

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 20.05.2022**
Judgment pronounced on: 26.05.2022

+ W.P.(C) 14552/2021

PRAVEEN CHHABRA

..... Petitioner

Through: Mr. Sanjeev Sagar, Ms. Nazia
Parveen, Mr.Ranjan Sardana and
Ms.Ridhi Malik, Advs.

versus

REAL ESTATE APPELLATE TRIBUNAL

..... Respondent

Through: Mr. Rajeeve Mehra, Sr. Adv.,
Amicus Curiae

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The petitioner who is a builder developer by profession has instituted these proceedings seeking the following reliefs: -

“(a) Issue a writ, order and direction, directing the respondent to place on record all the necessary records pertaining to case titled (Suo Motu Case) REAT/0002/2021 titled as “Court of Its Own Motion Vs. Commissioners of all the Municipal Zones & Anrs.”;

(b) Set aside and quash the orders and proceedings in respect of (Suo Motu Case) REAT/0002/2021 titled as “Court of Its Own Motion Vs. Commissioners of all the Municipal Zones & Anrs.”;

(c) Set aside orders dated 24/11/2021 and 17/11/2021 passed by Real Estate Appellate Tribunal, New Delhi in (Suo Moto Case) REAT/0002/2021 titled as “Court of Its Own Motion vs. Commissioners of all the Municipal Zones & Anr;”

2. In terms of the impugned orders, **the Real Estate Appellate Tribunal**¹ has drawn suo moto proceedings in respect of various residential and commercial projects and construction activity being undertaken in connection therewith in the National Capital Territory of Delhi and passed orders of restraint in terms noted hereinafter. The order of 17 November 2021 in terms of which proceedings were initiated records as follows: -

“ORDER:

It has been mentioned before us that there are large number of projects under construction, falling within the jurisdiction of this Tribunal. where the mandatory provision for registration of project under the Real Estate (Regulation and Development) Act, 2016 has not been complied with. A number of projects have been mentioned at the Bar. However, we deem it necessary to further verify the details, before we name the properties herein.

Section 3 in Chapter 11 of the Act provides for Registration of a Real Estate Project Sub-section (1) of Section 3 stipulates that no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act. Sub Section (2) relates to the applicability of the Act - (a) where the area of land proposed to be developed exceeds five hundred square meters or the number of apartments proposed to be developed exceeds eight, inclusive of all phases. It has been submitted before us that despite the clarity of the provisions of the Act regarding their applicability, there is a rampant non-compliance of these provisions within the city.

The Registry of the Tribunal also points out that they had addressed a couple of communications to the Commissioner of Police seeking details of the FIRS registered in respect of societies / individuals

¹ Appellate Tribunal

offering membership of housing projects and fraudulently collecting huge amounts of money from the gullible buyers within the jurisdiction of Delhi and especially in areas falling under the land pooling policy initiated by the Delhi Development Authority. The details are stated to have not been received till date, despite lapse of considerable time and also a reminder.

Keeping in view the aforesaid background, it is considered appropriate that suo-moto proceedings are initiated in the matter to ensure that there is strict compliance of the provisions of the Act and that the gullible buyers are not left to be cheated by the unscrupulous persons operating in the construction business.

Accordingly, issue notice to the Commissioners of all the Municipal Zones, the Vice Chairman of the Delhi Development Authority. Chairperson. NDMC as also the Commissioner of Police. Delhi, returnable on 24.11.2021.”

3. In terms of the order of 24 November 2021, the Appellate Tribunal has noticed that the **Real Estate (Regulation and Development) Act, 2016²** places an obligation on all developers and builders to ensure that projects are duly registered and completed in accordance with the provisions made therein. The Appellate Tribunal has observed in the aforesaid order that developers appear to have undertaken construction of projects without complying with the mandatory obligation of registering the projects with the **Real Estate Regulatory Authority³** and thus violating the provisions of the Act. Upon recordal of the aforesaid conclusions, it proceeded to pass the following order: -

² Act

³ Authority

“Accordingly, in view of the above, all construction activity in NCT of Delhi, residential as well as commercial, falling within the scope of sub-section (2) of Section 3 of the Real Estate (Regulation and Development) Act, 2016 being undertaken without registration with the Real Estate Regulatory Authority is stayed till the registration of their project with the Real Estate Regulatory Authority. The concerned Commissioner as well as Executive Engineer of each of the Municipal Corporations, DDA and NDMC as also the Commissioner of Police through concerned SHO of the local Police Station of each area shall ensure that with immediate effect no further construction activity falling within the scope of sub-section (2) of Section 3 of the Act is continued in the absence of RERA registration. The concerned field staff shall undertake a survey of each of the properties under construction in their jurisdiction and take necessary steps in terms of this order, take photographs as also the details of the developers.

