SHIV CHANDER MORE & ORS. A

v.

LIEUTENANT GOVERNOR & ORS.

(Civil Appeal No. 3352 of 2014)

MARCH 7, 2014 B

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

Andaman and Nicobar Islands (Land Tenure) Regulation, 1926:

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ANDAMAN AND NICOBAR ISLANDS LAND REVENUE AND LAND REFORMS REGULATION, 1966: Regulation 144

Grant of plot under 1926 Regulation – No fresh grant or renewal – Repeal of 1926 Regulation – Whether the 1966 Regulations conferred any right upon the grantee whose grant has lapsed by passage of time to stay in possession till such time one of the grounds enumerated under Regulation 151 becomes available to the Administration for their eviction – Held: If a grantee of an expired grant had incurred the liability to surrender possession of the granted property, such liability would remain enforceable notwithstanding the repeal of the Regulations under which such liability arose – Regulation 144 of 1966 Regulations stipulates that a grantee under the old Regulations would continue to be under the same obligation/ liability or enjoy the same rights as are permissible under the 1966 Regulations – Thus, the essence of the Regulation in so far as right of a grantee to continue in possession is concerned, is the same under the 1926 Regulations and the subsequent Regulations of the year 1966 – In either of the cases, the grantee cannot stay in possession for more than 60 years – The argument that an old grantee can stay in possession in perpetuity so long as there is no violation of Regulation 151, is not tenable – The appellants, in the instant D E F G

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A *case, no doubt had protection under the 1966 Regulations because the grant in their favour renewed upto 1994 was in existence in 1966 but such protection would cease with the expiry of the 60 years period in 1994.*

B *Res judicata:*

Constructive res judicata – Applicability to writ proceedings – Discussed.

Constructive res judicata – Grant of plot of land under C *1926 Rules – Request of appellant for fresh grant declined by the Lieutenant Governor – Writ petition – High Court took the view that the occupants need not be evicted from the land only so long as the same was not needed for any public purpose – Before the High Court, appellant did not raise* D *contention that regardless whether a fresh grant was made in their favour or not and regardless whether or not a second renewal was permissible under the 1926 Regulations, they had acquired a vested right under the 1966 Regulation to continue in occupation of the land till such time one of the* E *contingencies enumerated under Regulation 151 of the said Regulations arose disentitling them from continuing in occupation of the land – Said contention was available to the occupants which could and indeed ought to have been raised by them at that stage – Inasmuch as the occupants did not* F *urge such contention in the previous round of litigation they are debarred from doing so in the instant proceedings on the principles of constructive res judicata — Andaman and Nicobar Islands (Land Tenure) Regulation, 1926.*

The grandfather of the first appellant and the father G **of the remaining appellants was granted a plot of land for a period of 30 years in terms of Andaman and Nicobar Islands (Land Tenure) Regulation, 1926. The said period of 30 years expired in the year 1964. Revenue Administration sought to repossess the land. The grantee** H **challenged the same and it was held that Revenue**

Department having received land revenue upto the year 1974 should not refuse renewal and the grantee were allowed to continue in possession till 1994. With the expiry of total period of 60 years, again the grantee was asked to vacate. Matter came up before the High Court wherein the legal heirs of grantee were permitted to make a representation for fresh grant. No such representation was filed and the Revenue Department again issued notice to vacate. The legal heirs of grantee filed petitions dated 8th and 15th May, 2000 before the Lieutenant Governor for a fresh grant in their favour which were dismissed. The writ petitions thereagainst were allowed by a single judge of the High Court. However, the Division Bench modified the order of the single judge with direction that if the land in question is required by the Administration for public purpose, it would be entitled to resort to appropriate provisions of law for acquiring the same. Lieutenant Governor appealed before Supreme Court where it was held that the representations filed by the legal heirs of the original grantee were for a fresh grant in their favour and further held that the second renewal was rightly held to be impermissible by the Lieutenant Governor. Therefore, Deputy Commissioner relying upon the decision of Supreme Court directed the appellant to handover the possession of land. The writ petition was filed to challenge the direction of Deputy Commissioner. The High Court dismissed the writ petition on the ground that the appellants were not entitled to raise any question relating to refusal of renewal or a fresh grant in their favour.

In the instant appeal, the two distinct questions which arose for consideration were: Whether the appellants were debarred from resisting eviction from the land in question on the ground that they have acquired the right to continue in possession even without renewal and a fresh grant in their favour under the Andaman and

A Nicobar Islands Land Revenue and Land Reforms Regulation, 1966; and (2) Whether the 1966 Regulations indeed conferred any right upon the grantees whose grant has lapsed by passage of time to stay in possession till such time one of the grounds enumerated B under Regulation 151 becomes available to the Administration for their eviction.

