Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4494 OF 2015
(ARISING OUT OF SLP (CIVIL) NO.34115 OF 2013)

Maharaji Educational Trust ... APPELLANT

VERSUS

SGS Construction & Dev. P. Ltd. & Ors. ...RESPONDENTS

WITH
CIVIL APPEAL NO.4495 OF 2015
(ARISING OUT OF SLP (CIVIL) NO.36569 OF 2013)

U.P. Avas Evam Vikas Parishad ...APPELLANT

VERSUS

SGS Construction & Dev. P. Ltd. & Ors. ...RESPONDENTS

WITH
CIVIL APPEAL NO.4496 OF 2015
(ARISING OUT OF SLP (CIVIL) NO.1510 OF 2014)

Housing & Urban Development Corpn. Ltd. ... APPELLANT

VERSUS

SGS Construction & Dev. P. Ltd. & Ors. ...RESPONDENTS

J U D G M E N T

Arun Mishra, J.

1. Leave granted in all the special leave petitions.

2. In the appeals the judgment and order dated 25.9.2013 passed by the High Court of Allahabad, Bench at Lucknow, has been questioned by Maharaji Educational Trust (for short 'the Trust'), U.P. Avas Evam Vikas Parishad (for short 'Avas Evam Vikas Parishad') and Housing and Urban Development Corporation (hereinafter referred to as 'HUDCO') whereby the High Court has

directed the Avas Evam Vikas Parishad to demarcate 42.45 acres of the mortgaged land and 21 acres as unencumbered land out of total area of 63.45 acres in writ petition filed by SGS Construction & Development (P) Ltd. (for short 'Builder').

3. The factual matrix indicate that the Trust has taken a loan from HUDCO. The outstanding figure at present is stated to be approximately Rs.433 crores. There was default in making the payment. The Trust had mortgaged the immovable properties mentioned from serial Nos.1 to 5 and also the property at serial No.6 which is in question in the present matter in an area of 63.45 acres of vacant land situated at village Akbarpur, village Behrampur and village Mirzapur, Pargana-Loni, Tehsil and District Ghaziabad. Out of the property mentioned at serial No.6 which was mortgaged with HUDCO, the Trust had exchanged the land in area 21 acres from Avas Evam Vikas Parishad vide Exchange Deed dated 4.5.2007. Thereafter, the Trust had also deposited the deed of exchange of the said land with HUDCO on 27.7.2011.

4. As the loan was not repaid by the Trust, HUDCO had started proceedings before the Debt Recovery Tribunal at Delhi. The recovery proceedings are pending before the Recovery Officer, in which the builder has filed objections which are stated to be pending. The objections have been filed by the Builder in respect of property No.6 against the action initiated by HUDCO for sale of mortgaged property under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (hereinafter referred to as 'the SARFAESI Act').

5. The Builder has filed objections on the strength of an agreement to sell dated 26.8.2010 entered with Trust which was initially unregistered for purchase of 63.45 acres of land comprised in property No.6, which includes the 21 acres of land which was exchanged by the Trust with the Avas Evam Vikas Parishad. The agreement was executed between the Builder and the Trust for consideration of Rs.154 crores. Out of the same, it is submitted that sum of Rs.9 crores has been paid by the Builder to the Trust. The agreement had been registered subsequently, which has been questioned by the Trust and writ petition is pending in High Court at Allahabad. A civil suit is also stated to be pending.

6. Notwithstanding the pendency of the aforesaid proceedings, the Builder preferred writ petition in question before the High Court of Allahabad, Bench at Lucknow claiming following reliefs :

> "i) Issue a writ in the nature of mandamus commanding the Respondent/Opposite Party No.1 i.e. U.P. Awas Evam Vikas Parishad to demarcate lands measuring 42.45 acres out of 63.45 acres, which are mortgaged so that if at a later date the properties at Sl. No.6 as mentioned in Annexure P/1 were to be sold by the Respondent No.3, there would be no ambiguity in identifying the mortgaged property.
> ii) Issue a writ, order or direction commanding the Respondent No.2 to implement its order dated 6th September, 2011 in a time bound manner preferably with a period of 3 months in order to sell properties at Sl. No.1 to 5 as mentioned in Annexure P/1 and further restrain the Respondent No.2 to proceed with the application filed by the Respondent No.3 dated 20.10.2011 (Annexure P/7) till the properties at Sl. No.1 to 5 are not sold.
> iii) Issue any writ, direction or orders as may be deemed fit and proper in the facts and circumstances of the case."

