before the courts below, and the same was not allowed to be admitted.

22. Such grounds, if at all they were to be relied upon, should have been taken at the first possible instance. After all, these were decrees and laws that predated both the Collector's orders and the institution of the Suit before the Trial Court, and any reliance upon them ought to have been examined in the Suit itself. It is, in a certain sense, ironic that much of the Appellants' case hinges upon alleged delays by the authorities, when, in truth, such delay and

inaction precisely underscore why these grounds cannot be entertained by this Court.

23. We are thus of the considered view that a situation cannot arise where, after such an extended passage of time, the Appellants beckon us to return to the drawing board, reappraise evidence long since concluded, and attempt, in effect, to put the proverbial genie back into the bottle. Courts ought to curb such fishing/roving inquiries on the mere asking of a party. After all, the law assists only the wakeful and not those who sleep on their rights: *vigilantibus non dormientibus jura subveniunt.*

24. At this juncture, such a course is thus neither feasible nor permissible. Even if this Court were to embark upon such an ambitious exercise, it would cause grave prejudice to the Respondents. Given the nature of the dispute and considering that the instant appeal arises out of a civil suit, allowing such additional grounds to be raised at this stage would thus be wholly impermissible.

E.1.2. Whether such fresh submissions, if considered, hold good?

25. Be that as it may, even if, as an *arguendo*, we were to accept the Appellants' plea that these additional grounds deserve consideration on the footing that they raise substantial questions of law, such grounds would nevertheless fail. This conclusion

follows upon an assessment of (***i***) the true import and effect of Article 307 of the 1917 Law; and (***ii***) the implications of Decree No. 27:135.

E.1.2.1 True import and effect of Article 307 of the 1917 Law

26. The 1917 Law appears to have operated as a general legislation governing the grant of lands across all erstwhile Portuguese territories, including Goa, Daman and Diu, for varied purposes, including for cultivation and construction of buildings. By contrast, the OA seemed to have been a special enactment, designed specifically to regulate immovable properties within Dadra and Nagar Haveli and to govern the concessions of such lands for specifically agricultural use and cultivation. The OA thus functioned as a special law tailored to the peculiar requirements of the territory of Dadra and Nagar Haveli, particularly in relation to the conferment of '*Alvaras*' under the scheme of '*emphyteutic*' contracts.

27. Article 12 of the OA, very simply put forth that an '*emphyteutic*' contract would come to be rescinded '***without right to any compensation and without any independent proceedings***' should cultivation not have commenced in the manner prescribed under clauses (a) to (d). Article 307 of the 1917 Law, on the other hand, elaborated upon the manner in which authorities are to

undertake measures to ascertain whether '*emphyteutas*' fulfil the conditions of the contract, in a periodic manner. It further provided the process to be followed in the event that such conditions were not followed.

28. However, what decisively distinguishes Article 12 of the OA as the operative provision is its categorical stipulation that no independent proceedings were required for the rescission of the contract where the prescribed conditions remain unfulfilled. This feature is of particular significance when contrasted with Article 76 of the 1917 Law, which, though substantially analogous to Article 12 of the OA, had some material distinctions. For instance, it introduced the additional caveat that recission of an '*emphyteutic*' contract must follow a prior administrative inquiry, albeit still without any right to compensation. Additionally, the provisos or paragraphs to Article 76 also seem to have been in substantial variance from the language encapsulated in Article 12. Paragraph 2 of Article 76 allowed for rescission of only those parts of the land not brought under cultivation, whereas there was no such exception envisaged in the language of Article 12 of the OA. Article 76 reads as follows:

> ***"Article 76. The contract of the emphyteusis shall be rescinded, except in case of superior force, after a prior administrative enquiry, without right to any compensation***:-

(a) When the works of cultivation have not begun within the time limit of one year, from the date of the contract;

(b) When at the end of two years, at lease one fifth part of the land is not brought under regular cultivation;

(c) When in each year, after one fifth part of the land is brought under regular cultivation, the area under cultivation is not increased at least by one tenth of the total area, until complete cultivation;

(d) When, it being case of lands destined for buildings, at lease the foundations are not concluded within one year from time to time of the contract and within three years, all the remaining works.

Paragraph 1st. For the purposes of first three clauses of this article, it shall be considered regular cultivation that a paddy, sugar cane, pulses and the like, grown by dividing the land horizontal table lands separated by small bunds and that also of the trees of shrubs bearing fruits and of economic value, methodically planted in rows, maintaining among them the distance necessary for their regular growth.

Paragraph 2nd. In the cases provided in clause (b) and (c) the contract shall be rescinded only in relation to the part not actually cultivated, if the emphyteuta is agreeable to bind himself to the payment of initial emphyteutic pension.

Paragraph 3rd. In the case of the preceding paragraphs the lands not cultivated shall be granted again in emphyteusis, and the annual emphyteutic pension paid by the new emphyteuta shall revert in favour of old one.

Paragraph 4th. The taluka administrators shall send to the General Secretariat, the list of the lands which are successively reverted to the possession of the State; such lists shall be time to time published in the Government Gazette for the knowledge of those who wish to have the same lands on grant."

[Emphasis supplied]

29. It thus emerges that Article 307 of the 1917 Law was confined in its application to the 'preceding articles' of that statute itself *viz.* Article 76 and other such provisions, and cannot be transposed so as to have governed Article 12 of the OA, which embodied a self-contained scheme. Article 12, being the operative and special

provision, unequivocally provided that no independent proceeding was required for the rescission of a concession once the stipulated conditions stand breached. The provision left no ambiguity in vesting the Collector (previously the Governor General) with the authority to act directly upon such a violation.

30. There being no *casus omissus* within the scheme of the OA, recourse to Article 146 is therefore equally foreclosed, for that provision merely envisaged that omissions in the OA would be supplemented by the 1917 Law.

