ITEM NO.1C COURT NO.7 SECTION IV
(For Jt.)

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

CIVIL APPEAL NO(s). 6572 OF 2004

M/S. P.G.F. LTD. & ORS. Appellant (s)

VERSUS

UNION OF INDIA & ANR. Respondent(s)

Date: 12/03/2013 This Appeal was called on for judgment today.

For Appellant(s)
Mr. P.N. Puri,Adv.

Mr. Subramonium Prasad,Adv.

For Respondent(s)
Ms. Suruchii Aggarwal,Adv.

Mr. Sidharth Luthra,ASG.
Ms. Sushma Suri,Adv.
Ms. Supriya Juneja,Adv.
Ms. Aakansha Tandon,Adv.
Mr. B.V. Balaram Das,Adv.

Mr. Milind Kumar,Adv.

Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla pronounced the judgment of the Bench comprising of Hon'ble Dr. Justice B.S. Chauhan and His Lordship.

The appeal stands dismissed with cost of Rs.50,00,000/- (Rupees fifty lacs only) to be deposited by the PGF Limited with the Registry of the Supreme Court within eight weeks from the date of receipt of

copy of this judgment. On such deposit being made, the Registry shall arrange to deposit the said sum with the Supreme Court Legal Services Committee. In the event of PGF Limited failing to comply with the direction for payment of costs within the stipulated time limit, the Registry shall bring the same to the notice of the Court for initiating appropriate proceedings against the PGF Limited for non-compliance.

[SUMAN WADHWA]
COURT MASTER

[S.S.R. KRISHNA]
COURT MASTER

Signed Reportable judgment is placed on the file.

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6572 OF 2004

M/s. P.G.F. Limited & Ors. ...Appellants

VERSUS

Union of India & Another ...
Respondents

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. This appeal is directed against the Division Bench Judgment of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition (CWP) No.188/2003 dated 26.07.2004. Since the Division Bench has dealt with elaborately the background of the case for filing the writ petition at the instance of the appellant, we do not wish to state the same in detail in our judgment. However, we only wish to refer such of those bare facts required to support our decision and conclusion. At the very outset, we wish to note that though this appeal has been preferred by PGF Limited, its Chairman-cum-Managing Director and two other individuals who are stated to be residents of village Khabra and Samaspur of Punjab but the same has been really contested by the appellant No.1 whom we will

hereinafter refer to as 'PGF Limited'.

2. The appellant, known as Pearls Green Forests Limited and called PGF Limited from 1997, is having its registered office at S.C.O. No.1042-43, Sector 22-B, Chandigarh and its Head Office at 2nd Floor, Vaishali Building, Community Centre, Paschim Vihar, New Delhi. Though the Memorandum and Articles of Association of the Company provide for carrying on very many activities by way of business operations, we are only concerned with three of the activities of the PGF Limited, namely, sale of agricultural land, sale and development of agricultural land and joint venture schemes. Of the above three operations, when the writ petition was heard by the Division Bench of the High Court it was reported on 28.05.2004 by the learned counsel for the appellants that the PGF Limited took a decision to disband all its schemes, other than its operations relating to the business connected with sale of agricultural land and/or sale and development of agricultural land. Based on the said representation, an interim order came to be passed by the Division Bench on 28.05.2004 with which we are also not seriously concerned.

3. There was a public notice issued by the second respondent herein on 18.12.1997, apart from specific letter addressed by the second respondent to the PGF Limited dated 20.04.1998, by which the PGF Limited was called upon to furnish various details as regards to the Collective Investment Schemes, within 15 days of the issuance of its letter dated

20.04.1998. The second respondent also stated to have issued further communication based on the order of the Delhi High Court in CWP No.3352/1998 dated 7th and 13th October 1998, wherein all plantation companies, agro companies and companies running collective investment schemes, to get themselves credit rated from credit rating companies approved by the second respondent. The PGF Limited was directed to comply with the said directions also.

4. In the above-stated background, the second respondent passed an order on 20.02.2002 in exercise of its powers under Section 11B of the SEBI Act, by issuing some stringent directions against the PGF Limited. The PGF Limited challenged the said order before the Punjab and Haryana High Court in CWP No.4620/2002 wherein the second respondent came forward to keep its order dated 20.02.2002 in abeyance, provided the PGF Limited agreed to furnish the information sought for within two weeks. Based on the said stand of the second respondent by order of the High Court dated 29.04.2002, the PGF Limited was directed to submit its reply to the show cause notice and furnish all requisite information to the second respondent. The second respondent was also directed to provide an opportunity of personal hearing to the PGF Limited. The order dated 20.02.2002 was also directed to be kept in abeyance, till the final order was passed. Subsequent to the said order of the High Court dated 29.04.2002, after following the directions contained in the said order, the second respondent passed its order on 06.12.2002, by which it was held

that the business activity of the PGF Limited, namely, the sale and development of agricultural land, as well as its joint venture schemes, were all collective investment schemes and since the PGF Limited failed to comply with the statutory requirement as provided under the SEBI (Collective Investment Schemes) Regulation, 1999, directed the PGF Limited not to collect any money from investors nor to launch any new scheme with a further direction to refund the money collected under the schemes, which were due to the investors as per the terms of the offer within a period of one month from the date of its order and failing which threatened to initiate actions as available under the SEBI Act and SEBI (Collective Investment Schemes) Regulation, 1999.