Furthermore, it is directed that all municipal authorities granting sanction of the building plans in respect of projects falling within the scope of sub section (2) of Section 3 of the Act shall grant the sanction, subject to their obtaining registration with the Real Estate Regulatory Authority appointed under the Act.

Each of the respondents shall file a Status Report with respect to the action taken by them in terms of this order within two weeks.

Mr. Anil Kumar, ACP appearing for the Commissioner of Police shall also file a comprehensive status report furnishing details of the FIRs registered in respect of Societies / individuals offering membership of housing projects and fraudulently collecting huge amounts of money from the innocent buyers within the jurisdiction of Delhi. They shall also coordinate with the RERA with respect to complaints received by them other than those where FIRS are already registered.”

4. The petitioner has approached this Court aggrieved by the fact that he has been informed by the appropriate development authorities that the plans as submitted cannot be accorded approval in light of the orders passed by the Appellate Tribunal. When the writ petition was initially entertained, a

learned Judge of the Court on 17 December 2021 took note of the submissions addressed at the behest of the petitioner who had contended that the Appellate Tribunal did not have any jurisdiction to initiate suo moto proceedings. Upon a consideration of the importance of the question which stood raised, the Court had appointed Mr. Rajeeve Mehra, learned Senior Advocate as Amicus Curiae, and set down the matter for consideration bearing in mind the jurisdictional challenge which was raised. This Court on 21 March 2022 upon noticing the questions which had been formulated for consideration, deemed it expedient to join the Authority as a party respondent. Pursuant to the directions issued by the Court on that date, appropriate steps for service upon the Authority have been taken. However, none has appeared on its behalf.

5. The erudite and learned amicus has addressed the following submissions. Mr. Mehra submitted that the powers of the Appellate Tribunal stand duly enumerated in Section 53. The learned amicus would contend that the Act confers no power upon the Appellate Tribunal to draw proceedings on its own motion. Learned amicus has also taken the Court through the relevant provisions of the Act including Sections 34, 36, 37 and 38 in order to delineate and distinguish the jurisdiction conferred on the Authority and the Appellate Tribunal. It was submitted that while the Act does confer powers upon the Authority to draw proceedings suo moto in contingencies contemplated and enumerated thereunder, no such power stands vested in the Appellate Tribunal. Learned amicus submits that the issue which stands raised in the present petition is in any case no longer res integra bearing in mind the judgement rendered by the Court in **Padam W.P.(C) 14552/2021**

Singhee and Ors. vs. SVOGL Oil, Gas and Energy Ltd and Ors. ⁴ and **Shri Satyanarayan Rao vs. Indian Renewable Energy Development Authority Ltd. and Ors.**⁵ Mr. Mehra submits that the aforesaid decisions though rendered in the context of the powers conferred upon the Debts Recovery Tribunal constituted under the provisions of the **Recovery of Debts and Bankruptcy Act, 1993**⁶ would apply on all fours to the issue which arises in this petition and enable the Court to appreciate the circumstances in which powers suo moto may be exercised by a statutory tribunal or appellate body.

6. In **Padam Singhee**, the Court upon noticing the provisions made in the 1993 Act held as follows: -

"21. We note that the very same DRAT in the case of *Bhangoo & Company v. Mittal & Garg Enterprises*, (2006) 1 BC 112 (DRAT/DRT) has inter alia held that the Tribunal cannot exercise *suo moto* powers interfering with the action resulting in prejudice being caused to the appellant before it in that case. In Para 11, the DRAT has held as under:

"11. Firstly, I must say that these Debts Recovery Tribunals are constituted under the provisions of the RDB Act, 1993. The powers to be exercised by the Tribunals are distinct from the powers to be exercised by the Hon'ble Supreme Court and the Hon'ble High Courts which are constitutional Courts and are vested with plenary powers also. I must record hereunder that the Tribunals functioning under the RDB Act are not vested with such plenary powers, but derive their powers only under the RDB Act, 1993. I have not come across a provision under the