31. In light of the above, the principle of *lex specialis derogat legi generali* (a specific law overrides a general law) becomes immediately applicable, namely where a special enactment has been framed to deal with a defined subject matter, its provisions must prevail over those of the general law to the extent of any overlap. The OA, being a special law enacted for the territory of Dadra and Nagar Haveli with the specific object of regulating agricultural concessions, would therefore govern the rights and obligations arising from the '*Alvaras*' in question. The 1917 Law, notwithstanding its wider sweep, would have to yield in application insofar as the field was expressly occupied by the OA.

E.1.2.2 Implications of Decree No. 27:135

32. Turning then to the effect and import of Decree No. 27:135, it is seen that the said Decree which was issued on 20.10.1936 introduced certain modifications to the OA. Significantly, Article 1 thereof unequivocally stipulated that:

> *"**Article 1.0.** The immoveable properties in the Pargana of Nagar Haveli, of the district of Daman, State of India, owned by the State in terms of Article 1 of the Decree no. 3602 of 24 of November of 1917, may be given on emphyteusis (aforamento), the respective contracts of emphyteusis (aforamento) continuing to be governed by Organizacao Agraria of Nagar Haveli, approved by Portaria No. 985 of 22 of September of 1919, save the modifications in terms of the subsequent articles"*

33. A plain reading of the above provision leaves no manner of doubt that the OA stood modified by Decree No. 27:135. The controversy, however, pivots upon the construction and scope of Article 2 of the said Decree. It is the specific case of the Appellants that the lands granted under the OA could thereafter be rescinded only in accordance with the conditions prescribed under Article 2. For ready reference, Article 2 provides as follows:

> "***Article 2.0.*** *The properties conceded on emphyteusis (aforamento) are inalienable, except:*
> *1° In the cases of expropriation for public utility;*
> *2° In the cases contemplated in no. 3 of article 7 of the Organizacao Agraria already referred."*

34. Article 2 of the Decree, therefore, stipulated that properties conceded under an *emphyteutic contract* would be rendered

inalienable, save in two limited contingencies: *first*, where expropriation was necessitated for a public purpose; and *second*, in circumstances contemplated under Article 7(3) of the OA, namely, default by the concessionaire in the payment of the emphyteutic pension to the State. To appreciate the true ambit of Article 2, it becomes necessary to examine the import of the expression 'inalienable', which, as defined in *Black's Law Dictionary*, connotes:

> *"**INALIENABLE.** Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; e.g., liberty."*

35. In the same vein, it is also apposite to consider the meaning of the term 'rescission' as employed in Article 12 of the OA. According to *Black's Law Dictionary*, 'rescission' means:

> *"**RESCISSION OF CONTRACT.** Annulling or abrogation or unmaking of contract and the placing of the parties to it in status quo."*

36. Having regard to the import of the term *'inalienable'* when placed in juxtaposition with that of *'rescission'*, we are not persuaded by the Appellants' submission that Article 2 of the Decree has, in effect, supplanted or replaced Article 12 of the OA, thereby confining the Collector's authority only to the conditions contemplated therein. The concept of inalienability ordinarily refers

to restrictions on the voluntary transfer or alienation of property rights by the act of parties, such as sale, assignment, or conveyance of title. Rescission, on the other hand, denotes the annulment of an existing contractual arrangement on account of breach of its stipulations and entails the reversion of rights to the grantor by operation of law.

37. Decree No. 27:135 cannot, therefore, be construed as having the effect of wholly displacing the OA, or, for that matter, effacing Article 12 thereof. Upon a careful interpretation of the relevant provisions, it is evident that the Decree and the OA operate independently, serving separate purposes, with no warrant to suggest that one replaces or overrides the other.

38. We are, therefore, unable to accept the contentions advanced by the Appellants in this regard, and are not inclined to assess the matter in the light of any other law or statute beyond the OA.

E.2 Issue No. 2: The High Court's reversal of the concurrent findings of the courts below

39. The Appellants have further assuaged that the jurisdiction of the High Court in a second appeal under Section 100 of the CPC is narrowly circumscribed, and that it was not open to the High Court to interfere with concurrent findings of fact recorded by the Trial

Court and the First Appellate Court. On this basis, the Appellants have sought that the High Court's findings be set aside.

40. At the very outset of our analysis on this issue, it becomes necessary to peruse Section 100 of the CPC, which provides that an appeal would lie before the High Court, from every decree passed in appeal by any court subordinate to the High Court, if it is satisfied that the case involves a '*substantial question of law*'. The provision further elucidates that "…*nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.*"

41. The legislative intent underlying Section 100 of the CPC is therefore unambiguous. It demarcates the jurisdiction of the High Court in second appeal to instances where a substantial question of law is involved, thereby precluding interference with concurrent findings of fact recorded by the courts below. This Court has, through a consistent line of authority, clarified that such a restriction is not absolute. The High Court may justifiably exercise its jurisdiction in a second appeal where the findings of the subordinate courts are

vitiated by perversity, misreading of evidence, or a manifest disregard of settled legal principles.[7]

42. In ***Hero Vinoth v. Seshammal***,[8] this Court has eruditely delineated the contours of interference with concurrent findings of fact in the exercise of jurisdiction under Section 100 CPC. It was expounded that where findings of fact are arrived at by ignoring material evidence, by taking into account inadmissible evidence, or where the conclusions are so perverse that no reasonable or prudent person could have reached them, a substantial question of law would arise, thereby warranting interference. This Court held thus:

> *"19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.* ***The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.***
> *(xxxx) (xxxx) (xxxx)*

[7] Neelakantan v. Mallika Begum, (2002) 2 SCC 440.
[8] (2006) 5 SCC 545.

24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:
(i) An inference of fact from the recitals or contents of a document is a question of fact.
But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.
(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. *A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*
(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below.