Dismissing the appeal, the Court

HELD: Re: Question No.1

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1. By Representations dated 8th and 15th May, 2000 addressed to the Lieutenant Governor, the appellant sought a fresh grant in their favour. Their prayer was declined by the former by his order dated 28th February, D 2001. The petitioner had filed these representations obviously because the High Court had taken the view that a second renewal of the grant was not permissible under the 1926 Regulations. The filing of the representations clearly amounted to acknowledging the E correctness of that position. Aggrieved by the order passed by the Lieutenant Governor, the writ-petitioners approached the High Court again. It was open to them to contend that regardless whether a fresh grant was made in their favour or not and regardless whether or not a second renewal was permissible under the 1926 F Regulations, they had acquired a vested right under the 1966 Regulation to continue in occupation of the land till such time one of the contingencies enumerated under Regulation 151 of the said Regulations arose disentitling the writ-petitioners/occupants from continuing in G occupation of the land. Such a plea could and indeed ought to have been raised if the appellants intended to agitate that issue for adjudication. No such contention was, however, urged before the High Court in the said petition. On the contrary, the High Court took the view

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that the occupants need not be evicted from the land only so long as the same was not needed for any public purpose. The High Court referred to the 1966 Regulations to suggest that a fresh grant was permissible even under the provisions of the said Regulation thereof. It is, therefore, evident that not only the writ-petitioners but even the High Court was conscious of the repeal of 1926 Regulations by the 1966 Regulations and the provisions of the latter Regulations permitting a fresh grant. That being so, it need not have prevented the occupants (appellants) from urging before the High Court as they appear to be doing now, that the 1966 Regulations entitled them to continue in occupation regardless of whether there was a renewal of the grant in their favour and regardless of whether or not, there was a fresh grant in respect of the land. The contention now sought to be urged that the occupants can continue to occupy the land in question in perpetuity without even a renewal or without a fresh grant in their favour subject only to the condition that they did not violate the provisions of Regulation 151 was available to the occupants which could and indeed ought to have been raised by them at that stage. Inasmuch as the occupants did not urge any such point or raise any such contention in the previous round of litigation ending with the order of this Court they are debarred from doing so in the present proceedings on the principles of constructive *res judicata*. That constructive *res judicata* in principle applies even to writ proceedings. The doctrine of *res judicata* being one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilized society in the world. It is founded on a two-fold logic, namely, (1) that there must be finality to adjudication by competent Court and (2) no man should be vexed twice for the same cause. These two principles attract the doctrine of *res judicata* even to inter-parties decisions that may be erroneous on a question of law. Principles of

A **constructive *res judicata* which are also a part of the very same doctrine have been held to be applicable to writ proceedings. [Paras 18 and 19] [433-F-H; 434-A-H; 435-A-D, H]**

B *Lt. Governor and Ors. v. Shiv Chander More and Ors.* **2008 (4) SCC 690:2008 (6) SCR 106;** *Amalgamated Coalfields Ltd. & Anr. v. Janpada Sabha Chhindwara & Ors.* **AIR 1964 SC 1013: 1963 Suppl. SCR 172 – relied on.**

1.2. It is no longer open to the appellants to contend
C **that the principles of constructive *res judicata* would not debar them from raising the question which could and indeed ought to have been raised by them in the previous round of litigation. The High Court was, in that view of the matter, perfectly justified in holding that the plea sought**
D **to be raised by the appellants in the purported exercise of liberty given to them by the orders of this Court was not legally open and should not be allowed to be urged. [Para 22] [437-B-C]**

E <u>Re: Question no.2</u>

2.1. Regulation 141 of the 1966 Regulations classifies classes of tenants while Regulation 142 and Regulation 143 deal with occupancy tenants and non-occupancy tenants respectively. It is common ground that the
F **appellants do not answer the description of occupancy tenants or non-occupancy tenants within the meaning of Regulation 142 and Regulation 143. Their case falls more appropriately under Regulation 144 which deals with persons belonging to anyone of the two classes in**
G **clause (a) and (b) thereunder. That is because the appellants were held to be grantees under Regulation 4(1)(a) of the 1926 Regulations which is different from licencees falling under Regulation 4(1)(b) of the said Regulations or Regulation 145 of the 1966 Regulations.**
H **The question, however, is whether a grantee under the**

1926 Regulations has any right to continue in occupation beyond the period of 60 years, which is the period permissible under Regulation 146 of the 1966 Regulations. It is not in dispute that no such right can be located under the 1926 Regulations. The expiry of the period of grant as in the case at hand would oblige the grantees to surrender the possession to the administration. That obligation or liability incurred under the 1926 Regulation continues to hold good, notwithstanding the repeal of the 1926 Regulations by the Regulations of the year 1966. [Para 27] [442-B-F]

2.2. If a grantee of an expired grant had incurred the liability to surrender possession of the granted property, such liability would remain enforceable notwithstanding the repeal of the Regulations under which such liability arose. The argument that the liability gets extinguished by reason of Regulation 144(1)(a) of the 1966 Regulations is legally unsound. *Firstly,* because the contention flies in the face of Regulation 211 which continues the obligation incurred under the 1926 Regulations. So long as the liability incurred is recognized and continued by the repealing Regulation, the same can be enforced in law. *Secondly,* because the interpretation of Regulation 144(1)(a) itself does not admit of a situation where the liability to surrender possession not only becomes extinct but is enlarged into a right to stay in possession in perpetuity. All that Regulation 144 stipulates is that a grantee under the old Regulations would continue to be under the same obligation/liability or enjoy the same rights as are permissible under the 1966 Regulations. The right to continue would however, depend on whether the person in occupation has a valid grant in his favour, even on the date the 1966 Regulations came into force. If the answer is in affirmative, such grant may be treated to be a grant under the 1966 Regulations, no matter, it was in fact a grant under the 1926 Regulations. [Para 28] [443-F-H; 444-A-C]