Second prayer had been abandoned at the time of final hearing of the writ petition.

7. On behalf of the appellants, it was submitted that it is not the function of Avas Evam Vikas Parishad to demarcate the land on the basis of an agreement entered into *inter se* between the Trust and the Builder. Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (in short referred to as Adhiniyam of 1965) has been enacted so as to further various kinds of housing schemes and development projects. The powers under Section 15 of the Adhiniyam of 1965 cannot be exercised out of context of the Act. It was also submitted that Lucknow Bench had no jurisdiction to entertain the writ petition. The High Court could not have treated the property exchanged by Avas Evam Vikas Parishad with the Trust as unencumbered one. It was further submitted that on the strength of unregistered agreement to sell, no right, title or interest passes to the Builder. The registration of agreement to sale which had been obtained subsequently, has been stayed by the High Court in the pending writ application. The writ petition was a misconceived venture. By virtue of section 70 of the Transfer of Property Act (for short 'the TP Act'), HUDCO was having a right over the property of Trust obtained in exchange with mortgaged property. The Deed of Exchange has also been deposited by the Trust with HUDCO. No application was ever filed by the Builder with the Avas Evam Vikas Parishad for demarcation of land. There was no housing scheme framed by Avas Evam Vikas Parishad with respect to the land which had been given in exchange to the Trust.

Thus, provision of section 15 of the Adhiniyam of 1965 is not attracted. It was also submitted on behalf of the appellants that the Builder is dilly dallying the recovery proceedings by filing frivolous litigation.

8. Per contra, on behalf of the Builder, it was submitted that the agreement to sell has been executed in favour of the Builder by the Trust with respect to 63.45 acres of land which includes 21 acres of the land given by Avas Evam Vikas Parishad to the Trust in exchange. Recovery proceedings against the Trust are pending before the Debt Recovery Tribunal, New Delhi, in which objections have been preferred by the Builder which are pending consideration. The Builder having entered into an agreement, had the right to apply to Avas Evam Vikas Parishad to demarcate the land it had exchanged with the Trust. The direction for demarcation is beneficial to all concerned. No case for interference is made out. The Builder has submitted a proposal under section 56 of the T.P. Act to the Chairman of HUDCO. The land given by the Avas Evam Vikas Parishad to the Trust was unencumbered. The 21 acres of land obtained in exchange was not mortgaged with HUDCO. Indubitably, Lucknow Bench had the jurisdiction as the Head Office of Avas Evam Vikas Parishad is situated at Lucknow. The Avas Evam Vikas Parishad had the onus to demarcate the land as provided under section 15(1) (e), (k) (m) and (o). The Builder had the right to know/identify the property i.e. 21 acres of land which was unencumbered. The land received by the Avas Evam Vikas Parishad from the Trust has been utilised for a housing scheme. Thus, the impugned order calls for no interference.

9. After hearing learned counsel for the parties at length, we are of the considered opinion that it was a misadventure on the part of the Builder to file a writ petition for the kind of reliefs prayed for and that too could not have been entertained by the Bench at Lucknow.

10. It is not in dispute that property Nos.1 to 6 had been mortgaged with HUDCO by the Trust. Property No.6 which is in dispute comprised of 63.45 acres of land which was initially mortgaged by the Trust with HUDCO. Proceedings for recovery of debt which seems to have presently amassed to more than Rs. 433 crores under the SARFAESI Act, are stated to be pending before the Debt Recovery Tribunal, Delhi. The property is admittedly situated in the district of Ghaziabad, State of U.P. and Ghaziabad falls within the territorial limits of the main seat of the High Court of Allahabad. Undisputedly, objections had been preferred by the Builder before the Recovery Officer, Debt Recovery Tribunal, Delhi. Admittedly, 21 acres of land, out of the total of 63.45 acres which was mortgaged to HUDCO as item No.6, had been exchanged by the Trust with Avas Evam Vikas Parishad. Thus, the exchange was with the property which was under mortgage with HUDCO and the exchange deed had been deposited by the Trust with HUDCO on 11.7.2011. Before the Debt Recovery Officer, New Delhi, prayer has been made by the Builder to sell property Nos.1 to 5 and not to sell property No.6 with respect to which he has entered into an agreement with the Trust.