⁴ 2018 SCC OnLine Del 13386

⁵ 2018 SCC OnLine Del 12666

⁶ 1993 Act

RDB Act, 1993 which confers suo motu powers or nor semblance of conferment of such powers could be gathered from the entire text of the Act. Though Section 22 of the RDB Act provide that the Tribunal and the Appellate Tribunal shall not be bound by procedure laid down in CPC but shall be guided by the principles of natural justice and subject to other provisions of the Act and Rules and shall have the power to regulate their own procedure including places at which they shall have their sittings, I do not think this provision could be interpreted to say that the Tribunals have suo motu powers. I am, therefore, inclined to say that the view taken by the Tribunal that it can exercise suo motu powers to interfere in a given case, may not be a correct position.”

23. In any case, we are of the view, the issue whether the DRAT/DRT, have powers to *suo moto* initiate any proceedings is no more res integra in view of the judgment of the Supreme Court in the case of *Standard Chartered Bank v. Dharminder Bhoji v.* (2013) 15 SCC 341 wherein the Supreme Court while considering the provisions of Act of 1993 has, in Paras 33 to 38, held as under:

“33. Section 19 of the RDB Act, occurring in Chapter IV of the Act, deals with procedure of tribunals. Sub-section (25) of Section 19 reads as follows:

“19. (25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

The aforesaid provision makes it quite clear that the Tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the Tribunal is required to function within the statutory parameters. The Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers.

34. In this context, we may refer to a three-Judge Bench decision in Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. [AIR 1963 SC 217] wherein it has been held that when the tribunal has not been conferred with the jurisdiction to direct for refund, it cannot do so. The said principle has been followed in Union of India v. Orient Paper and Industries Ltd. [(2009) 16 SCC 286]

35. In Union of India v. Madras Bar Assn. [(2010) 11 SCC 1] the Constitution Bench, after referring to the opinion of Hidayatullah, J. in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669], the pronouncements in Jaswant Sugar Mills Ltd. v. Lakshmi Chand [AIR 1963 SC 677], Associated Cement Companies Ltd. v. P.N. Sharma [AIR 1965 SC 1595] and Kihoto Hollohanv. Zachillhu [1992 Supp (2) SCC 651], ruled thus : (Madras Bar Assn. case [(2010) 11 SCC 1], SCC p. 35, para 45)

“45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.

(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an 'expert' in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”

36. From the principles that have been culled out by the Constitution Bench, it is perceptible that a tribunal is established under a statute to adjudicate upon disputes arising under the said statute. The Tribunal under the RDB Act has been established with a specific purpose and we have already focused on the same. Its duty is to see that the disputes are disposed of quickly regard being had to the larger public interest. It is also graphically clear that the role of the Tribunal has not been fettered by technicalities. The Tribunal is required to bestow attention and give priority to the real controversy before it arising out of the special legislations. As has been stated earlier, it is really free from the shackles of procedural law and only guided by fair play and principles of natural justice and the regulations formed by it. The procedure of tribunals has been elaborately stated in Section 19 of the RDB Act.

37. It is apt to note here that Section 34 of the SARFAESI Act bars the jurisdiction of the civil court. It reads as follows:

“34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

*38. Section 34 of the RDB Act provides that the said Act would have overriding effect. We have referred to the aforesaid provisions to singularly highlight that the sacrosanct purpose with which the tribunals have been established is to put the controversy to rest between the banks and the borrowers and any third party who has acquired any interest. **They have been conferred jurisdiction by special legislations to exercise a particular power in a particular manner as provided under the Act. They cannot assume the role of a court of different nature which really can grant “liberty to initiate any action against the bank”.** They are only required to decide the lis that comes within their own domain. If it does not fall within their sphere of jurisdiction they are required to say so. Taking note of a submission made at the behest of the auction-purchaser and then proceed to say that he is at liberty to file any action against the bank for any omission committed by it has no sanction of law. The said observation is wholly bereft of jurisdiction, and indubitably is totally unwarranted in the obtaining factual matrix. Therefore, we have no hesitation in deleting the observation, namely, “liberty is also given to the auction-purchaser to file action against the bank for any omission committed by it”.*

24. From the reading of the aforesaid paragraphs of the judgment of the Supreme Court, it is clear that:

- (1) The Tribunal/DRAT does not have inherent powers and even Section 19 (25) confers limited powers.
- (2) The power of the Tribunal/DRAT under Section 19(25) is limited to pass such other orders and give such directions to give effect to the orders or to prevent abuse of its process or to secure the ends of justice.
- (3) Courts established by the State are entrusted with the State's inherent judicial power for administration of justice in general. The Tribunal/DRAT having been established under a statute to adjudicate upon disputes arising under the said statute or disputes of a specialised nature by regulating the procedure, applying the provisions of CPC only where it is required.