But it is not an absolute rule. Some of the well-recognised exceptions are where

(i) the courts below have ignored material evidence or acted on no evidence;

(ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or

(iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

[Emphasis Supplied]

43. What thus emerges from the above extracted case law is that, as a general rule, the High Court, while exercising its jurisdiction under

Section 100 CPC, would not be justified in interfering with the concurrent findings of fact recorded by the courts below in a civil suit. Such interference is permissible, however, in the exceptional circumstances carved out in ***Hero Vinoth (supra)***, including where the findings on material aspects suffer from perversity, are founded on no evidence, or are vitiated by reliance on considerations wholly irrelevant to the matter in issue.[9]

44. In the instant case, while adjudicating upon the plea of waiver advanced by the Appellants, the High Court in the Impugned Judgment noted the submission of the learned counsel that, in view of the concurrent findings rendered by the courts below, the High Court was proscribed from interfering therewith by reason of the limited jurisdiction under Section 100 of the Code. Having considered the submission, the High Court nonetheless proceeded to observe as follows:

> *"24. There is no absolute prohibition against interfering with the findings of fact in a the Second Appeal under Section 100 of the Code of Civil Procedure, 1908. As held by the Apex Court in a Judgment reported in (1996) 8 S.C.C. page No.365 (D.S.Thimmappa Vs. Siddaramakka), where the first Appellate Court failed to draw the proper inference and to apply law in proper perspective to the proved facts, the High Court in Second Appeal was justified in drawing proper inference from the such proved facts and the said course adopted will not amount to appreciation of evidence in Second Appeal."*

[9] Madhukar Nivrutti Jagtap v. Pramilabai Chandulal Parandekar, (2020) 15 SCC 731.

45. The High Court thereafter undertook a detailed examination of the plea of waiver and, in doing so, identified material inconsistencies in the findings returned by both the courts below. In particular, it noted the undue reliance placed upon extraneous considerations, such as the decision of the Overseas Council of Lisbon, the testimony of PW-3 before the Trial Court, as well as the alleged inaction on the part of the State authorities. Having engaged in a careful dissection of the doctrine of waiver, in the light of the jurisprudence of this Court on the subject, the High Court came to the conclusion that the concurrent findings of the courts below were unsustainable, and consequently deemed it fit to set them aside.

46. Insofar as the exercise of jurisdiction under Section 100 of the CPC by the High Court is concerned, we are unable to discern any infirmity. The course adopted by the High Court, viewed against the reasons recorded in the Impugned Judgment, cannot be questioned. Consequently, the contention of the Appellants on this score is devoid of merit and stands rejected. That said, we consider it appropriate to proceed to an examination of the substantive issues arising on the merits, which we undertake in the ensuing parts of this judgment.

E.3 Issue No. 3: The Collector's order of recission of the grant

47. As we turn to the substantive aspects of the present appeal, it becomes necessary to note that this issue has perhaps been the most mercurial, owing to the inherent contradictions embedded in the submissions advanced by the Appellants. A survey of the litigation history reveals a persistent tendency on their part to alter positions and project fresh concerns before successive fora, thereby engendering uncertainty and obfuscation around what is, at its core, a singular question: whether the lands in question were cultivated or not. This question embodies the very nucleus of the dispute between the parties, for it constitutes the basis of the Collector's order dated 30.04.1974.

48. The Appellants, rather than maintaining consistency in their narrative, have chosen to advance shifting and often incongruous versions with respect to the status of cultivation upon the lands in question. Such vacillation has not only prolonged the course of litigation but has also rendered it virtually impossible, at this stage, to ascertain with certainty the true state of affairs.

49. What emerges is a veritable *Meinong's Jungle* of possibilities. The record is replete with competing narratives: that the land was indeed cultivated; or that cultivation was attempted but rendered impossible owing to the poor quality of the soil; or that, despite

such impossibility, considerable labour and resources were nonetheless expended to cultivate grass of varying kinds; or that nothing at all was grown and the land lay barren; and alternatively, that the land had long remained fallow but has now been tilled and made cultivable, as sought to be demonstrated through the photographs belatedly produced before this Court.

50. Nonetheless, the onus now rests upon this Court to dispel the prevailing confusion and bring *quietus* to the controversy. The most appropriate manner of addressing these competing claims is to undertake a systematic examination of the record, proceeding *seriatim* through each strand of contention. Accordingly, we are of the view that these contentions may be categorised as: (***i***) the plea of waiver and acquiescence; (***ii***) the plea of reasonable period of time; and (***iii***) the plea of impossibility and condonation.

E.3.1. The plea of waiver and acquiescence

51. The gravamen of the Appellants' case rests upon the contention that, irrespective of whether cultivation was in fact undertaken by them, the failure of the authorities to act with promptitude constituted a waiver of the statutory power vested in the Respondents. It is urged that rescission of '*Alvaras*' under Article 12 of the OA contemplates a structured mechanism, read in consonance with Article 307 of the 1917 Law, whereby upon a

finding of non-cultivation, action must be initiated forthwith, followed by a fresh grant of the land under Article 16. The Appellants contend that this scheme cannot, by any stretch, extend to the initiation of proceedings nearly half a century after the original grant, and that such prolonged inaction amounts to waiver and acquiescence on the part of the Respondents.