A **2.3. To the extent of the unexpired period of grant, as on the date, the 1966 Regulations came into force, the grantee would continue to enjoy his right and be subject to liability under the 1966 Regulations. Upon expiry of the period of grant, however, the grantee will be liable to**
B **surrender possession just as the grantee is liable to do under Regulation 146 in regard to a grant made under the 1966 Regulations. The essence of the Regulation in so far as right of a grantee to continue in possession is concerned, is the same under the 1926 Regulations and**
C **the subsequent Regulations of the year 1966. In either of the cases, the grantee cannot stay in possession for more than 60 years. The argument that an old grantee can stay in possession in perpetuity so long as there is no violation of Regulation 151, therefore, is liable to be**
D **rejected. The appellants, in the instant case, no doubt may have protection under the 1966 Regulations because the grant in their favour was deemed to have been renewed upto 1994 was in existence in 1966 but such protection would cease with the expiry of the 60 years period in 1994.[Pars 29 and 30] [444-D-H]**
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Ratan Kaur v. Union of India and Ors. **(1997) 10 SCC 61: 1997 (1) Suppl. SCR 48;** *Devilal Modi v. STO* **AIR 1965 SC 1150: 1965 SCR 686;** *Direct Recruit Class-II Engineering Officers Assn. v. State of Maharashtra* **(1992) 2**
F **SCC 715;** *Direct Recruit Class-II Engineering Officers Assn. v. State of Maharashtra* **(1992) 2 SCC 715 – referred to.**

Case Law Reference:

1997 (1) Suppl. SCR 48	**Referred to**	**Para 11**
G **2008 (6) SCR 106**	**Relied on**	**Para 18**
1963 Suppl. SCR 172	**Relied on**	**Para 18**
1965 SCR 686	**Referred to**	**Para 19**
H **(1992) 2 SCC 715**	**Referred to**	**Para 20**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3352 of 2014. A

From the Judgment & Order dated 31.01.2011 of the High Court of Calcutta in MAT No. 4 of 2011.

Pramod Kohli, Nipu Patiri, Rajiv Talwar for the Appellants. B

G. Dara, Shadman Ali, Shailender Saini, Rashmi Malhotra, D.S. Mahra, R. Balasubramanain, K.V. Jagdishvaran for the Respondents.

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The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. This appeal arises out of a judgment and order dated 31st January, 2011 passed by the High Court of Calcutta, D Circuit Bench at Port Blair, whereby MAT No.004 of 2011 filed by the appellants has been dismissed and order dated 20th December, 2010 passed by a Single Judge of that Court dismissing Writ Petition No.174 of 2008 affirmed.

3. The factual matrix in which the controversy arises has E been set out at considerable length in the order passed by the learned Single Judge of that Court as also order dated 28th February, 2001 passed by the Lieutenant Governor, Andaman and Nicobar Islands. Shorn of details we may briefly recapitulate the same as under: F

4. Vitoba, the grandfather of the first appellant and father of the remaining appellants was allotted a plot of land measuring 43 acres, 12 Kanals and 10 marlas situate within the limit of Ferragunj Tehsil in the South Andaman District in G terms of Regulation 4(1)(b) of the Andaman and Nicobar Islands (Land Tenure) Regulation, 1926. At some stage of the long drawn proceedings between the parties, one of the issues that arose for determination was whether the grant in question was made in terms of Regulation 4(1)(a) or 4(1)(b) of the H

A Regulation mentioned above. The Andaman and Nicobar Administration ('Administration' for short) was of the view that although the grant was made in Form B under the Regulation 4(1)(b) of the Regulations, the same was in reality a grant under Regulation 4(1)(a) thereof. That part of the controversy no
B longer survives for consideration before us. The submissions made before us proceeded on the common premise that the grant was indeed one, made under Regulation 4(1)(a) of the Regulation in question.

C 5. The grant made in favour of Vitoba was in terms of Regulation 4(1)(a) valid for a period of 30 years but could be renewed for another term of 30 years. With the expiry of the initial period of 30 years in the year 1964, the Administration appears to have taken a decision to re-possess the land in question as no renewal of the grant was ordered in favour of
D the holder. The Deputy Commissioner in that direction passed an order on 26th April, 1974 aggrieved whereof Ram Chander Vitoba, son and Smt. Dan Dei, widow of the deceased grantee filed an appeal before the Secretary, Andaman and Nicobar Administration challenging the order passed by the Deputy
E Commissioner. The Revenue Secretary disposed of the appeal holding that the Revenue Department having received land revenue from the occupants upto the year 1974, it was too late to say that the grant will not be renewed.