11. The writ petition filed for the aforesaid twin reliefs, was not

maintainable before the writ court; firstly, it is not within ken of the High Court in writ jurisdiction to declare any property as unencumbered one. Such rights between private parties cannot be made subject-matter of writ jurisdiction as has been ordered in the impugned judgment and order that out of a total of 63.45 acres of land, 21 acres be demarcated as an unencumbered property and to maintain status quo. Following is the operative portion of the order passed by the Division Bench at Lucknow :

> "In the premises discussed hereinabove, we are of the considered view that the relief as sought in prayer no.1 can be granted by directing respondent no.1 to demarcate 42.45 acres, said to be mortgaged, and 21 acres as unencumbered, out of the total area of 63.45 acres, as mentioned at serial no.6, in the list of properties as detailed in the foregoing paragraphs. Thus, we allow this petition and direct respondent no. 1 to carry out the aforesaid exercise of demarcation either itself or being an instrumentality of the State, and having statutory duties as extracted and reproduced hereinabove, with the help of revenue authorities concerned. Moreover, in view of the chequered background of the litigation in respect of the lands/properties in question, and the conduct of respondent no.3, as noticed above, we also deem it expedient in the interest of justice to direct and thus it is ordered that the parties shall maintain status quo qua the lands, namely, 21 acres out of the total area of 63.45 acres as mentioned at serial no.6. We also direct that the said area of 21 acres of the land at serial no. 6 shall not be alienated and/or transferred in any manner till the exercise of demarcation is fully carried out in accordance with law. Additionally, it is further directed that the area of 42.45 acres, said to be encumbered and 21 acres, as unencumbered shall be clearly identified and segregated in the presence of the parties."

12. Though, there is serious dispute between the parties to the lis whether the said land is unencumbered, finding has been given by the High Court that 21 acres of land is unencumbered. The High Court could not have treated 21 acres of land as unencumbered one out of 63.45 acres. It was not open to the High

Court to enter into the aforesaid arena, which of the property is encumbered and to be sold in realization of debt is the outlook of the Recovery Officer, DRT, Delhi, where the recovery proceedings are pending, including the objections preferred by the Builder.

13. In our opinion, it was not open to the Builder to file a writ application for the aforesaid reliefs. Though the second relief had been abandoned at the time of final arguments but the first relief could not have been granted without going into the said question. The High Court in writ jurisdiction has made a declaration that the property 21 acres of land is unencumbered. The High Court could not have adjudicated on the property rights under the guise of directing Avas Evam Vikas Parishad to demarcate the land and give finding that it was unencumbered land. The High Court has erred in law in giving a finding on merits on effect of exchange and that section 70 of TP Act is not applicable. It was not the function of the High Court to decide these questions under writ jurisdiction. Section 70 of the TP Act is extracted hereunder :

> "70. Accession to mortgaged property.—If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession."

14. We could have decided the aforesaid question finally. However, we refrain from doing so as, in our opinion, it was not open to the High Court to take up these questions under writ jurisdiction and to declare the properties as unencumbered. It was for the parties to agitate the questions before the DRT where the recovery proceedings are pending at the instance of HUDCO with

whom the property had been mortgaged by the Trust.

15. *Prima facie*, we are of the view that on the strength of the agreement to sell, particularly when possession had not been handed over to the Builder, it was not open to him to file a writ application for demarcation of the property as unencumbered property or otherwise. What was sought to be achieved by filing a writ petition, was to get rid of the proceedings pending before the Recovery Officer, DRT at Delhi, and to save land at serial No.6 from being sold which includes 21 acres of land, and an attempt was made to get the 21 acres of land declared as unencumbered one. As a matter of fact, such disputed questions with respect to the properties *inter se* between the Builder and the Trust as to demarcation, writ petition could not be said to be appropriate remedy, particularly when the order passed by the Recovery Officer, DRT, was not in question and the order passed by the DRT, Delhi, could not have been questioned before the Lucknow Bench of High Court of Allahabad.