5. Aggrieved by the said order of the second respondent dated 06.12.2002, the appellants preferred the writ petition before the High Court of Punjab and Haryana in CWP No.188 of 2003 wherein the order impugned dated 26.07.2004 came to be passed. Before the Division Bench of the High Court, on behalf of the appellants herein, two contentions were raised, namely, that apart from its joint venture business, its other business activities, namely, sale of agricultural land and sale and development of agricultural land, would not fall within the category of collective investment schemes as specified under Section 2(ba) read with Section 11AA of the SEBI Act and consequently the order impugned dated 06.12.2002 cannot be sustained.

6. Apart from challenging the order dated 06.12.2002, the appellants also challenged the *vires* of Section 11AA of the SEBI Act. At the instance of the second respondent the question about the territorial jurisdiction of the High Court was raised, which was turned down by the Division Bench in the order impugned and the same has become final and conclusive, as there was no challenge to the said part of the judgment of the Division Bench. As far as the stand of the PGF Limited that its business activity of sale and development of agricultural land would not fall within the category of collective investment schemes, the Division Bench, after a detailed consideration, held that having regard to the nature of offer made by the PGF Limited, the prescribed filled in application forms, collected from the investors before entering into the transaction of transfer of any land by way of sale and the various terms contained in the agreement for development, held that the nature of development of the land assured to the customer by the PGF Limited would bring the whole scheme of sale and development of agricultural land under the concept of collective investment schemes falling under Section 11AA(2)(ii) and (iv) of the SEBI Act and, therefore, the second respondent had every authority to proceed against the PGF Limited.

7. The Division Bench, thereafter, proceeded to examine the correctness of the order of the second respondent dated 06.12.2002 and held that there

was every justification for the second respondent to pass the said order and for passing the ultimate direction contained therein. As far as the challenge as to the *vires* of Section 11AA of the SEBI Act, the Division Bench examined the said submission threadbare and found no substance in the said submission inasmuch as the object of adding Section 11AA of the SEBI Act pointed at investors' protection, not agriculture and consequently the first respondent-Union of India had every competence to introduce the said provision in the SEBI Act.

8. We heard Mr. A.K. Ganguli, learned senior counsel for the appellants, Mr. Sidharth Luthra, learned Additional Solicitor General for respondent No.1 & Mr. Parag P. Tripathi, learned senior counsel for respondent No.2. Mr. Ganguli while assailing the order of the Division Bench after taking us through the material documents, in particular, the specimen application form submitted by the investors along with its annexures, copies of certain sale deeds between the vendor and the investors, submitted that once the joint venture operations carried on by the PGF Limited, were stopped by them on and from 01.02.2000, its other activity of sale of agricultural land nor the sale and development of agricultural land can be brought within the category of collective investment schemes. The learned senior counsel by referring to the definition of 'security' under the Securities Contracts (Regulation) Act, 1956, which definition was adopted for the purpose of application of SEBI Act as mentioned in Section 2(1)(i), contended that the application form or the development agreement cannot be construed as an 'instrument' in order to state that the sale and

development activity of the PGF Limited can be brought within the category of collective investment schemes.

9. The learned senior counsel contended that none of the terms and conditions of the agreement contemplated any return while operating the activity of development of the agricultural land of the investors that since return is *sine qua non* for any collective investment scheme, the activity of sale and development of agricultural land cannot be construed as a collective investment scheme. According to learned senior counsel, the role of the PGF Limited was merely facilitating the investors for purchasing agricultural lands in multiple units and beyond that no other obligation was to be performed by the PGF Limited, which can be construed as providing for any return in the process of sale and development of agricultural land to the investors by the PGF Limited. The learned senior counsel, therefore, contended that the conclusion of the Division Bench in holding that the sale and development of agricultural land would fall within the definition of collective investment scheme under Section 2(ba) read along with 11AA of the SEBI Act, was erroneous and consequently the judgment of the Division Bench as well as the order of the second respondent dated 06.12.2002 are liable to be set aside.

10. As far as the *vires* of Section 11AA of the SEBI Act is concerned, learned senior counsel primarily contended that the business of the PGF Limited being sale of agricultural land and sale and development of

agricultural land to its customers, the said activity would only fall under Entry 18 of List II of the Seventh Schedule and, therefore, the State Legislature alone was competent to bring about any legislation for the purpose of regulating its activities. The learned senior counsel contented that none of the transactions carried on by the PGF Limited with its customers whether directly or indirectly nor any of the documents available on record in relation to the transaction of sale of agricultural land and sale and development of agricultural land can be construed as an 'instrument' falling under the definition of 'securities' as defined under Section 2(h)(ib) of the Securities Contracts (Regulation) Act, 1956, which expression was 'mutatis mutandis' applied for the definition of 'securities' under the provisions of the SEBI Act. According to learned senior counsel since those documents would not fall within the definition of 'securities' as defined under the SEBI Act read along with Securities Contracts (Regulation) Act, 1956 there is absolutely no scope to invoke the definition of Section 2(ba) read along with Section 11AA of the SEBI Act.