F 6. Pursuant to the direction issued by the Revenue Secretary in the appeal aforementioned, the Revenue Authorities re-fixed the revenue payable for the landed property and allowed the legal heirs of the original grantee to continue in occupation till 1994 by which time the extended period of the
G grant also expired, although no formal extension/renewal of grant was made in favour of the occupants. With the expiry of a total period of 60 years, Smt. Sangita Bai wife of Ram Chander Vitoba was called upon to release the land property in favour of the Administration as the same was required for developmental purposes. Aggrieved by the said direction Smt.
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Sangita Bai wife of Ram Chandra More and mother of the present writ-petitioner filed Writ Petition No.72 of 1994 before the High Court of Calcutta, Circuit Bench at Port Blair. A Single Judge of that Court disposed of the said writ petition on 2nd December, 1994 holding, *inter alia*, as under:

> *"Considering the facts and circumstances of this case, it appears that the petitioner has no right in the land since the lease granted in favour of her predecessors in 1934 including the extended period had lapsed in 1994 as per the Land Revenue and Land Reforms Regulation, 1966. As such the only remedy available to the petitioner, is to make a representation to the authority concerned for a fresh grant in respect of her coconut plantation which was given to the petitioners predecessor, the original licensee. Accordingly liberty is given to the petitioner to make such representation within four weeks from date and if such representation is made, the authorities concerned shall consider her such representation considering that the predecessor of the Petitioner was enjoying the possession of the land in question as licence, positively within 4 months from the date of making such representation. Till three weeks after the disposal of the representation, status quo as on today shall continue."*

7. The above order attained finality as the same was not challenged by the writ-petitioner in appeal. A second renewal of the grant was held to be impermissible under the Regulations. The High Court all the same permitted the legal heirs of the grantee to make a representation for a fresh grant in their favour in regard to the coconut plantation. No such representation having been filed, a fresh notice dated 20th July, 1998 was issued to the legal heirs, namely, Smt. Sangita Bai More and seven others by the Deputy Commissioner asking them to hand over physical possession of the land in question to the Government. On receipt of the said notice Shri Shiv

A Chander More, one of the legal heirs of the original grantee, filed Writ Petition No.54 of 1998 before the High Court which was disposed of by the High Court on 16th November, 1998 once again holding that there was no provision for a second renewal of the grant but the grantees could apply for the fresh
B grant in their favour. The writ petition was accordingly disposed of with a direction to the petitioners to file a written representation before the Lieutenant Governor for a fresh grant in respect of the land under their possession which the Administration was directed to consider sympathetically.

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8. The direction issued by the High Court notwithstanding the writ-petitioners did not submit any representation and continued in joint possession of the land. The Deputy Commissioner accordingly issued a notice to the successor-in-interest of the grantee to make over the physical possession
D of the land to the Tehsildar, Ferragunj. It was only after receipt of the said notice that the writ-petitioners filed two petitions one dated 8th and the other 15th of May, 2000 before the Lieutenant Governor for a fresh grant in their favour. The said representations were considered by the Lieutenant Governor
E and declined by his order dated 28th February, 2001. The Lieutenant Governor gave two main reasons for refusal of a fresh grant in favour of the grantees. Firstly, it was stated that although there was a provision in the Regulations of 1966 which had repealed 1926 Regulations to make a fresh grant, the
F Administration had not given any fresh grant to anyone after the renewal of the old grants for only one term as permissible under the Rules. All the lands under such grants were on the contrary taken over by the Administration after the expiry of the period for which they were renewed. The Lieutenant Governor held that
G in the case at hand, the grantees had already enjoyed possession of the land in question for over 67 years w.e.f. 1.1.1934.

9. The second reason which the Lieutenant Governor gave while declining to grant a fresh grant in favour of the writ-
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petitioners was that the grantee and his family members had landed properties with them at Shore point and Bambooflat and that some of the said land had been utilised for construction of houses and buildings which were rented out for commercial purposes. The refusal of a fresh grant to the writ-petitioners was not, therefore, going to render the petitioners landless. The Lieutenant Governor observed:

> *"Since the writ petitioner and his family members are having 6.35 hects of land at Shore Point/Bambooflat in their names and since they are not going to be rendered homeless on resumption of the grant, they are not entitled to get the Grant renewed in their favour. Therefore, the petition of the petitioner is rejected and the representation is hereby disposed off."*

10. Aggrieved by the order passed by the Lieutenant Governor, the legal heirs of the original grantee filed Writ Petition No.91 of 2001 before the High Court which was allowed by a Single Judge of the High Court by his order dated 18th September, 2001. The High Court held that since the petitioners and his family members had developed the land spending considerable amount, they need not be evicted from the land until and unless such land is actually needed for any public purpose. In case the land is needed for public purpose, the petitioner or anyone else shall not be entitled to retain claim to the land in question observed the High Court for public purpose must get precedence over all other purposes. But until and unless the land in question is actually needed for any public purpose, the possession of the petitioner or his family members should not be disturbed nor possession of the land handed over to any other individual. The High Court observed:

> *"Accordingly, the Lt. Governor is directed to allow the petitioner to retain the land until the same is actually needed for any public purpose and for this purpose, it necessary, the Lieutenant Governor may grant fresh licence. However, if any such fresh licence is granted by*