52. The term *waiver* connotes the voluntary and intentional relinquishment of a known legal right or advantage, and necessarily presupposes full knowledge of such right by the person waiving it.[10] The doctrine of waiver, firmly rooted in the principles of contract law, operates to enable parties to a transaction to abandon rights that inhere in them. However, this doctrine is not without bounds. It is well settled in Indian jurisprudence that waiver cannot be invoked so as to efface statutory obligations or to defeat matters grounded in public policy.[11]

53. The decision of this Court in ***Shri Lalchoo Mal (supra)*** directly addresses this point of waiver *vis-à-vis* public policy, while considering whether the tenant therein could claim the benefit of Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947. The Court held that where a statute is enacted to protect

[10] Manak Lal v. Dr. Prem Chand Singhvi, AIR 1957 SC 425.
[11] Waman Shriniwas Kini v. Ratilal Bhagwandas and Co., 1959 Supp (2) SCR 217.

public interest, the benefit or protection conferred thereby cannot ordinarily be waived by an individual, since the larger public purpose underlying the enactment would stand defeated. The relevant portions are extracted hereinbelow:

> *"6.* ***The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy****. Thus the maxim which sanction the non observance of the statutory provision is cuilibet licat renuntiare juri pro se introducto. (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages 375 & 376.)* ***If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation 'as a matter of public policy****. In Halsbury's Laws of England, Volume 8, Third Edition, it is stated in paragraph, 248 at page 143 :*
> *"As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the legislature has expressly provided that any such agreement shall be void."*
>
> [Emphasis supplied]

54. This principle has been consistently reiterated in a catena of decisions, including ***All India Power Engineer Federation & Ors. v. Sasan Power Limited & Ors.***,[12] wherein this Court categorically held that if any element of public interest is involved, a waiver by one of the parties to an agreement cannot be given effect to where

[12] (2017) 1 SCC 487.

it militates against such public interest. It thus stands firmly established that the doctrine of waiver finds no application in matters concerning public interest or public policy.

55. There is no gainsaying that the grant of land by the State for the purposes of cultivation and agriculture is, by its very nature, an act rooted in public interest. Indeed, this Court has, on several occasions, observed that State intervention in matters concerning agricultural land, particularly to secure proper cultivation, is an exercise undertaken in furtherance of public interest and to subserve a public purpose.[13] Article 12 of the OA must be read in this very light, as a provision embodying and effectuating the same legislative intent.

56. In the context of the case at hand, as we have already discussed *ad nauseam*, Article 12 of the OA delineates the precise conditions under which rescission may be effected in the event of non-compliance by the '*Alvara*' holders. It stipulates that rescission would be warranted if: (***i***) agricultural operations are not commenced within one year from the date of the contract; (***ii***) if, within two years from the date of the contract, one-fourth of the cultivable land has not been brought under cultivation; and (***iii***) if,

[13] State of Bihar v. Kameshwar Singh, 1952 SCC OnLine SC 52; Ramanlal Gulabchand Shah v. State of Gujarat, 1968 SCC OnLine 70.

in each subsequent year, the cultivated area is not increased by at least one-fifth of one-half of the total area, save where prevented by unforeseen circumstances. Any deviation from these prescribed conditions, as explicitly provided, would attract rescission of the contract, without entitlement to compensation, and as underscored, without the necessity of independent proceedings.

57. Article 12 of the OA thus mandates rescission of the contract where the conditions for cultivation stipulated therein are not fulfilled by the grantees/landholders. The language of the provision, read with the public policy objective animating the legislation, does not eschew any such discretion or unbridled liberty upon the State or the erstwhile Portuguese administration to voluntarily waive the enforcement of such conditions.

58. In fact, we are in complete agreement with the observations made by the High Court in the Impugned Judgment that there can be no estoppel against the Government in the exercise of its Legislative, Sovereign, or Executive functions. When pressed against the Government, the plea of waiver faces an especially high threshold and rarely succeeds. It is, therefore, pertinent to extract the relevant portions of these observations:

> *"27. .....*
> ***Apart from affirming well known principles that there can be no question of estoppel against the Government in exercise legislative, sovereign or executive power, the***

Apex Court held that the plea of waiver when it is pressed against the Government has an uphill journey to make for success. The Apex Court held that the for establishing the plea of waiver, case of intentional relinquishing the plea of waiver, case of intentional relinquishment of a known right by the Government will have to be made out and in absence of such voluntary and intentional abandonment of a known advantage, waiver cannot be postulated. *Another decision of the Supreme Court on this point is reported in A.LR. 1989 S.C. page No.1834 (Provash Chandra Dalui Vs. Bishwanath Banerjee). The paragraph No.21 of the said Judgment which reads thus:*

> *"21. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of relinquishment of such right. It means the forsaking the assertion of a right at the proper opportunity. The first Respondent filed suit at the proper opportunity after the land was transferred to him, and no covenant to treat the appellants as Thika tenants could be shown to have run with the land is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel such intent is immaterial."*

The Apex Court has emphasized that in waiver, there is an existence of intention to abandonment or surrender of right while estoppel such intention is immaterial. I am not going into the question of estoppel as it is settled that there cannot be estoppel against the exercise of statutory power. But what is to be seen here is that intention is an essential element of wavier."

[Emphasis supplied]

59. Additionally, Article 12 of the OA, or for that matter the OA itself, does not prescribe any specific timeline within which rescission must be effected. Having regard to the nature of these grants, which were in the form of long-term and virtually permanent landholding rights conferred for the purpose of cultivation, it is only logical that the provision vested the administration with ample authority to

rescind such contracts whenever a violation of the subsisting conditions came to light. We cannot conceive a situation where the administration, having conferred transferable and heritable rights of a virtually perpetual character, would at the same time relinquish the very conditions circumscribed within Article 12.

60. This brings us to the plea of acquiescence. What is noteworthy about this contention is that it was never raised by the Appellants in their pleadings before the Trial Court, nor does it find mention in the issues framed therein. Instead, it first surfaces before the First Appellate Court, which, while dealing with the issue of condonation, observed that the prolonged delay and inaction by the authorities in not rescinding the contract under Article 12 would amount to acquiescence rather than condonation. It therefore appears that no specific plea or sustained emphasis was ever placed by the Appellants on the contention of acquiescence by the authorities.