11. The learned senior counsel strenuously contended that the stand of the respondents as accepted by the Division Bench, namely, that the collective investment scheme would fall within the expression 'investor protection' and thereby governed by Entry 97 of List I of the Seventh Schedule read along with Article 248 of the Constitution was wholly misconceived and, therefore, on the ground of legislative competence, Section 11AA of the SEBI Act is liable to be struck down. In support of the

said submission learned senior counsel also made detailed reference to various State enactments dealing with the protection of rights of depositors in financial establishments and contended that having regard to such initiatives taken by various State Governments, if at all, any protection were to be extended to the investors, namely, the customers of the PGF Limited whose rights *qua* the agricultural lands transferred in their favour, could have been validly enacted only in exercise of the powers vested with the respective State Governments under Entry 18 of List II of the Seventh Schedule and such exercise of power of legislation could have never been carried out by the first respondent.

12. Learned senior counsel further contended that the judgment of the Division Bench of the High Court in upholding the validity of Section 11AA of the SEBI Act resulted in various incongruities in that the impugned provision brought into the SEBI Act created under a law referable to Entries 43, 44 and 48 of List I of the Seventh Schedule directly encroaching upon the legislative power of the State under Entry 18 of List II of the Seventh Schedule. According to learned senior counsel, the subject matter of 'investors protection' pleaded on behalf of the respondents and accepted by the Division Bench of the High Court, which was referable only to Entries 43 and 44 of List I of the Seventh Schedule, can have no reference to the transactions dealing with sale and purchase of agricultural lands and their development and consequently the introduction of Section 11AA into the SEBI Act by way of a parliamentary

legislation was wholly incompetent.

13. According to learned senior counsel, the SEBI Act and the Securities Contracts (Regulation) Act, 1956 deal only with instruments, which can be openly traded in the Stock Market as compared to the title deeds with respect to immovable properties, which cannot by any stretch of imagination brought within the meaning of the term 'instrument' in order to invoke Section 11AA of the SEBI Act to rope in the PGF Limited's activities as falling under the expression 'collective investment scheme' and proceed against them. It was, therefore, contended that even if Section 11AA can be held to be valid, it should be declared that the said provision will have no application to sale and development of agricultural land.

14. The learned senior counsel further contended that even the second respondent never contended that the transactions of the PGF Limited in the sale and development of the agricultural lands to its investors as sham transactions as could be seen from the impugned order of the second respondent dated 06.12.2002 and in the said circumstances the conclusions drawn by the Division Bench to the contrary cannot be accepted and the same cannot form the basis for upholding the order of the second respondent dated 06.12.2002.

15. In support of his submissions learned senior counsel relied upon the

decisions in **K.K. Baskaran** Vs. **State represented by its Secretary, Tamil Nadu and others** - (2011) 3 SCC 793, **Sonal Hemant Joshi and others** Vs. **State of Maharashtra and others** - (2012) 10 SCC 601, **State of Maharashtra** Vs. **Vijay C. Puljal and others** - (2012) 10 SCC 599, **New Horizon Sugar Mills Ltd.** Vs. **Government of Pondicherry and another** - (2012) 10 SCC 575, **Naga People's Movement of Human Rights** Vs. **Union of India** - (1998) 2 SCC 109, **Union of India** Vs. **Shri Harbhajan Singh Dhillon** - (1971) 2 SCC 779, **S.P. Mittal** Vs. **Union of India and others** - (1983) 1 SCC 51, **Kartar Singh** Vs. **State of Punjab** - (1994) 3 SCC 569, **Mohinder Singh Gill and another** Vs. **The Chief Election Commissioner, New Delhi and others** - (1978) 1 SCC 405 and **Commissioner of Police** Vs. **Gordhandas Bhanji** - 1952 SCR 135.

16. Mr. Luthra, learned Additional Solicitor General appearing for the Union of India after referring to the judgment of the Division Bench and the directions ultimately issued to the PGF Limited to refund all the monies collected from the investors, contented that the source of power to the Parliament to introduce Section 11AA of the SEBI Act was Entry 97 of List I read along with Article 248 of the Constitution and not Entry 48 of List I or Entry 18 of List II. By relying upon the recent decision of this Court in **Sahara India Real Estate Corporation Limited and others** Vs. **Securities and Exchange Board of India and another** - (2013) 1 SCC 1, learned Additional Solicitor General contended that the object of SEBI Act itself was mainly for the protection of investors and that the decision of

this Court has also reinforced the said position. The learned Additional Solicitor General relied upon **Delhi Cloth & General Mills Co. Ltd.** Vs. **Union of India and others** - (1983) 4 SCC 166, **Reserve Bank of India** Vs. **Peerless General Finance and Investment Co. Ltd. and others** - (1987) 1 SCC 424 and **Narendra Kumar Maheshwari** Vs. **Union of India** - 1990 (Suppl.) SCC 440 to emphasis the need for investors protection in the present day context. The learned Additional Solicitor General contended that since the protection of investors is the main objective of the legislation, namely, SEBI Act and the said concept is not specifically enumerated in any of the Entries of Seventh Schedule, the same would be governed only by Entry 97 of List I and by virtue of the residual power is vested with the Parliament under Article 248 of the Constitution, the introduction of Section 11AA of the SEBI Act was valid in law and the judgment of the Division Bench does not call for interference. By relying upon the decision of this Court in **E.V. Chinnaiah** Vs. **State of A.P. and Others** - (2005) 1 SCC 394, the learned Additional Solicitor General also contended that the pith and substance theory applied by the Division Bench of the High Court to conclude that the business activity of the PGF Limited, namely, sale and development of agricultural land is nothing but a collective investment scheme and consequently governed by the concept of investors protection as governed by Section 11AA of the SEBI Act, was perfectly justified and the same does not call for interference.