A *the Lieutenant Governor the same "Under no circumstances should be regard as renewal of the licence as no second renewal is admissible." The petitioner shall hand over peaceful and vacant possession of the said land in the event the same is actually needed by the*
B *respondent authorities for any specific public purpose and particularly when prior notice would be served by the respondent authorities requisitioning the land for the public purpose. The Lieutenant Governor may also ask the petitioner to furnish an undertaking before granting*
C *fresh licence to the petitioner. The impugned order passed by the Lt. Governor on 28th of February, 2001 is therefore modified in the manner as indicated hereinabove."*

11. MAT No.28 of 2001 filed against the above order of
D the Single Judge of the High Court was disposed of by order dated 6th February, 2002 by which the Division Bench modified the order passed by the Single Judge with a direction that if the land in question is required by the Administration for public purpose, it will be entitled to resort to appropriate provisions
E of law for acquiring the same. The Division Bench held that the judgment of this Court in *Ratan Kaur v. Union of India and Ors.* (1997) 10 SCC 61 had no application to the case at hand as the same had been delivered in a different fact situation.

F 12. Aggrieved by the order passed by the High Court the Lieutenant Governor appealed to this Court in CA No.5091 of 2004. This Court held that the representations filed by the legal heirs of the original grantee were for a fresh grant in their favour. This Court further held that the second renewal had been rightly
G held to be impermissible by the Lieutenant Governor in the order passed by him and as held by this Court in *Ratan Kaur's* case (supra). This Court accordingly set aside the order passed by the High Court holding that the order passed by the Lieutenant Governor was legal and proper. This Court
H observed:

"The order of the Lt. Governor, therefore, was legal and proper and the High Court should not have interfered with it. If the respondent has any remedy, as claimed, other than seeking fresh grant and/or renewal, that did not fall for consideration in the representation before the Lt. Governor and the High Court. We express no opinion in that regard.

The appeal is allowed to the aforesaid extent without any order as to costs."

13. A fresh round of litigation was then triggered by order dated 23rd June, 2008 passed by the Deputy Commissioner whereunder the Deputy Commissioner relying upon the decision of this Court directed the petitioners to handover the possession of the subject land within 15 days from the date of receipt of the said order failing which Tehsildar, Ferrargunj, was directed to initiate appropriate action as per law to restore the land to the Government. Writ Petition No.174 of 2008 filed to challenge the direction issued by the Deputy Commissioner not only assailed the order issued by the Deputy Commissioner but also prayed for a mandamus directing the respondents not to interfere with their possession over the disputed land. That petition was eventually dismissed by a Single Judge of the High Court holding that the petitioners were not entitled to raise any question relating to the refusal of renewal or a fresh grant in their favour in the light of the judgment of this Court and the orders passed in the earlier stages of the proceedings. The High Court took the view that once the order passed by the Lieutenant Governor declining a fresh grant to the petitioners had been affirmed by this Court as being legal and valid, there was no room for any challenge to the said order nor was it open to the petitioners to argue that they were entitled to a second renewal or a fresh grant in their favour. Letters Patent Appeal filed against the order of the Single Judge also having failed, the legal heirs of the original grantee have filed the present appeal to assail the said orders.

A 14. Appearing for the appellants Mr. Kohli, learned senior counsel, argued that the order passed by this Court in the previous round of litigation left sufficient room for the appellants to resist their eviction from the disputed parcel of land on any ground other than the two grounds urged earlier namely renewal B of the earlier grant or a fresh grant in their favour. It was contended that the appellants were, in the fresh writ petition filed by them, neither claiming a right of second renewal of grant nor were they claiming a fresh grant in their favour as both these aspects stood concluded against them in the earlier round of C litigation. What the appellants were nevertheless entitled to argue was that they had in terms of 1966 Regulations acquired a right to continue in possession till such time their case fell under one or other contingencies enumerated in Regulation 151 of the said Regulations. This was, according to the learned D counsel, a ground that was available to the appellant on account of the liberty reserved to them by this Court in its order dated 9th April, 2008. Inasmuch as the High Court had taken the view that no such contention could be urged by the appellant on the doctrine of constructive *res judicata* the High Court had fallen in error. There was, according to the learned counsel, no E determination of the question whether the appellants had acquired any right to stay in occupation of the land under the 1966 Regulation independent of their right to claim renewal or a fresh lease/license in their favour. That apart, the question whether a right to continue in possession even without a F renewal or fresh lease was not and could not have been, according to the learned counsel, raised in the previous round of litigation so as to attract the doctrine of *res judicata* or the principles underlying the same.

G 15. On behalf of the respondents it was argued by Mr. Balasubramanian, that the present round of litigation was an abuse of the process of law. It was submitted that this Court having clearly held that the order passed by the Lieutenant Governor was legal and valid, there was no room for any further H debate on the question whether the appellants were entitled to

a renewal or a fresh grant. He urged that the appellants were debarred from claiming any benefit even under the 1966 Regulation because any such benefit could and indeed ought to have been claimed by them in the previous round of litigation in which the appellants were claiming a renewal or in the alternative a fresh grant in their favour. The High Court was, therefore, justified in declining interference with the order passed by the Deputy Commissioner, argued the learned counsel.