(4) The Tribunal/DRAT are required to function within the statutory parameters.

(5) The Tribunal/DRAT have been conferred jurisdiction by special statute to exercise a particular power in a particular manner as provided under the Act.

(6) The Tribunal/DRAT are required to decide the lis that come within their domain.

25. A Coordinate Bench of this Court also in the case of *Prem Kumar Gupta v. Bank of India*, 2015 SCC OnLine Del 8232 in **W.P. (C) 2630/2014** decided on 9th March, 2015 has, by referring to the judgment of the Supreme Court in *Standard Chartered Bank* (supra), in paras 23 to 29 held as under:

*“23. The litigation brought before a Debts Recovery Tribunal essentially involves a civil dispute. It concerns primarily the claim of a bank or a financial institution to “a debt” which it seeks to recover from the person impleaded as a defendant. In dealing with such an application instituted before it by a bank or financial institution, the DRT may not be strictly bound by the procedure laid down in the Code of Civil Procedure or may have been vested with the power to regulate its own procedure. **But there is nothing in the statutory provisions to indicate that the procedure which DRT adopts may be what it fancies.**”*

24. As noted earlier, Section 22(2) confers upon DRT, and DRAT, certain specific powers vested by the Code of Civil Procedure in the Civil court. These include the power to enforce the attendance of a person. But the rider is that the attendance being enforced must be with the objective of “examining him on oath”. Necessarily, a person required to attend to be examined on oath would be a person called as a witness and not a party to the suit.

25. The clauses (f) and (g) of Section 22(2) leave no room for doubt that for regulating the appearance of parties and consequences of their non-appearance, DRT (and DRAT) are to be guided generally by the provisions contained in order 9 of the

Code of Civil Procedure. If the applicant under Section 19 fails to appear, the application may be dismissed in default. Conversely, if the defendant, duly served, does not appear, the proceedings on the application under Section 19 may be held ex parte. An application dismissed in default may be restored upon application being made on sufficient cause being shown for such order to be set aside. Similarly, the defendant having been set ex parte, may join the proceedings and may be permitted to participate and ex parte proceedings being set at naught subject of course to sufficient cause being shown for earlier non-appearance. This power also extends to setting aside of a judgment rendered ex parte resulting in the hearing on the application being reopened.

26. The forums constituted under RDDBFI Act are not criminal courts. To put simply, they do not adjudicate upon criminal causes or criminal charges. There is nothing in the provisions of the statute which establishes them to show that they are vested with any powers of the criminal court. These tribunals are expected to follow and be guided by the principles of natural justice. Their obligation is to ensure that no one is condemned unheard. Their application is to ensure that the dispute brought before them is adjudicated upon after both sides have been given proper "opportunity of being heard". It is inherent in this that, having issued summons to the defendant in terms of Section 19(4), the Tribunal must ensure that the process is duly served. The prime objective of summons is to give opportunity to the defendant "to show cause" as to why relief prayed for should not be granted. If the defendant, duly served, chooses not to appear, he suffers the proceedings ex parte. The Tribunal is within its jurisdiction to set such a defendant ex parte and proceed further towards adjudication on the basis of the pleadings and material brought before it by the applicant. There is no power vested in the Tribunal to compel or enforce the attendance of the defendant at the stage of adjudication on the claim under Section 19, not the least by issuing a warrant of arrest or for such duress process to be executed through the agency of police. It may be added that there is, generally

speaking, no obligation on the part of one defendant to “ensure” the appearance of a co-defendant, unless there is material to show collusion or one is the agent (or principal) of the other.