16. It was submitted on behalf of the Builder that the writ petition was filed before the Lucknow Bench of the High Court of Allahabad as the Head Office of Avas Evam Vikas Parishad is located at Lucknow and part of the cause of action has arisen at Lucknow. In view of the fact that the Avas Evam Vikas Parishad had exchanged the 21 acres of land with the Trust and it had a statutory duty enjoined under section 15 of the Adhiniyam of 1965 so as to conduct survey and demarcate the land. In our considered opinion, no part of the cause of action to the Builder has arisen at Lucknow where the Head Office of Avas

Evam Vikas Parishad is situated. Avas Evam Vikas Parishad was not at all answerable to the Builder. As way-back in the year 2007, much before agreement to sell was entered into, it had exchanged its 21 acres of land with the Trust. Moreover, no application was ever filed by the Builder to Avas Evam Vikas Parishad for seeking demarcation of the land. Thus, in case of dispute *inter se* between the Builder and the Trust based upon subsequent agreement to sale entered into in 2010, there was no right available to the Builder to ask Avas Evam Vikas Parishad to demarcate the land which it had already given to the Trust. After the 21 acres of land had been given to the Trust, Avas Evam Vikas Parishad had nothing to do with that land. This, it was a wholly misconceived venture on the part of the Builder to ask Avas Evam Vikas Parishad to demarcate the land given to the Trust, particularly when the Parishad was not having any housing scheme with respect to the land which had been given to the Trust.

Thus, filing of the writ petition at Lucknow Bench was totally uncalled for and the propriety required that it should not have been entertained at Lucknow Bench. Merely because the transfer petition filed in this court for transfer of case was withdrawn and the direction was issued by the Chief Justice of High Court to decide at an early date, would not confer jurisdiction on Bench at Lucknow, all the questions had been left open to be agitated at the time of hearing. In our opinion, Bench at Lucknow ought not to have entertained the petition as it lacked the jurisdiction.

17. With respect to the jurisdiction of the Lucknow Bench, the Builder has

relied upon the decision of this Court in *Sri Nasiruddin etc. v. State Transport Appellate Tribunal etc*. [1975 (2) SCC 671]. Reliance has been placed upon paras 37 and 38 and the same are reproduced hereunder:

> "37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well- known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the *dominus litis* to have his *forum conveniens*. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.
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> 38. To sum up, our conclusions are as follows. First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class

of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the Order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

18. Learned counsel for the appellants has strongly relied upon the decision of this Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu & Ors*. [1994 (4) SCC 711} as follows :

"12. Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was not necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we

are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, *Aligarh Muslim University and Anr. v. Vinay Engineering Enterprises (P) Ltd. and Anr*., [1994 (4) SCC 710] this Court observed:

> "We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction."

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction, the Arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

19. Reliance has also been placed on *National Textile Corporation Ltd. & Ors. v. Haribox Swalram & Ors*. [2004 (9) SCC 786] as follows :

"10. Under clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In *Union of India* v. *Adani Exports Ltd.* [2002 (1) SCC 567] in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. A similar question was examined in *State of Rajasthan* v. *Swaika Properties* [1985 (3) SCC 217]. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that the Calcutta High Court had no jurisdiction to entertain the writ petition.

x x x x x

12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the

cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed. However, in order to avoid any further harassment to the parties and to put an end to the litigation, we would examine the matter on merits as well."

20. Reliance has also been placed with respect to jurisdiction of the High Court in the decision of this Court in *Alchemist Ltd. & Anr. v. State Bank of Sikkim & Ors*. [2007 (11) SCC 335] as follows :

"20. It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of *essential* facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

x x x x x

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

x x x x x

25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the *lis* between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

x x x x x

38. In the present case, the facts which have been pleaded by the

> appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition."

21. Reliance was also placed on the decision of this Court in *Eastern Coalfields Ltd. & Ors. v. Kalyan Banerjee* [2008 (3) SCC 456] to the following effect :

> **"13.** In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma area within the State of Jharkhand, we are of the opinion that only because the head office of the appellant Company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the head office had nothing to do with the order of punishment passed against the respondent."