16. Two distinct questions arise for our consideration. These are:

(1) Whether the appellants are debarred from resisting eviction from the land in question on the ground that they have acquired the right to continue in possession even without renewal and a fresh grant in their favour under the 1966 Regulation; and

(2) Whether the 1966 Regulations indeed confer any right upon the grantees whose grant has lapsed by passage of time to stay in possession till such time one of the grounds enumerated under Regulation 151 becomes available to the Administration for their eviction.

17. We propose to deal with the questions *ad seriatim*.

Re: Question No.1

18. Representations dated 8th and 15th May, 2000 addressed to the Lieutenant Governor sought a fresh grant in favour of the writ-petitioners. Their prayer was declined by the former by his order dated 28th February, 2001. The petitioner had filed these representations obviously because the High Court had taken the view that a second renewal of the grant was not permissible under the 1926 Regulations. The filing of the representations clearly amounted to acknowledging the

A correctness of that position. Aggrieved by the order passed by the Lieutenant Governor, the writ-petitioners approached the High Court again in W.P. No.91 of 2001. It was open to them to contend that regardless whether a fresh grant was made in their favour or not and regardless whether or not a second B renewal was permissible under the 1926 Regulations, they had acquired a vested right under the 1966 Regulation to continue in occupation of the land till such time one of the contingencies enumerated under Regulation 151 of the said Regulations arose disentitling the writ-petitioners/occupants from continuing C in occupation of the land. Such a plea could and indeed ought to have been raised if the appellants intended to agitate that issue for adjudication. No such contention was, however, urged before the High Court in the said petition. On the contrary, the High Court took the view that the occupants need not be evicted D from the land only so long as the same was not needed for any public purpose. The High Court referred to the 1966 Regulations to suggest that a fresh grant was permissible even under the provisions of the said Regulation thereof. It is, therefore, evident that not only the writ-petitioners but even the High Court was conscious of the repeal of 1926 Regulations E by the 1966 Regulations and the provisions of the latter Regulations permitting a fresh grant. That being so, it need not have prevented the occupants (appellants herein) from urging before the High Court as they appear to be doing now, that the 1966 Regulations entitled them to continue in occupation F regardless of whether there was a renewal of the grant in their favour and regardless of whether or not, there was a fresh grant in respect of the land. The contention now sought to be urged that the occupants can continue to occupy the land in question in perpetuity without even a renewal or without a fresh grant in G their favour subject only to the condition that they did not violate the provisions of Regulation 151 was available to the occupants which could and indeed ought to have been raised by them at that stage. Inasmuch as the occupants did not urge any such point or raise any such contention in the previous round of

H 1. (1980) 2 SCC 684.

litigation ending with the order of this Court in *Civil Appeal No.5091 of 2004 the Lt. Governor and Ors. v. Shiv Chander More and Ors. reported in 2008 (4) SCC 690,* they are debarred from doing so in the present proceedings on the principles of constructive *res judicata*. That constructive *res judicata* in principle applies even to writ proceedings is fairly well-settled by several decisions of this Court. We may briefly refer to some of those decisions which elaborate the principle and extend their application to proceedings before a Writ Court. But before we do so, we need to say what is trite namely the doctrine of *res judicata* being one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilized society in the world. It is founded on a two-fold logic, namely, (1) that there must be finality to adjudication by competent Court and (2) no man should be vexed twice for the same cause. These two principles attract the doctrine of *res judicata* even to inter-parties decisions that may be erroneous on a question of law. That the doctrine is applicable even to writ jurisdiction exercised by superior Courts in this country is settled by a Constitution Bench decision of this Court in *Amalgamated Coalfields Ltd. & Anr. v. Janpada Sabha Chhindwara & Ors.* AIR 1964 SC 1013 where this Court observed:

> *"...Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Art.32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."*

19. Principles of constructive *res judicata* which are also a part of the very same doctrine have been held to be applicable to writ proceedings, by another Constitution Bench

A decision of this Court in *Devilal Modi v. STO* (AIR 1965 SC 1150) where this Court observed:

> *"It may be conceded in favour of Mr. Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."*

20. Reference may also be made to the Constitution Bench decision in *Direct Recruit Class-II Engineering Officers Assn. v. State of Maharashtra* (1992) 2 SCC 715 where this Court once again reiterated that the principles of constructive res judicata apply not only to what is actually adjudicated or determined in a case but every other matter which the parties might and ought to have litigated or which was incidental to or essentially connected with the subject matter of the litigation. This Court observed:

> *"..an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata*

underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

21. It is in the light of the above authoritative decisions of this Court no longer open to the appellants to contend that the principles of constructive *res judicata* would not debar them from raising the question which, as observed earlier, could and indeed ought to have been raised by them in the previous round of litigation. The High Court was, in that view of the matter, perfectly justified in holding that the plea sought to be raised by the appellants in the purported exercise of liberty given to them by the orders of this Court dated 9th April, 2008 in Civil Appeal No.5091 of 2004 was not legally open and should not be allowed to be urged.