61. On this contention as well, we find ourselves in agreement with the reasoning of the High Court, which, relying upon the settled decisions of this Court, has rightly clarified that mere delay cannot, by itself, constitute acquiescence so as to divest a party of its legal rights. The High Court is correct in holding that the inference drawn by the First Appellate Court pertaining to long inaction by

the authorities amounting to abandonment of the right is untenable in law. Acquiescence cannot be presumed solely on the basis of delay, and no such conclusion can be sustained without clear and unequivocal conduct amounting to voluntary relinquishment. The relevant findings of the High Court in this regard merit reproduction as under:

> *As stated earlier, the finding on the issue of acquiescence is not a concurrent finding as there was no issue framed on the acquiescence by the Trial Court and there is no specific finding recorded by the Trial Court on that aspect. In paragraph No.52 of its judgment, the Appellate Court held that inordinate delay leads to legitimate inference of implied consent to the irregular act or violation of the material conditions of Alwara in question. Even in paragraph No.53 of the Judgment, the Appellate Court relied upon the inference of implied consent which can be drawn only on, the basis of inordinate delay.* ***As held by the Apex Court mere inordinate delay does not lead to inference of implied consent or acquiescence. There is no finding recorded by the Appellate Court that acquiescence exists because there is something more than inaction or lack of initiative. The finding recorded by the Appellate Court is at highest of long inaction. Such long inaction will not amount to abandonment or right. Only on the basis of a finding that there was a long delay in taking action, inference of acquiescence could not have been drawn. In my view, the finding recorded by the Appellate Court on the issue of acquiescence will have to be set aside both on and on the ground that the plea of acquiescence could not have been considered for the first time in the Appeal.***
>
> [Emphasis supplied]

62. We, therefore, discern no infirmity in the observations recorded in the Impugned Judgment on this score. The assertions advanced by the Appellants on the grounds of waiver and acquiescence stand devoid of merit and are accordingly liable to fall.

E.3.2. The plea of reasonable period of time

63. The next argument advanced by the Appellants, is also inextricably linked with the previous segment comprising '*the plea of waiver and acquiescence*'. In this respect, the Appellants contend that the Collector failed to take action within a 'reasonable period of time' and, therefore, must be construed to have waived the right to invoke Article 12 of the OA. To bolster this submission, reliance has been placed upon a decision of the Overseas Council of Lisbon, wherein it was observed that such action ought to be taken within a period of seven years. However, as already delineated in the preceding portions of this judgment, mere delay or inaction on the part of the Respondents cannot dilute or defeat the rights vested in them to rescind the grants in accordance with the mandatory conditions enshrined under Article 12 of the OA. Even otherwise, the plea of inordinate delay cannot be entertained unless the party invoking it is able to demonstrate that such delay has occasioned serious prejudice. In the instant case, the Appellants are themselves the beneficiaries of the grant, and it is difficult to see how delay, even of a decade, could have operated to their detriment; if anything, such delay enured to their advantage.

64. What then remains for our consideration is the efficacy of the decision rendered by the Overseas Council of Lisbon. It is pertinent

to note that this decision has been heavily relied upon by both the Trial Court and the First Appellate Court to support their conclusion that the Respondents had 'waived' their rights under Article 12.

65. At the outset, the judgment of the Council itself, and the language employed therein, is extremely difficult to discern, even if considered purely hypothetically. It remains unclear whether this opacity arises from the manner in which the decision was originally framed or is the result of an erroneous translation. This observation is mirrored in the Impugned Judgment of the High Court, which categorically notes the difficulty in ascertaining the precise *ratio decidendi* that the judgment seeks to establish.

66. Regardless, as reflected in the Impugned Judgment, it appears that both the Trial Court and the First Appellate Court have erroneously relied upon the Council's judgment. Their reliance seems to be predicated on the contentions advanced by the landholders therein, which essentially asserted that at the end of a seven-year period, reversion could not be effected because the predecessors of the Appellants had complied with the conditions enumerated in Article 12 of the OA, and consequently, no reversion could be ordered over the entirety of the land, even if portions remained uncultivated. Acting upon this purported finding, which in reality was only the

submissions made by the parties, the Trial Court concluded that no reversion of lands could take place and affirmed that the Respondents had waived their rights under Article 12. The portion of the decision of the Council relied upon in this regard is reproduced herein:

> *"Since after the end of seven years the reversion was not ordered to be effected it is because the lessee effectively carried out all the conditions laid down in the cited article 12 and as such no reversion can take place even after this the lots remain totally uncultivated.*
>
> *If the lands had not been brought under cultivation in-due time and in a required manner the order for reversion should have been effected in 1930 and not in 1952 after a lapse of about twenty nine years."*

67. This reasoning was subsequently adopted by the First Appellate Court, which relied upon it to suggest that there had been implied acquiescence on the part of the Respondents due to the delayed nature of their actions. The First Appellate Court, while placing reliance on the decision of the Overseas Council of Lisbon, held that the right of rescission under Article 12 of the OA could not be exercised after an inordinate lapse of time, as such delay amounted to acquiescence by the Administration. It reasoned that though the judgment did not expressly advert to the doctrines of waiver or condonation, the ratio therein was clearly premised on those principles.

68. Thus, as already held, the courts below not only proceeded on an erroneous apriorism, but the First Appellate Court in particular devolved the issue of alleged implied acquiescence on the part of the Respondents. Furthermore, these courts were not *ad idem* regarding the plea of 'waiver' and misinterpreted the decision of the Council.