22. We have held that no part of the cause of action has arisen at Lucknow, and it was not the function of Avas Evam Vikas Parishad to demarcate the property in case of dispute between private party or for the purpose of proceeding before the DRT and that the property was situated in the district of Ghaziabad which is not under territorial jurisdiction of Bench at Lucknow. Thus, the writ petition was not maintainable at Lucknow Bench.

23. Apart from that, we find that there is no merit in the submission that the Housing Board could have demarcated the land in exercise of powers within the purview of section 15 of the Act of 1965. The objective of the Act of 1965 is to tackle the housing and development problems of urban areas. The objective of the Act is extracted hereunder :

> "Migration of people from rural to urban area, influx of displaced persons, increasing impact of the development activity generated by the Five Year Plans and several other factors have resulted in rapid increase of population in towns of this State. Construction of new houses and the planned development of towns has, however, not kept pace with this rapid increase of urban population. The efforts in this direction made by the State Government, Nagar Mahapalikas, Nagar Palikas, Improvement Trusts, Development Board and other Smaller Local Bodies have, for want of effective co-ordination and control, not met with the desired success. The said local bodies with their limited resources and know-how and due to other factors have not been able to relieve the housing shortage and to undertake the requisite development of land. There are areas in this State with immense potentialities of development, but they still remain as they were a decade or so back. It is now considered absolutely essential for tackling the housing and development problems of practically all the fast growing urban areas, and areas with potentialities of development, that an autonomous central body to be known as Housing and Development Board be created for the whole State. A Comprehensive Bill, called the Uttar Pradesh Avas Evam Vikas Parishad Vidheyak has accordingly been prepared to provide for the establishment, incorporation and functioning of a Housing and Development Board in this State. This bill is being introduced accordingly."

24. The provisions of section 15 of Adhiniyam of 1965 have been relied upon. Same are extracted below :

> "15. Functions of the Board.—(1) Subject to the provisions of this Act and the rules and regulations, the functions of the Board shall be—

(a) To frame and execute housing and improvement schemes and other projects;
(b) To plan and co-ordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes in the State;
(c) To provide technical advice for and scrutinise various projects under housing and improvement schemes sponsored or assisted by Central Government or the State Government;
(d) To assume management of such immovable properties belonging to the State Government as may be transferred or entrusted to it for this purpose;

(e) To maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties of the Board or of the State Government placed under the control and management of the Board;

(f) To organise and run workshops and stores for the manufacture and stockpiling of building materials;

(g) On such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. Industrial Housing Act, 1955 (U.P. Act XXIII of 1955);

(h) To regulate building operations;

(i) To improve and clear slums;

(j) To provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas developed by it;

(k) To acquire movable and immovable properties for any of the purposes before mentioned;

(l) To raise loans from the market, to obtain grants and loans from the State Government, the Central Government, local authorities and other public corporations, and to give grants and loans to local authorities, other public corporations, housing co-operative societies and other persons for any of the purposes before mentioned;

(m) To make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the State Government;

(n) To levy betterment fees;

(o) To fulfil any other obligation imposed by or under this Act or any other law for the time being in force; and

(p) To do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

(2) Subject to the provisions of this Act and the rules and regulations, the Board may undertake, where it deems necessary, any of the following functions, namely –

(a) To promote research for the purpose of expediting the construction of and reducing the cost of buildings;

(b) To execute works in the State on behalf of public institutions, local authorities and other public corporations, and departments of the Central Government and the State Government;

(c) To supply and sell building materials;

(d) To co-ordinate, simplify and standardise the production of building materials and to encourage and organise the prefabrication and mass production of structural components;

(e) With a view to facilitating the movement of the population in and around any city, municipality, town area or notified area, to establish, maintain

and operate any transport service, to construct widen, strengthen or otherwise improve roads and bridges and to give financial help to others for such purposes;

(f) To do all such other acts and things as may be necessary for the discharge of the functions before mentioned."

25. Chapter III of Adhiniyam of 1965 deals with the powers and functions of the Board constituted under section 3. Section 15 deals with the functioning of the Board and the provisions of the Act. It is crystal clear from the provisions of section 15 that the power to make investigation, examination or survey of any property is to be exercised by the Board in connection with its functions enjoined in the Act. The power is not general in nature. Section 18 deals with types of housing schemes. Sections 19 to 27 deal in details with the schemes provided in section 18(1)(a) to (i). Other sections 28 to 49 deal with acquisitions, framing of schemes, its execution, transfer of property to Board, streets, square etc.