22. Question No.1 is answered accordingly.

Re: Question No.2

23. Although with Question No.1 answered against the appellants there is no need to examine this question, but since the matter was argued at some length, we may as well deal with the same.

24. Reliance was placed on behalf of the appellants on the provision of Regulations 141 to 146 and 151 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966. We may, for facility of reference, extract the said provisions at this stage:

"141. There shall be the following classes of tenants, namely :-

(i) Occupancy tenants;

(ii) Non-occupancy tenants;

(i) Grantees and; and

A *(iv) Licensees.*

142. Every person belonging to any of the following classes shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities
B *conferred or imposed upon an occupancy tenant by or under this Regulation, namely :-*

(a) every person who, immediately before the commencement of this Regulation, had acquired the right of occupancy under the provisions of the Andaman
C *and Nicobar Islands (Land Tenure) Regulation, 1926 ;*

(b) every person who has, as a non-occupancy tenant, cultivated and holding not being a holding situated within the local limits of the Port Blair Municipal
D *Board, continuously for a period of two years from the commencement of this Regulation or of such tenancy, whichever is later, in accordance with the provisions of this Regulation and is not in arrears of land revenue.*

143. Every person belonging to any of the following
E *Classes shall be called a non-occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon a non-occupancy tenant by or under this regulation, namely :-*

F *(a) every person who, immediately before the commencement of this Regulation, was a non-occupancy tenant under the provisions of the Andaman and Nicobar Islands (Land Tenure) Regulation, 1926;*

G *(b) every person who is granted a licence under clause (ii) of section 146 in respect of any agricultural land.*

144 (1) Every person belonging to any of the following classes shall be called a grantee and shall have all the
H *rights and be subject to all the liabilities conferred or*

imposed upon a grantee by or under this Regulation, namely :- A

(a) every person who, immediately, before the commencement of this Regulation, was in occupation, of any land in pursuance of a grant made under the Andaman and Nicobar Islands (Land Tenure) Regulation, 1926 ; B

(b) every person to whom a grant is made under clause (i) of section 146.

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(2) Notwithstanding anything contained in sub-section (1), every person who, not being an occupancy or non-occupancy tenant, is in possession of any account or arecanut plantation in the Nicobars immediately before the commencement of the Regulation otherwise than in D *pursuance of a grant or licence made or granted under the Andaman and Nicobar Islands (Land Tenure) Regulation, 1926 shall be deemed to be a grantee thereof for the purpose of this Regulation for such period as the Chief Commissioner may by notification specify* E *from time to time.*

Explanation. – In this sub-section "Nicobars" means all the Islands comprised in the Union Territory of the Andaman and Nicobar Islands lying south of 10 Degree Channel. F

145. Every person belonging to any of the following classes shall be called in licensee and shall have all the rights and be subject to all the liabilities conferred or imposed upon a licensee by or under this Regulation, G *namely : -*

(a) every person who, immediately before the commencement of this Regulation, was in occupation of any land in pursuance of a licence granted under the

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A *provisions of the Andaman and Nicobar Islands (Land Tenure) Regulation, 1926 ;*

(b) every person who is granted a licence in respect of any non-agricultural land under clause (ii) of section 146.

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146. The Chief Commissioner may, on such terms and subject to such conditions as he thinks fit, -

(i) make to any person, for the cultivation of

C *coconuts, coffee, rubber and other long-lived crops and for the construction of buildings and works to be used for the purpose of, or in connection with, such cultivation, a grant of land for any period not exceeding thirty years with an option for renewal for a like period :*

D *Provided that for the cultivation of rubber crop a longer period may be specified by the Chief Commissioner with the approval for the Government*

(ii) grant a licence in writing to any person to occupy

E *any land to such extend and for such purposes as may be prescribed*

151. (1) A tenant shall be liable to be ejected from his holding by an order of the Sub-Divisional Officer, made

F *on any of the following grounds, namely:-*

(a) he has done any act which is destructive or permanently injurious to the land comprising the holding; or

G *(b) he has used such land for any purpose other than that for which it was given; or*

(c) he has transferred his interest in such land in contravention of the provisions of this Regulation or any rule made thereunder.

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(2) No order under sub-section (1) shall be passed unless the Sub-Divisional Officer has, by notice, called upon the tenant to show cause against his ejectment A

(3) No order for ejectment shall be executed before the 1st day of February or after the 30th day of April in any year." B

25. It was contended by Mr. Kohli that since the appellants were in occupation of disputed land in terms of grant made under the Andaman and Nicobar Islands (Land Tenure) Regulation, 1926; they were grantees and had all the rights and C were subject to all the liabilities conferred or imposed upon a grantee by or under the 1966 Regulations. It was contended that although the period of grant made in favour of the appellants had expired and no renewal was made in their favour, such renewal not being permissible, they were not liable to be D evicted except on one or more of the grounds enumerated under Regulation 151 (supra). Mr. Kohli argued that the interpretation sought to be placed by him upon the provisions of the said Regulations may result in every grant made under the 1926 Regulation and those made under 1966 Regulation E becoming a grant in perpetuity subject to the grantee avoiding the liability for eviction under Regulation 151 (supra), there is no reason why that interpretation should be avoided especially when it was meant to benefit the occupants who are legal heirs of deceased grantees who were condemned to spend their F lives on the Andaman and Nicobar Islands.