17. Mr. Tripathi, learned senior counsel for the second respondent in his

submissions contended that the sale and development of agricultural land of the PGF Limited was in pith and substance a collective investment scheme and that the contention of the PGF Limited that its business related to transaction concerning agricultural land simplicitor cannot be accepted. The learned counsel, therefore, contended that the submission that there was no competence for the Parliament to enact Section 11AA of the SEBI Act and based on the said provision SEBI cannot control the business of the PGF Limited, cannot be countenanced. According to learned senior counsel the salient features of the business of the PGF Limited, namely, sale and development of agricultural land in reality was an investment simplicitor by the gullible public under the guise of sale and development of agricultural land and, therefore, Section 11AA of the SEBI Act was valid in law and the PGF Limited is bound to comply with the requirements of the SEBI Act in order to protect the interests of the investors.

18. While highlighting the salient features, the learned senior counsel referred to the application to be submitted by the investors and the various stipulations contained in the agreement of the PGF Limited, which disclose that while the sale of agricultural land in units of 150 sq. yrds. (1350 sq. ft.) was not immediately made, the same was dependent on certain other time bound contingencies. The learned senior counsel then pointed out that various terms contained in the application and the agreement disclose that the PGF Limited continued to retain absolute

control over the land in question, which is sold in fragmentation to different parties and created a bondage with the PGF Limited, which virtually deprived of those investors to have absolute control over the land purchased by them. According to him, the so called development of the land by various investors was collectively retained by the PGF Limited.

19. To highlight such a dominant control of the PGF Limited over the various units sold to the customers, the learned senior counsel pointed out that from the date of signing of the agreement for development, the PGF Limited retained absolute control in the matter of consultation with agro-consultants and experts for soil test, climate etc., apart from the development of the land by way of survey, demarcation, clearing cultivation, planting and raising of crops, trees, plants, saplings etc., use of fertilizers and pesticides, irrigation, harvesting and all other activities allied or incidental thereto, to be decided by the PGF Limited. Even as regards to the payment plans, the learned senior counsel pointed out that the sample agreement produced does not disclose as to how much from out of the composite amount collected from the customer would be the cost of the land for the purpose of development. By referring to the rejoinder filed before the High Court, the learned senior counsel pointed out that for the first time PGF Limited stated that 1/3rd of the consideration was towards the cost of land for which the sale deed is executed and the remaining amount spent towards development of land and there was no separate document to cover the amount spent for

development. Based on the said stand of the PGF Limited, the learned senior counsel pointed out that out of Rs.5000/- by way of consideration only Rs.1750/- was relatable to cost of land and the rest was towards development, maintenance etc.

20. The learned senior counsel also submitted that the Notes of Accounts disclose that it was the policy of the company to acquire land and allot land units to its joint ventures by way of earmarking land units after three years in case of deferred schemes and after one year in case of a lump sum scheme. It was also pointed out that when a specific question was put by the High Court to the PGF Limited as to how many investors had in fact proceeded to cultivate the land and put it for agricultural use or developed it by themselves, nothing was placed before the High Court to substantiate the claim of the PGF Limited. It was pointed out that the investors mostly belonged to the rural areas and were uneducated, who were lured with a return of 12.3%, as against the comparative investment option of 8.9%, while in reality there was no development of the land and the alleged promise of distribution of return was from out of the investment, from new investors. In the light of the above features contained in the application and the agreement placed before the Court, it was contended that the activity of the PGF Limited was not a mere sale and purchase of land, but in actuality was an investment scheme wherein land was being used only as a resource, which was promised to be worked on and developed by the PGF Limited and the exploitation of the land would result in return to the investors. It was, therefore, submitted that in

reality the business of the PGF Limited was purely an investment scheme and consequently governed by the definition of collective investment scheme as defined under Section 2(ba) read along with Section 11AA of the SEBI Act.

21. With regard to the legislative competence, the learned senior counsel submitted that having regard to the nature of business transaction of the PGF Limited, in pith and substance, it was a collective investment scheme of the PGF Limited along with the investors and, therefore, as rightly claimed by the respondent the introduction of Section 11AA of the SEBI Act by the Parliament was governed by the concept of 'investors protection' falling within residuary Entry 97 of List I read along with Article 248 of the Constitution and not governed by Entry 18 of List II. The learned senior counsel, therefore, contended that the challenge to the said Section on the ground of legislative competence was rightly rejected by the Division Bench of the High Court.