27. The provision contained in Section 19(25) of RDDBFI Act has been referred by the DRAT in the impugned order. The clause reads as under:

“The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

28. In the specific context of Section 19(25) of RDDBFI Act, the Supreme Court in the case reported as Standard Chartered Bank v. Dharminder Bhoji [(2013) 15 SCC 341 : JT (2013) 13 SC 69] held that the Debts Recovery Tribunal is required to function within statutory parameters and that “the Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers”.

29. We do not approve of the observations of DRAT that the above noted clause Section 19(25), confers upon the DRT a jurisdiction akin to the one vested in the High Court under Section 482 of the Code of Criminal Procedure. The language employed in the two provisions may be similar but the import thereof cannot be equated. The provision in Section 19(25) may at best be compared with the one contained in Section 151 of the Code of Civil Procedure which saves the “inherent power” of the civil court to secure ends of justice or make orders to prevent abuse of the judicial process. It is trite that such inherent jurisdiction to render justice cannot be taken resort of so as to nullify the other statutory provisions put in position to regulate the procedure. Where the legislation deals expressly with a particular matter, the provisions so enacted would normally be regarded as exhaustive.”

7. The principles laid down in **Padam Singhee** were reiterated by the Court in **Shri Satyanarayan Rao**. Learned amicus submitted that the two decisions noted above clearly hold that tribunals and appellate authorities

constituted under a statute, do not stand conferred with any inherent powers. It was submitted that the power to draw proceedings suo moto must be found to have been specifically conferred by statute. Absent such conferral of jurisdiction, the learned amicus would contend, the tribunal or appellate authority would have no jurisdiction to draw proceedings of its own motion. It was submitted that while the Authority under the Act does stand conferred the power to draw proceedings suo moto in certain contingencies, absent such a power being conferred upon the Appellate Tribunal, the proceedings impugned here are liable to be quashed. The learned amicus commended for the consideration of the Court that the Appellate Tribunal here was admittedly not *in seisin* of any appeal or petition directed against an order passed by the Authority. In view of the above, Mr. Mehra submitted that the drawl of proceedings by the Appellate Tribunal was patently without jurisdiction.

8. To appreciate the submissions addressed, it would be apposite to notice the relevant provisions of the Act in terms of which the Authority and the Appellate Tribunal have come to be constituted.

9. The Appellate Tribunal has been constituted in terms of the provisions contained in Section 43 of the Act which reads thus: -

“43. Establishment of Real Estate Appellate Tribunal.—(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act: 25

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.”

10. As is evident from a reading of Section 43(5), the Tribunal is empowered by the Act to hear appeals that may be instituted by any person aggrieved by a direction, decision or order made by the Authority or by an Adjudicating Officer. Section 44 then provides that the appropriate government, competent authority or any person aggrieved by any direction, order or decision of the Authority or the Adjudicating Officer may prefer an appeal to the Appellate Tribunal. The powers of the Appellate Tribunal are then enumerated in Section 53 which reads as follows: -

“53. Powers of Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examinations of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or directing it ex parte; and

(g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

11. The Authority, on the other hand, owes its genesis to Section 20.

That provision is extracted hereinbelow: -

“20. Establishment and incorporation of Real Estate Regulatory Authority. —

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to

exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority: Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.”

12. The procedure for filling of complaints is set out in Section 31 which reads as under: -

“31. Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation. —For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].”

13. Section 34 enumerates the functions of the Authority and reads thus:

“34. Functions of Authority. —The functions of the Authority shall include—

(a) to register and regulate real estate projects and real estate agents registered under this Act;

(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;

(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;

(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.”

14. Sections 35, 36 and 37 which would have a significant bearing on the question which stands posed in the present writ petition are extracted hereinbelow: -

“35. Powers of Authority to call for information, conduct investigations.—(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely: —

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

36. Power to issue interim orders.—Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

37. Powers of Authority to issue directions.—The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

15. In exercise of the powers conferred by Section 84 of the Act, the Central Government has framed the **National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016**. Rule 22 specifies certain additional powers which are conferred on the Authority. Rule 22 reads as follows:-

“22. Additional powers of Authority.-

(1) In addition to the powers specified in clause (iv) of sub-section (2) of section 35, the Authority shall exercise the following additional powers,-

(a) require the promoter, allottee or real estate agent to furnish in writing such information or explanation or produce such documents within such reasonable time, as it may deem necessary;

(b) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office.

(2) The Authority may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture, law or engineering or from any other discipline as it deems necessary, to assist the Authority in the conduct of quality audit or of any inquiry or proceedings before it.