69. On the contrary, a perusal of the decision of the Overseas Council reveals that its *ratio* clearly establishes that recission could have been effected after the purported period of seven years, provided that until such time the landholder had not complied with the conditions imposed under Article 12. The relevant extract is reproduced hereinbelow:

> "***It is certain that the rescission could have been effected after 1930 but for that it would have to (be) shown that up till that date the tenant had not fulfilled the obligations imposed by Article 12 which are effectively illegal and should be taken into consideration.*** *[Sic]*
>
> *Meanwhile, and even if it was to be discussed whether the rescission at any time in respect of the uncultivated area was legal, it is certain that the order under appeal covers the whole concession which is contrary to the precepts established in para 2 of article 16 of the mentioned Agrarian organization which says that the contract may be rescinded in relation to the uncultivated portion."*
>
> [Emphasis supplied]

70. There is thus no doubt that the decision of the Overseas Council of Lisbon cannot serve as a sheet anchor to advance the plea of waiver

or postulate that recission could only be carried out within seven years from the date of grant. Given its own findings, its ratio does not bind the Indian Courts, nor is it directly applicable to the facts of the instant case. In any event, such decisions carry mere persuasive value only.[14] The plea founded on the concept of reasonable time is therefore also rejected.

E.3.3. The plea of impossibility and condonation

71. The Appellants, albeit not with the same force as their principal submissions, have also contended that cultivation of the lands in question was an impossibility. They assert that despite substantial efforts, financial investment, and labour undertaken by them, the land did not yield crops. It is further their case that, upon intimation to the then Portuguese Administration, such cultivation was 'condoned' and the grants were allowed to subsist.

72. Insofar as this contention is concerned, we do not deem it necessary to advert to it in great depth. We say so firstly for the reason that the argument itself stands in contradiction to the Appellants' own assertions that they were engaged in the cultivation of high-quality grass seeds and that no violation of the mandatory conditions prescribed under Article 12 had occurred.

[14] Forasol v. ONGC, AIR 1984 SC 241; General Electric Co. v. Renusagar Power Co., (1987) 4 SCC 137.

Further, the plea of impossibility has already been rejected by both the First Appellate Court and the High Court.

73. It is also imperative to note that the Collector's order itself, in paragraph 8, expressly considered the category of uncultivable lands, and classified them as those not cultivated owing to 'uncontrollable circumstances duly proved'. Such lands were excluded from consideration only after inspection established that they were genuinely uncultivable. Accordingly, the very ground now urged by the Appellants has already been examined and negatived by the Collector, since the lands in question were not categorised as falling within this exception. The Collector has on this issue made the following observations:

> *"**The third contention raised in the replies which in considered it necessary to discuss here is that the uncultivable nature of the land in many cases justifies the failure to cultivate It article ***of the Organizaco a Agraria does relax the reequip emend of bringing additional land under cultivation annually once on fourth of the area has been cultivated, in the case of "uncontrollable" circumstances duly proved**". The applicability of this provision is not clear but it was further held by the High Court that the Collector "must take into consideration the factors which have made it impossible for the holder of the lands to cultivate thelands." it may be added, that the Government has in any case no interest is taking over lands which, even if granted to another person, would remain uncultivated. **I have therefore excluded from consideration any lands found in site inspection to be uncultivable. This has been done even though it has not been claimed in the replies that any particular piece of land in question is uncultivable. (All the land is in fact claimed to have been cultivated.)** It may be added here, whether or not a particular piece of land is cultivable can be*

> *ascertained satisfactorily by inspecting it and consider the demand that has been made for the setting up of a commission to go into this matter to be vexations in intent)"*
>
> [Emphasis supplied]

74. With respect to the plea of condonation, the same was erroneously accepted by the Trial Court on the basis of the Overseas Council's view that rescission had to be exercised within seven years from the grant, and on the testimony of PW-3, who claimed that certain '*Alvara*' holders had been orally condoned by Portuguese authorities upon citing impossibility of cultivation. However, the Trial Court does not appear to have rendered any specific findings on the issue of condonation. The First Appellate Court, however, held that the Appellants, having accepted the grant for purposes of cultivation, could not subsequently rely on impossibility as a defence. It further found that no material evinced any condonation by the authorities, and instead concluded that the matter was one of implied acquiescence.

75. Having independently examined the record, we find no material to suggest that any express condonation was ever granted by the authorities. We therefore do not consider it necessary to dwell any further upon this contention. Accordingly, the pleas relating to impossibility and condonation are rejected.

E.4 Issue No. 4: The validity of the Collector's order of recission of the grant

76. The final issue urged by the Appellants pertains to the very nature of the order itself. It is their emphatic claim that the order dated 30.04.1974 passed by the Collector was invalid, illegal and *mala fide*, and was unsustainable in view of the 1971 Land Reforms Regulation. The Appellants specifically contend that by virtue of the Regulation, which came into force on 01.05.1974, the '*Alvaras*' stood abolished and, in their stead, 'Occupancy Rights' were conferred upon the '*Alvara*' holders together with other statutory benefits enshrined under Sections 3 and 4 thereof. According to the Appellants, the order of the Collector is vitiated by *mala fides*, for it was passed on 30.04.1974, just one day prior to the coming into force of the 1971 Land Reforms Regulation, with the deliberate intent of depriving them of the statutory benefits they would otherwise have become entitled to under the said Regulation.

77. The Appellants have further contended that the repeal of the OA was effected by way of re-enactment and that the present case squarely raises the issue of repugnancy between the enacting clause and the saving clause. It is urged that Section 57 of the 1971 Land Reforms Regulation, which embodies the savings provision, cannot be so construed as to frustrate the very object and purpose

of the legislation or to stand in the way of achieving its true intent. Reference was made in this vein to the decisions of this Court in ***State of Punjab v. Mohar Singh***,[15] ***Jayantilal Amrathlal v. The Union of India***[16] and ***Udai Singh Dagar and others v. Union of India***.[17]

78. In addition, reliance has also been placed by the Appellants on Sections 21 and 51 of the 1971 Land Reforms Regulation and that these provisions had already come into force on 15.12.1973. On the strength of these provisions, it is their contention that the issuance of show-cause notices by the Collector on 09.01.1974 was wholly without jurisdiction and in direct contravention of the mandate of the 1971 Land Reforms Regulation.