22. As far as the contention that the PGF Limited's scheme did not fall under the category of security, the learned senior counsel contended that even applying Section 2(h) of the Securities Contracts (Regulation) Act, 1956 read along with the provisions of the SEBI Act, the sale-cum-development agreement of the PGF Limited would fall within the definition of 'instrument', which only means "a written legal document

that defines rights, duties, entitlements or liabilities" and consequently governed by the provisions of the SEBI Act. In this context, learned senior counsel placed reliance upon a decision of the Bombay High Court in the case of **Ashok Organic Industries Ltd.** Vs. **Asset Reconstruction Company (India) Limited** – (2008) 3 Comp. L.J. 61, wherein it was held that instrument is a formal legal document which may even in appropriate case wide enough to cover the decrees. The learned senior counsel, therefore, contended that even a Certificate, Receipt, Registration Letter or a Unit Certificate or any such similar document would fulfill the criteria of "by whatever name called" in the definition of the term 'Unit' under Regulation 2(*z*)(dd) and it can be treated as an instrument and, therefore, subject to the rigours of SEBI (Collective Investment Schemes) Regulations, 1999.

23. Learned senior counsel also drew our attention to the fact that in the case on hand, the sale of land in multiple units could always be sold or disposed of after getting a No Objection Certificate from the PGF Limited and, therefore, from that angle as well the contention of the PGF Limited was liable to be rejected. The learned senior counsel also referred to the 'Blue Sky Laws' in the United States of America, which sought to regulate and control frauds in securities, largely at the initiative of the agrarian population and its small bankers against the fraudulent transactions of financiers in agricultural/plantation lands and submitted that the SEBI (Collective Investment Schemes), Regulations are more or less parallel to

such 'Blue Sky Laws', which was carried out in the interest of the investors, who were lured to part with their hard earned savings under the disguised promise of the PGF Limited to provide a higher value for the investment, by way of development and, therefore, the second respondent as a statutory authority had every duty to ensure that such schemes were controlled and regulated by the Regulation of 1999. The learned senior counsel, therefore, contended that the PGF Limited cannot be allowed to wriggle out of the control of SEBI Act by contending that it was dealing only with agricultural lands governed by Entry 18 of List II and hence its activities cannot be called as collective investment scheme falling under the provision of the SEBI Act.

24. Having heard Mr. A.K. Ganguli, learned senior counsel for the appellants, Mr. Sidharth Luthra, learned Additional Solicitor General for respondent No.1 & Mr. Parag P. Tripathi, learned senior counsel for respondent No.2, having perused the numerous paper books and compilations placed before us and having bestowed our serious consideration to the various submissions before us, at the very outset, we state that the present litigation by way of writ petition before the High Court in challenging the *vires* of Section 11AA of the SEBI Act and after having lost before the Division Bench of the High Court in its elaborate judgment, in its frantic attempt to pursue the litigation still further by filing this civil appeal before the Supreme Court, which in turn necessitated devotion of the precious time of this Court, force us to state that the whole attempt of the PGF Limited was thoroughly vexatious and

calls for severe indictment. We also wish to note here and now that apart from rejecting the contentions of the PGF Limited for various reasons to be adduced in this judgment and having noted the evil intention of the PGF Limited in having perpetrated this litigation, apart from mulcting the PGF Limited with exemplary costs, it also calls for appropriate enquiry and investigation to be made not only by the second respondent but also by the prime criminal investigating agencies, namely, the Central Bureau of Investigation and also by the Department of Income Tax, in order to find out the extent of fraud indulged in by the PGF Limited under the garb of development of agricultural lands that too at the cost of gullible investors, who were offered fragmented pieces of so called agricultural lands in multiple units of 150 sq. yds. per unit. At this juncture, it will be appropriate to note that in spite of our repeated asking of the learned senior counsel for the appellants, as to what materials were placed before the High Court or before this Court, as to the extent of developments made to the various so called agricultural lands procured and stated to have been transferred in favour of thousands of investors, to our utter dismay, the learned senior counsel appearing for the appellants fairly submitted that no material was either placed before the Division Bench of the High Court or before this Court till the conclusion of the hearing. The learned senior counsel, however, made a feeble contention that there was no occasion for the appellants to produce those materials though he was not able to satisfactorily explain to us as to why no such material could be placed before us when we repeatedly called upon the appellants to place such materials.

25. With the above prelude to the nature of litigation launched by the appellants in the High Court and pursuing the same in this Court, when we consider the submission of the appellants, we find that the submission was fivefold. According to the appellants while the appellants as a company provided in the Memorandum and Articles of Association, various objects and business ventures, it was actually involved in the business of joint venture schemes, sale of agricultural lands and sale and development of agricultural lands. While the sale of agricultural land and sale and development of agricultural land was continued to be operated upon, according to the PGF Limited, its business of joint venture schemes were brought to an end on and from 01.02.2000. In fact, the said stand was made at the time when the second respondent extended its opportunity prior to the passing of the impugned order dated 06.12.2002. Certain details were also furnished before the second respondent as to what were the extent of monitory transactions carried on in respect of the joint venture schemes and also the action taken by the PGF Limited after stopping its joint venture activities on and after 01.02.2000. Before this Court also certain details were furnished as to what extent monies were refunded to those who were part of the joint venture schemes and certain funds, which were deposited with the second respondent and were to be refunded to those whose availability and identity could not be traced after the stopping of the operation of joint venture schemes. We shall, however, examine the scope and extent of acceptability of such a stand made on behalf of the PGF Limited in order to examine whether the stand of the