(3) The Authority may in the interest of the allottees, inquire into the payment of amounts imposed as penalty, interest or compensation, paid or payable by the promoter, in order to ensure that the promoter has not,-

(a) withdrawn the said amounts from the account maintained under sub-clause (D) of clause (1) of sub-section (2) of section 4; or

(b) used any amounts paid to such promoter by the allottees for that real estate project for which the penalty, interest or compensation is payable, or any other real estate project; or

(c) recovered the amounts paid as penalty, fine or compensation from the allottees of the relevant real estate project or any other real estate project.”

16. Similarly the additional powers which are conferred on the Appellate Tribunal are set forth in Rule 29 which reads thus: -

“29. Additional powers of Appellate Tribunal.-

(1) In addition to the powers specified in clause (g) of sub-section (4) of section 53, the Appellate Tribunal shall exercise the following additional powers,-

(a) require the promoter, allottee or real estate agent to furnish in writing such information or explanation or produce such documents within such reasonable time, as it may deem necessary;

(b) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office.

(2) The Appellate Tribunal may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture, law or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any inquiry or proceedings before it.”

17. In order to appreciate, the challenge which stands raised in the present petition, it would at the outset be relevant to contrast the power and jurisdiction which the Appellate Tribunal and the Authority are conferred with under the provisions of the Act. As is evident from a reading of Sections 43 and 44, it is manifest that the Appellate Tribunal has been constituted as a forum whose jurisdiction may be invoked by any person aggrieved by a direction, decision or order made by the Authority or an Adjudicating Officer. Sections 43 and 44 of the Act do not confer, recognize or envisage any original or plenary power or authority being exercised by the Appellate Tribunal. The authority of the Appellate Tribunal stands confined to consideration of challenges that may be laid to orders passed by either the Authority or the Adjudicating Authority. The

Act does not vest or confer any authority or jurisdiction upon the Appellate Tribunal to initiate proceedings on its own motion.

18. Turning then to the provisions which deal with the constitution and powers of the Authority, it is manifest that it is obliged to regulate real estate projects, to ensure compliance of obligations placed on promotees, allottees and real estate agents. In terms of Section 35, where a complaint is received by it in respect of any real estate project, it is empowered to call upon the promoter, allottee or real estate agent to furnish information in writing or explain its affairs to the Authority. The powers exercised by the Authority under Section 35 can be set in motion either on a complaint or by the Authority itself acting suo moto. Section 35(2) confers on the Authority the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 insofar as they pertain to discovery and production of books of account and documents, summoning and enforcing the attendance of persons, issuing commissions for the examination of witnesses or documents and other matters which may be prescribed. Section 36 empowers the Authority to issue interim orders by way of restraint against a promoter, allottee or real estate agent injuncting it from carrying on any act which is complained of or noticed until the conclusion of the enquiry initiated under Section 35. This very provision also empowers the Authority to issue interim orders ex-parte. The Authority in terms of Section 37 is invested with the power to issue directions from time to time to any promoter, allottee or real estate agent and prescribes that all such directions would be binding on parties concerned. Rule 22 enumerates the additional powers which may be exercised by the Authority and is referable to the

provisions contained in Section 35 (2)(iv). Similarly, Rule 29 spells out the additional powers which may be exercised by the Appellate Tribunal and thus amplifies and provides content to the mandate of Section 53(4)(g).

19. On a consideration of the aforesaid provisions as made and incorporated in the Act, it is manifest that the Appellate Authority cannot possibly be recognized as conferred with the power to initiate proceedings suo moto or on its own motion. This is evident from a reading of the provisions engrafted in the statute and which enumerate and circumscribe the jurisdiction of the Appellate Tribunal. The Appellate Tribunal, it must be remembered, is a creation of statute. It is not an authority which may be recognised as being vested with inherent powers. Regard must also be had to the fact that the Appellate Tribunal is not part of the hierarchy of traditional judicial institutions which constitute the judicial system of our country. It is an appellate forum whose origin and formation stems from the provisions of the Act. It is in that sense an adjudicatory authority which owes its existence and authority to a special statute. Viewed in that light it is manifest that it can neither assume nor arrogate to itself a power or authority which may otherwise not stand conferred on it by the Act. There is thus an evident and blatant assumption of jurisdiction which otherwise does not stand vested upon the Appellate Tribunal. The Court thus comes to the firm conclusion that the impugned proceedings are clearly ultra vires the Act.