79. The Respondents, on the other hand, have refuted these claims and urged that the instant case does not involve abrogation of law, nor is it a question of when a law stands saved. Their submission is that the effect of repeal is well settled—once an enactment is repealed, it ceases to be part of the body of law and must be treated as if it had never existed, save to the extent preserved by a saving clause. A saving clause, by its very nature, merely preserves the operation of the repealed legislation in specified circumstances or

[15] AIR 1955 SC 84.
[16] (1972) 4 SCC 174.
[17] (2007) 10 SCC 306.

for a limited purpose, and cannot be construed so broadly as to negate the repeal itself.

80. In this light, it becomes imperative to analyse the issue along two distinct prongs: (***i***) the applicability and effect of the 1971 Land Reforms Regulation; and (***ii***) the validity and sustainability of the Collector's order.

E.4.1. Applicability of the 1971 Land Reforms Regulation

81. At the outset, it must be observed that the issue of repeal, savings, and the applicability of Sections 21 and 51 of the 1971 Land Reforms Regulation has been raised for the first time before this Court. These aspects find no mention in the pleadings or submissions before any of the courts below. As already discussed at length under '***Issue No. 1***', a party cannot be permitted to set up an entirely new case at the appellate stage, and consideration must remain confined to the issues arising from the pleadings framed at the time of the civil suit.

82. Nevertheless, we have considered these submissions advanced by the Appellants. In this regard, we must first duly understand the import of Section 57 of the 1971 Land Reforms Regulation, which reads as follows:

> *"**Section 57. Repeal and Savings.***
> *(1) On and from the date on which any provision of this Regulation is. brought into force, all laws and orders or any*

part thereof as are relatable to the matters covered by such provision shall stand repealed.

(2) The repeal of any law or order or part thereof by sub-section (1) shall not affect-
(a) the previous operation of such law or order or part thereof or anything done or suffered thereunder;
(b) any right, privilege or, liability acquired, accrued or incurred under such committed against such law or order;
(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such law or order;
(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid: and any such investigation, legal proceeding or remedy may be instituted or enforced and any such penalty, forfeiture or punishment may be imposed as if such law or order or part thereof had not been repealed.

(3) Subject to the provisions of sub-section (2), anything done or any section taken under any of the laws or orders or part thereof as would stand repealed under sub-section (1) shall, in so far as it is not inconsistent with any such provision of this Regulation as is brought into force, be deemed to have been done or taken under such provision.

(4) Any custom or usage prevailing at the time of the commencement of any provision of this Regulation and having the force of law shall, if such custom or usage is repugnant to or inconsistent with such provision, cease to be operative to the extent of such repugnancy or inconsistency."

83. The doctrine of repeal and savings of a statute, within the confines of Indian jurisprudence, is primarily governed by Section 6 of the General Clauses Act, 1897. The settled principle in this regard is that the effect of repeal is to efface the repealed law altogether, as if it had never existed, save for the limited purpose of preserving actions that were initiated, prosecuted, and concluded while the law was in force.[18] At the same time, it is equally well settled that

[18] Koteswar Vittal Kamath v. Rangappa Baliga and Co., (1969) 1 SCC 255; State of Rajasthan v. Mangilal Pindwal, (1996) 5 SCC 60.

repeal does not imply that the deleted provisions never existed to begin with, so as to preclude the continuance of proceedings that had already been instituted under the repealed statute.[19]

84. Having considered this and upon a careful reading of Section 57 of the 1971 Land Reforms Regulation, it becomes evident that the Regulation repeals the OA and applies to all situations, save and except those concerning '*any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment'*. In such cases, the OA is deemed not to have been repealed and continues to operate for the limited purpose of sustaining those proceedings.

85. What is of significance is that the inquisition undertaken by the Collector predates both the coming into effect of Section 21 and Chapter VIII of the 1971 Land Reforms Regulation on 15.12.1973, as well as the commencement of the Regulation, which came into force on 01.05.1974. It is not the case that such an investigation into the cultivation of lands was initiated in anticipation of the Regulation; rather, the very first order of the Collector rescinding the '*Alvaras*', invoking Articles 12 and 16 on the grounds of non-cultivation of lands, dates back as far as 28.10.1969.

[19] Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284.

86. As already noted, the aforesaid order was assailed before the High Court, which proceeded to interpret the provisions of the OA, with particular emphasis on Article 12. The High Court in its order dated 03.10.1973 observed that the manner in which the Collector had passed the impugned order, as well as the enquiry leading to it, suffered from a violation of the principles of natural justice, for no opportunity had been afforded to the Appellants to demonstrate that portions of the land—where only grass was found growing—remained uncultivated owing to uncontrollable circumstances. Stressing upon the inviolable principle of *audi alteram partem*, the High Court directed the Collector to conduct a fresh inquiry strictly in accordance with the principles of natural justice and the conditions postulated in Article 12. The operative direction of the High Court order states that:

> *"In these circumstances, the orders passed by the collector which are challenged in all these petitions deserve to be quashed. This, however, will not prejudice the rights of the Respondents to take proper action under Article 12 after giving a fair and reasonable opportunity to the Petitioners. Rule absolute. The order impugned in the Petitions are quashed and the Respondent No.2 shall not give effect to any of them. In the Circumstances of the case, no order as to costs."*

87. What also emerges from the above is that the High Court did not make any observation on the aspect of purported delay in the exercise of power under Article 12 of the OA. Its reasoning was confined to the requirement that any action sought to be

undertaken under Article 12 must necessarily conform to the principles of natural justice.

88. It thus becomes amply clear to us that the proceedings initiated by the Collector, as well as the High Court's initial order, preceded the coming into force of the 1971 Land Reforms Regulation, including specifically, Section 21 and Chapter VIII. Even otherwise, the Appellants' contentions, if accepted, would be in the teeth of Section 57 of the Regulation, given that these proceedings would come within the ambit of the exception carved out in clause 1(d). The applicability of the 1971 Land Reforms Regulation, in this scenario, is therefore a moot question.