PGF Limited that its joint venture schemes were stopped from 01.02.2000 while the provisions of Section 11AA of the SEBI Act was brought into the statute book from 22.02.2000 by Act 31 of 1999. We, however, hasten to add that admittedly even after 01.02.2000, according to the PGF Limited it continued to receive funds from various participants of the joint venture schemes on the pretext that such receipt of funds related to the involvement of those investors in the schemes, which were in operation prior to 01.02.2000. The contention of the PGF Limited was that since the operation of joint venture schemes were brought to an end as from 01.02.2000 and Section 11AA of the SEBI Act was inserted into statute book and became operational only from 22.02.2000, there was no scope for the second respondent to have called upon the PGF Limited to subject itself to the jurisdiction of the second respondent in purported exercise of its power under Section 11AA of the SEBI Act as well as in pursuance of its public notice issued in the year 1997-98.

26. The second submission of the learned senior counsel for the appellants was that sale of agricultural land, which is one of the business activities of the PGF Limited being an activity of mere sale and purchase of agricultural land and there being no connected scheme relating to such sale transaction, there was no scope for any collective investment scheme in order to invoke Section 11AA of the SEBI Act.

27. The third contention was that the other activities of sale and development of agricultural land of the PGF Limited was governed by

Entry 18 of List II of the Seventh Schedule and, therefore, the connected developmental activity of the PGF Limited in regard to those agricultural land sold to its investors cannot form the subject matter of legislation by the Parliament and consequently even if the validity of Section 11AA of the SEBI Act can be upheld, the PGF Limited's activity of the development of agricultural land should stand excluded from its coverage. In other words, according to learned counsel, even if the activities of the PGF Limited based with land sold and its further development, if at all any legislation could be passed, the same could have been done only by the State Legislature and not under Section 11AA of the SEBI Act.

28. It was then contended that having regard to the fact that agricultural land, which was the subject matter of development of PGF Limited's business activity along with the incidence of sale, the same being governed by Entry 18 of List II of the Seventh Schedule, the very promulgation of Section 11AA of the SEBI Act by the Parliament was invalid and *ultra vires* of the Constitution on the ground of lack of competence and consequently the second respondent could not have proceeded against the PGF Limited for non-compliance of the provisions contained in the said Section.

29. It was lastly contented that the approach of the Division Bench of the High Court in having gone into the nature of transactions entered into by the PGF Limited with the investors, was incorrect as the sale deeds

executed in favour of the investors were all not the subject matter of investigation, even by the second respondent, while passing its order dated 06.12.2002. Therefore, the order of the Division Bench in having extensively gone into the genuineness of those documents, was by way of extra pleadings of the Division Bench, which ought not to have been made and hence on that score the PGF Limited should not have been non suited.

30. Having noted the various submissions of the learned senior counsel for the appellants, we wish to deal with the constitutional validity of Section 11AA of the SEBI Act in the forefront before dealing with other contentions. In this context, in the foremost, we wish to deal with the contention of the PGF Limited by making reference to various State enactments dealing with the rights of depositors. The contention proceeds on the basis that if at all the activities of the PGF Limited in dealing with agricultural lands *vis-à-vis* its customers, in respect of the so called development agreements, were to be controlled, monitored or regulated, the State Legislature alone could be competent to bring about a legislation on par with various State enactments referred to by the PGF Limited. In fact, even after the elaborate submissions of learned senior counsel, we were at a loss to understand as to how far the operation of those State enactments relating to the depositors, can have any impact, while examining the constitutional validity of Section 11AA of the SEBI Act. For the purpose of analysis, when we examine the Madhya Pradesh

Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (M.P. Act No.16 of 2001) the preamble of the Act states that the said Act was to protect the deposits made by the public in the financial establishments and matters connected therewith or incidental thereto. Admittedly, the PGF Limited is not a financial institution at all and even according to PGF Limited it has not collected any deposits from the public at large. The PGF Limited though a company incorporated under the Companies Act, was not receiving deposits under any scheme or arrangement or in any other manner and hence, it will not fall under the definition of 'financial establishment' of the said Act. The purported intent of almost all the other State enactments were identical. It is a common ground that many of the statutes brought out by the respective States were upheld, except in some States where the Act was struck down, which is stated to be a subject matter of consideration pending before this Court. These State enactments in order to protect the depositors being duped under the garb of granting extraordinary returns, were sought to be protected by providing certain machineries, including certain prosecuting machinery and appropriate judicial forum for redressing their grievances. According to the PGF Limited it is not a financial institution and was not collecting any deposits and that its sole activity apart from sale of agricultural land was development of such lands sold to its customers. The extreme contention of the PGF Limited was that if Section 11AA of the SEBI Act was to be upheld, it would virtually set at naught those various State enactments, which in our considered opinion can only be stated as an argument of desperation and has absolutely no nexus whatsoever to the