20. The Court further notes that the patent lack of jurisdiction stands further highlighted when one compares the jurisdiction conferred upon the

Authority and the Appellate Tribunal. As is clear from a reading of Section 35, the power to draw proceedings suo moto power stands specifically bestowed on the Authority. There is however a conspicuous and evident absence of extension or conferral of similar powers on the Appellate Tribunal. This, in the considered opinion of the Court, is not liable to be construed as legislative silence. It is in fact and to the contrary positively indicative of a conscious and evident legislative intent of not conferring similar powers upon the Appellate Tribunal. The Court thus comes to conclude that there was a patent lack of jurisdiction and the proceedings as drawn by the Appellate Tribunal are liable to be quashed in entirety.

21. Turning then to the impugned orders passed, the Court notes that the order of 17 November 2021 had not been passed while the Appellate Tribunal was *in seisin* of any order or direction made by the Authority or the Adjudicating Officer. The Court also notes that the order of 17 November 2021 proceeds on the basis that there is rampant non-compliance of the provisions of the Act within the NCT. The Appellate Tribunal also took cognizance of a report submitted by its Registry which appears to have alluded to allegations of innocent people being duped by real estate agents and housing developers who were implementing projects in areas falling under the Land Pooling Policy of the Delhi Development Authority. It seems to have issued various communications to the Commissioner of Police seeking details in respect of these projects and consequent to no details being proffered, it proceeded to register the case suo moto.

22. On 24 November 2021, the Appellate Tribunal went even further and framed an omnibus direction restraining all construction activities, be it residential or commercial, in the NCT of Delhi. The aforesaid direction was to cover all projects which had failed to register in terms of the provisions contained in Section 3(2) of the Act. The Court notes that Section 3(1) prescribes that no promoter shall advertise, sell or offer to sell, or invite persons to purchase any plot, apartment or building in any real estate project which is not registered under the Act. The first proviso to Section 3(1) then stipulates that in case of ongoing projects which are under different stages of implementation on the date of commencement of the Act and in respect of which a completion certificate may not have been issued, would also require to be registered within three months from the date of commencement of the Act. Section 3(2) is an exemption provision and specifies projects which may not require registration under the Act. Sub-section (2) reads thus: -

“3. Prior registration of real estate project with Real Estate Regulatory Authority

Xxxxxx

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

23. It would be relevant to note that the Act came into force on 26 March 2016. As this Court views Section 3, it is manifest that the same would principally apply to projects which may commence thereafter. In light of the mandate of Section 3(1) and insofar as ongoing projects are concerned, they would stand governed by its first Proviso. Similarly, Section 3(2) specifies the various contingencies in which a real estate project may be exempted from the requirement of compulsory registration under the Act. The provisions of Section 3 clearly indicate that the requirement of registration is one which necessarily merits an enquiry and examination of the facts of each real estate project before the Authority or the Appellate Tribunal may come to conclude that registration is mandated.

24. This Court finds itself unable to appreciate the omnibus direction which ultimately came to be issued by the Appellate Tribunal on 24 November 2021. The Appellate Tribunal clearly and abjectly failed to bear in mind the true ambit of Section 3 and proceeded on the incorrect and unfounded premise that all projects were liable to be compulsorily registered under the Act. The Court also takes into consideration the significant portent of the direction issued. It has practically injuncted all construction activity in the NCT of Delhi. The aforesaid injunction is not

shown to have been preceded by any enquiry with respect to the validity of a particular project or even a prima facie assessment or evaluation of the validity of a single project. In fact, the order does not even take note of a proven or evident violation of the provisions of the Act by a particular project. This Court is constrained to observe the procedure as adopted by the Appellate Tribunal can neither be countenanced nor accorded an imprimatur.

25. Accordingly, and for all the aforesaid reasons, the instant writ petition is allowed. The impugned orders of 17 November 2021 and 24 November 2021 are hereby set aside. For reasons aforementioned, all proceedings relating to Suo Moto Case No. REAT/0002/2021 shall also stand quashed. This judgment shall however not be construed as restraining the Authority from independently examining the validity of individual projects and enforcing the provisions of the Act in accordance with law.

YASHWANT VARMA, J.

MAY 26, 2022

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