26. On behalf of the respondents, it was on the other hand, argued that the interpretation sought to be placed by the appellants was in tune neither with the scheme of the Regulations nor was it sustainable on any known juristic G principle. It was urged that Regulation 151 (supra) was a provision that deals with tenants. It had no application to cases of grants where the right to remain in occupation itself had expired by lapse of time as in the case at hand. Our attention was drawn in that regard to a provision of Regulation 146 H

A (supra) according to which a grant could be made for a period of 30 years and renewed for 30 more years and not beyond. It was submitted that the interpretation sought to be given to the provisions would have the effect of negating the scheme of the Regulations apart from being erroneous and legally untenable.

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27. Regulation 141 of the 1966 Regulations classifies classes of tenants while Regulation 142 and Regulation 143 deal with occupancy tenants and non-occupancy tenants respectively. It is common ground that the appellants do not answer the description of occupancy tenants or non-occupancy C tenants within the meaning of Regulation 142 and Regulation 143 (supra). Their case falls more appropriately under Regulation 144 which deals with persons belonging to anyone of the two classes in clause (a) and (b) thereunder. That is because the appellants were held to be grantees under D Regulation 4(1)(a) of the 1926 Regulations which is different from licencees falling under Regulation 4(1)(b) of the said Regulations or Regulation 145 of the 1966 Regulations. The question, however, is whether a grantee under the 1926 Regulations has any right to continue in occupation beyond the E period of 60 years, which is the period permissible under Regulation 146 of the 1966 Regulations. It is not in dispute that no such right can be located under the 1926 Regulations. The expiry of the period of grant as in the case at hand would oblige the grantees to surrender the possession to the administration. F That obligation or liability incurred under the 1926 Regulation continues to hold good, notwithstanding the repeal of the 1926 Regulations by the Regulations of the year 1966. This is evident from Regulation 211 of the 1966 Regulations which reads as under:

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"211 (1) The Andaman and Nicobar Islands (Land Tenure) Regulation, 1926, is hereby repealed.

(2) The repeal of the said Regulation shall not effect, -

H *(a) the previous operation of the said Regulation*

or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued, or incurred under the said Regulation; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Regulation; or

(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, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the said Regulation had not been repealed.

(3) Subject to the provisions contained in sub-section (2), anything done or any action taken under the said Regulation and the rules made thereunder shall in so far as it is not inconsistent with the provisions of this Regulation, be deemed to have been done or taken under this Regulation and shall continue to be done in force until superseded by anything done any action taken under this Regulation."

(emphasis supplied)

28. If a grantee of an expired grant had incurred the liability to surrender possession of the granted property, such liability would remain enforceable notwithstanding the repeal of the Regulations under which such liability arose. The argument that the liability gets extinguished by reason of Regulation 144(1)(a) of the 1966 Regulations is, in our opinion, legally unsound. We say so, for two reasons. *Firstly,* because the contention flies in the face of Regulation 211 which continues the obligation incurred under the 1926 Regulations. So long as the liability

A incurred is recognized and continued by the repealing Regulation, the same can be enforced in law. *Secondly,* because the interpretation of Regulation 144(1)(a) itself does not admit of a situation where the liability to surrender possession not only becomes extinct but is enlarged into a right
B to stay in possession in perpetuity. All that Regulation 144 stipulates, in our opinion, is that a grantee under the old Regulations would continue to be under the same obligation/ liability or enjoy the same rights as are permissible under the 1966 Regulations. The right to continue would however, depend
C on whether the person in occupation has a valid grant in his favour, even on the date the 1966 Regulations came into force. If the answer is in affirmative, such grant may be treated to be a grant under the 1966 Regulations, no matter, it was in fact a grant under the 1926 Regulations.

D 29. To the extent of the unexpired period of grant, as on the date, the 1966 Regulations came into force, the grantee would continue to enjoy his right and be subject to liability under the 1966 Regulations. Upon expiry of the period of grant, however, the grantee will be liable to surrender possession just
E as the grantee is liable to do under Regulation 146 in regard to a grant made under the 1966 Regulations. The essence of the Regulation in so far as right of a grantee to continue in possession is concerned, is the same under the 1926 Regulations and the subsequent Regulations of the year 1966.

F 30. In either of the cases, the grantee cannot stay in possession for more than 60 years. The argument that an old grantee can stay in possession in perpetuity so long as there is no violation of Regulation 151, therefore, needs to be noticed
G only to be rejected. The appellants, in the present case, no doubt may have protection under the 1966 Regulations because the grant in their favour was deemed to have been renewed upto 1994 was in existence in 1966 but such protection would cease with the expiry of the 60 years period in 1994.

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31. We have in that view of the matter, no hesitation in answering Question No. 2 in negative. A

32. In the result this appeal fails and is, hereby, dismissed but without any orders as to costs.

D.G. Appeal dismissed. B