question raised with regard to the validity of Section 11AA of the SEBI Act and hence, does not in any way impinge upon the said Section. Moreover, the said submission was never raised or focused before the Division Bench and is now sought to be raised before this Court for the first time and we find no substance in the submission while examining the validity of Section 11AA of the SEBI Act. In the light of our above conclusion, we do not find any necessity to refer to any of the decisions relied upon in connection with the said submission, namely, the decisions in **K.K. Baskaran** (supra), **Sonal Hemant Joshi** (supra), **Vijay Puljal** (supra), **New Horizon Sugar Mills Ltd.** (supra), **Naga People's Movement of Human Rights** (supra), **Harbhajan Singh** (supra), **S.P. Mittal** (supra), **Kartar Singh** (supra), **Mohinder Singh Gill** (supra) and **Gordhandas Bhanji** (supra).

31. Before adverting to the various contentions raised in challenging the *vires* of Section 11AA of the SEBI Act, we feel that it is worthwhile to state and note certain precautions to be observed whenever a *vires* of any provision of law is raised before the Court by way of a writ petition. It will be worthwhile to lay down certain guidelines in that respect, since we have noticed that on very many occasions a challenge to a provision of law, as to its constitutionality is raised with a view to thwart the applicability and rigour of those provisions and as an escape route from the applicability of those provisions of law and thereby create an impediment for the concerned authorities and the institutions who are to

monitor those persons who seek such challenges by abusing the process of the Court. Such frivolous challenges always result in prolongation of the litigation, which enables such unscrupulous elements who always thrive on other peoples money to take advantage of the pendency of such litigation preferred by them and thereby gain, on the one side, unlawful advantage on the monitory aspect and to the disadvantage of innocent victims, and ultimately, gain unlawful enrichment of such ill-gotten money by defrauding others. In effect, such attempts made by invoking the extraordinary jurisdiction of the writ Courts of many such challenges, mostly result in rejection of such challenges. However, at the same time, while taking advantage of the long time gap involved in the pending proceedings, such unscrupulous litigants even while suffering the rejection of their stand at the end as to the *vires* of the provisions, always try to wriggle out of their liabilities by stating that the time lag had created a situation wherein those persons who were lured to part with huge sums of money are either not available to get back their money or such unscrupulous petitioners themselves are not in a position to refund whatever money collected from those customers or investors. It is, therefore, imperative and worthwhile to examine at the threshold as to whether such challenges made are bonafide and do require a consideration at all by the writ courts by applying the principle of 'lifting the veil' and as to whether there is any hidden agenda in perpetrating such litigation. With that view, we lay down some of the criteria to be kept in mind whenever a challenge to a provision of law is made before the Court.

32. The Court can, in the first instance, examine whether there is a *prima facie* strong ground made out in order to examine the *vires* of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time gap exist as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision *vis-à-vis* the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the *vires* made. Even if the writ Court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ Court and the same is not exhaustive. In other words, the Writ Court should examine such other grounds on the above lines for consideration while considering a challenge

on the ground of *vires* to a Statute or provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the above stated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time bound basis, so that the legal position is settled one way or the other.

33. Keeping the above factors relating to the constitutional challenge to a provision of law made in mind, we proceed to examine the challenge made by the PGF Limited to Section 11 AA of the SEBI Act. In fact, the challenge to the provision was two-fold. The main contention of the PGF Limited was that since indisputably the business of the PGF Limited was sale and development of agricultural land, the same would be governed by Entry 18 of List II, namely the State subject and, therefore, the Central Legislation brought about by the Parliament in introducing Section 11AA of the SEBI Act cannot be sustained. It was alternatively contended that even assuming that the Section can be held to be valid, inasmuch as the business is solely sale and development of agricultural land again falling under Entry 18 of List II section 11AA it can be read down to the effect that the said provision will have no application to the business activity of the PGF Limited.

34. As far as the main contention is concerned, when we test the said submission, we find that the said submission is wholly misconceived. In order to appreciate the first contention, it will be worthwhile to extract

Section 11 AA which reads as under:

"11AA. Collective investment scheme- (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which-

(i) the contributions, or payment made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement-

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938) applies;

(iv) providing for any scheme, pension scheme or the insurance scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under Section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a *Nidhi* or a Mutual Benefit Society under Section 620A of the Companies Act, 1956 (1 of 1956)

(vii) falling within the meaning of chit business as defined in clause (e) of Section 2 of the Chit Funds Act, 1982 (40 of 1982);

(viii) under which contributions made are in the nature of subscription to a mutual fund,

Shall not be collective investment scheme."