E.4.2. Nature of the Collector's order dated 30.04.1974

89. Turning to the next facet of this issue, upon a closer examination of the Collector's order dated 30.04.1974, we find that it invoked Articles 12 and 16 of the OA and proceeded to rescind the '*Alvaras*' held by the Appellants on the ground of non-cultivation of lands. The order is reasoned in detail, setting out the nature of the lands in question and the process adopted to ascertain whether cultivation had, in fact, taken place. Significantly, the order records that even those parcels of land which were found to be cultivated to the extent of 5/8th were excluded from rescission, and no adverse action was taken in respect thereof. The reasoning of the

Collector also reflects due regard to the difficulty in ascertaining cultivation at an earlier stage, a contention that the Appellants have persistently advanced before us.

90. In this regard, the order makes explicit exceptions for lands that could not be cultivated owing to '***uncontrollable circumstances duly proved***', as already delineated in paragraph 73 herein. Having extended such exceptions, the Collector proceeded to hold that a substantial and complex aspect of the inspection lay in determining whether the lands had, in fact, been cultivated during the seven years from the date of grant. It was noted that genuine cultivation ordinarily leaves behind discernible traces which remain visible even years after such activity ceases, whereas no such indications were found in the present case. The Collector further recorded that the Appellants' claim of failed attempts at cultivation was not *bona fide* and that they could not demonstrate that such lands had been brought or attempted to have been brought under cultivation. In this connection, the Collector made the following pertinent observations:

> ***This cycle styled reply is not bona fide [sic]; in fact considerable areas of the lands in respect of which this reply has been given have been found in site inspection to actually be under cultivation. Some khajuri trees were also found growing naturally in many cases, indicating that such trees could have been raised and cultivated systematically. I cannot believe that the holder had all tried to cultivate paddy, nagli, varai and undid, incurring heavy expenditure but failed****. Many of*

> *these lands in facts and reported to still require investment before they can be cultivated.* ***I consider that the very clearly false statements made in the replies deprive them of any readability and that the alwara holders, on whom the burden of proof lies, have failed the show that the lands in question were brought or were attempted to be brought under cultivation****. [Sic]*
>
> [Emphasis supplied]

91. The Collector seems to have drawn these findings by relying not merely upon the inspection conducted, but also upon common knowledge pertaining to the nature and condition of the '*Alvara*' lands in that territory. Such findings, in the Collector's view, were of "*quite sufficient certainty to be acted upon,*" and, therefore, warranted rescission of the concessions. The Collector, thus, proceeded to pass the order on the basis that: (***i***) the inspecting officers had specifically identified and demarcated portions of land that were genuinely uncultivable; and (***ii***) the officers had further noted parcels where cultivation was possible, albeit requiring substantial investment and effort. In respect of the latter category, the Collector directed rescission of the contracts, observing that the mandate of the law imposed a clear obligation upon the grantees to effect improvements and bring the land under cultivation. The absence of such effort, despite the statutory requirement under Article 12 of the OA, was therefore construed to be sufficient ground for rescission.

92. Given the above analysis, we are inclined to hold that there is no infirmity in the reasoning assigned by the Collector, which appears to have been rendered after due deliberation, consideration of the relevant circumstances, and following the applicable rules and regulations.

93. Consequently, it would be far-fetched to infer that the order(s) of the Collector or the actions of the Respondents were actuated by *mala fides*, undertaken solely to deprive the Appellants of statutory benefits, or that such measures were in contravention of the underlying legislative intent of the 1971 Land Reforms Regulation.

94. We are, therefore, not persuaded by the Appellants' contention as to the applicability of the 1971 Land Reforms Regulation, and the same stands rejected. There is also nothing on record to suggest that the Respondent's actions were malicious or unsustainable.

F. CONCLUSION AND DIRECTIONS

95. Having reached the culmination of this judgment, and before setting out our final conclusions, it is necessary to briefly recapitulate our findings on the issues that have engaged our consideration:

i. The governing law for determining the nature and extent of the rights in the lands granted to the Appellants is the OA, and the inquiry must be confined to its provisions;

ii. The High Court's reversal of the concurrent findings of the courts below does not transgress the limits of its jurisdiction under Section 100 of the CPC;

iii. The Appellants' pleas of waiver, acquiescence, delay, impossibility, and condonation have no legal or factual basis, and none of these principles render the Collector's order dated 30.04.1974 unsustainable; and

iv. The Collector's order dated 30.04.1974 was not tainted by *mala fides* and cannot be construed as having been passed with the intent to disentitle the Appellants from the statutory benefits under the 1971 Land Reforms Regulation.

96. In view of the foregoing discussion, we hold that the findings of the High Court in the Impugned Judgment suffer from no infirmity, legal or factual, warranting interference under our appellate jurisdiction.

97. Consequently, the appeals are devoid of merit and stand dismissed. The earlier *status quo* order dated 24.02.2006 stands vacated. There shall be no order as to costs.

98. Additionally, we deem it necessary to observe that if some of the Appellants, as was sought to be projected before us during the course of hearing, have not been granted or have not been

considered for the grant of occupancy rights under the 1971 Land Reforms Regulation, liberty is reserved to them to approach the Collector within a period of six (6) weeks. Such applications, notwithstanding the expiry of limitation, shall be entertained and adjudicated upon in accordance with law.

99. Furthermore, in so far as the plea for acquisition as proposed by the National Highways Authority of India (**NHAI**) for the purposes of development of the Delhi–Mumbai Expressway is concerned, the relevant Interlocutory Applications stand disposed of, with liberty reserved to the parties to work out their remedies in accordance with law.

100. All other pending applications also stand disposed of in terms of the above.

101. Ordered accordingly.

.....J.
(SURYA KANT)

.....J.
(DIPANKAR DATTA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
DATED: 24.09.2025