26. It is apparent from the scheme of the Adhiniyam of 1965 that the provisions contained in section 15(1)(m) are not to be read in isolation but with reference to the objectives of the Adhiniyam of 1965 and its functions relating to housing and development issues.

27. The principle of *noscitur a socii* will be applicable in construing Section 15 of the Act and the words "to make investigation, examination or survey of any property" in section 15(1)(m) will take their meaning and colour

from the other phrases employed in section 15(1). As held by this Court in *Rohit Pulp & Paper Mills Ltd. v. Collector of Central Excise, Baroda* [1990 (3) SCC 447] :

> "12. The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the "noscitur a sociis" principle. This expression simply means that "the meaning of a word is to be judged by the company it keeps." Gajendragadkar, J. explained the scope of the rule in *State of Bombay v. Hospital Mazdoor Sabha* [1960 (2) SCR 866] in the following words : (SCR pp. 873-74)
>
> > "This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vol. XIV, p. 207). "Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*" In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscitur a sociis*". The argument is that certain essential features of attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of

> narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful, but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."
>
> This principle has been applied in a number of contexts in judicial decisions where the court is clear in its mind that the larger meaning of the word in question could not have been intended in the context in which it has been used."

28. The Trust has submitted an application for limited purpose of approval of site plan of housing society to Avas Evam Vikas Parishad which was not pressed by it. The said application was not for the purpose of demarcation and would not enure to the benefit of the Builder. The objective of builder in writ petition was to get land demarcated as unencumbered.

29. For the purpose of demarcation the remedy is available before the concerned authority under section 24 of the Uttar Pradesh Revenue Code, 2006. Section 24 of the Code is extracted below :

> "**24. Disputes regarding boundaries.-** (1) The Sub-Divisional Officer may, on his own motion or on an application made in this behalf by a person interested, decide, by summary inquiry, any dispute regarding boundaries on the basis of existing survey map or, where the same is not possible, in accordance with the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of such map.
>
> (2) If in the course of an inquiry into a dispute under sub-section (1), the Sub-Divisional Officer is unable to satisfy himself as to which party is in possession or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, within a period of three months preceding the commencement of the inquiry, the Sub-Divisional Officer shall-
>
> (a) in the first case, ascertain by summary inquiry who is the

person best entitled to the property, and shall put such person in possession.

(b) in the second case, put the person so dispossessed in possession, and for that purpose use or cause to be used such force as may be necessary an shall then fix the boundary accordingly.

(3) Every proceeding under this section shall, as far as possible, be concluded by the Sub-Divisional Officer within six months from the date of the application.

(4) Any person aggrieved by the order of the Sub-Divisional Officer may prefer an appeal before the Commissioner within 30 days of the date of such order. The order of the Commissioner shall be final."

The corresponding provision in the U.P. Land Revenue Act, 1901 was section 41. The recourse to provision of the Adhiniyam of 1965 in such cases was not available.

30. It was also submitted on behalf of the appellants that the agreement which was entered into between the Trust and the Builder was required to be registered under the provisions of the Registration Act as per Section 17 read with section 49 of the Registration Act as applicable in U.P. and section 3 read with section 54 of the TP Act. We decline to entertain and examine the submissions as it would not be proper to do so in the present proceedings and as effect of non-registration and validity of registration made subsequently has been questioned in Writ Petition [C] No.38596/2013 pending consideration before the High Court of Allahabad. Thus, it is for the High Court to adjudicate upon the aforesaid questions.

31. In view of the afore discussion, we allow the appeals, set aside the judgment and order passed by the Lucknow Bench of the High Court of Allahabad, and dismiss the writ petition filed by the Builder – respondent No.1

– with costs quantified at Rs.5 lakhs to be paid to the Supreme Court Legal Services Committee, within a period of six weeks from today.

.....CJI
(H.L. Dattu)

.....J.
(S.A. Bobde)

New Delhi;
May 15, 2015.

.....J.
(Arun Mishra)