35. A reading of the said provision discloses that it talks of any scheme or arrangement, which would fall within the definition of a collective investment scheme. Section 2 (ba) under the definition clause states that a collective investment scheme would mean any scheme or arrangement, which satisfies the conditions specified in Section 11 AA. Under sub-Section (2) of Section 11AA, it is stipulated that any scheme or arrangement made or offered by any company by which the contribution, or payment made by the investors, by whatever name called, are pooled and utilized for the purposes of scheme or arrangement; contributions or payments are made by the investors with a view to receive profits, income, produce or property, whether movable or immovable, based on the scheme or arrangement, any property, contribution or investment which forms part of the scheme or arrangement is identifiable or not is managed by someone on behalf of the investors shall be collective investment

scheme. Further the investors should not have day to day control over the management and operation of the scheme or arrangement. A detailed analysis of sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from. As a matter of fact the provision does not make any reference to agricultural or any other specific activity and, therefore, at the very outset it will have to be held that the submission based on Entry 18 of List II, while challenging the *vires* of Section 11AA, is wholly misconceived. The fallacy in the submission of the PGF Limited is that it proceeds on the footing as though the said provision, namely, Section 11AA was also intended to cover an activity relating to agriculture and its development and, therefore, the provision conflicts with Entry 18 of List II of the State List to be struck down on that score. Inasmuch as the said Section 11AA seeks to cover, in general, any scheme or arrangement providing for certain consequences specified therein *vis-à-vis* the investors and the promoters, there is no question of testing the validity of Section 11AA in the anvil of Entry 18 of List II. The said submission made on behalf of the appellants is, therefore, liable to be

rejected on that sole ground.

36. The correctness of the submission can also be examined in a different angle, namely, what is the paramount purpose for which the SEBI Act, 1992 came to be enacted? The object of the main Act itself came to be considered by this Court in a recent decision reported in ***Sahara India Real Estate Corporation Ltd.*** (supra) wherein this Court has stated as under:-

> "65. Parliament has also enacted the SEBI Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. The SEBI was established in the year 1988 to promote orderly and healthy growth of the securities market and for investors' protection. SEBI Act, Rules and Regulations also oblige the public companies to provide high degree of protection to the investor's rights and interests through adequate, accurate and authentic information and disclosure of information on a continuous basis."
>
> (emphasis added)

The object for introducing Section 11AA which came to be inserted by Act 31 of 1999 w.e.f 22.02.2000 is to the following effect:

> "2. Recently many companies especially plantation companies have been raising capital from investors through schemes which are in the form of collective investment schemes. However, there is not an adequate regulatory framework to allow an orderly development of this market. In order that the interests of investors are protected, it has been decided that the Securities and Exchange Board of India would frame regulations with regard to collective investment schemes. It is, therefore, proposed to amend the definition of "securities" so as to include within its ambit the derivatives and the units or any other instrument issued by any collective investment scheme to the investors in such schemes."

37. Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the

Act. When such was the laudable object with which the main Act was enacted and Section 11AA was introduced as from 22.02.2000, the challenge made to the said Section will have to be examined by keeping in mind the above said background and test the grounds of challenge as to whether there is any good ground made out to defeat the purport of the enactment.

39. A reading of sub-Section (3) of Section 11AA also throws some light on this aspect, wherein it is provided that those institutions and schemes governed by sub-clause (i) to (viii) of sub-Section (3) of Section 11AA will not fall under the definition of collective investment scheme. A cursory glance of sub-clauses (i) to (viii) shows that those are all the schemes, which are operated upon either by a cooperative society or those institutions, which are controlled by the Reserve Bank of India Act, 1934 or the Insurance Act of 1938 or the Employees Provident Fund and Miscellaneous Provisions Act, 1952 or the Companies Act, 1956 or the Chit Fund Act of 1982 and contributions, which are made in the nature of subscription to a mutual fund, which again is governed by a SEBI (Mutual Fund) Regulations 1996. Therefore, by specifically stipulating the various ingredients for bringing any scheme or arrangement under the definition of collective investment scheme as stipulated under sub-Section (2) of Section 11AA, when the Parliament specifically carved out such of those schemes or arrangements governed by other statutes to be excluded from the operation of Section 11AA, one can easily visualize that the purport of the enactment was to ensure that no one who seeks to collect and deal

with the monies of any other individual under the guise of providing a fantastic return or profit or any other benefit does not indulge in such transactions with any ulterior motive of defrauding such innocent investors and that having regard to the mode and manner of operation of such business activities announced, those who seek to promote such schemes are brought within the control of an effective State machinery in order to ensure proper working of such schemes.

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, *anna* or *paise* gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded. Sub- clauses (i) to

(viii) of sub-Section (3), which excludes those schemes and arrangements from the operation of Section 11 AA in as much as those schemes are already governed under various statutes and are operated upon by a cooperative society or State machinery and there would be no scope for the concerned persons or the institutions who operate such schemes within the required parameters and thereby the common man or the contributory's rights or benefits will not be in any way jeopardized. It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

41. In this context, we can also take judicial notice of the fact that those schemes, which would fall under sub-Section (2) of Section 11AA would consist of a marketing strategy adopted by those promoters, by reason of which, the common man who is eager to make an investment falls an easy prey by the sweet coated words and attractive persuasions of such marketing experts who ensure that those who succumb to such persuasions never care to examine the hidden pitfalls under the scheme, which are totally against the interests of the investors, apart from various other stipulations, which would ultimately deprive the investors of their entire entitlement, including their investments. The investors virtually by signing on the dotted lines of those stereotyped blank documents would never be aware of the nature of constraints created in the documents, which would virtually wipe out whatever investment made by them in

course of time and ultimately having regard to the legal entangles in which such investors would have to undergo by spending further monies on litigations, ultimately prefer to ignore their investments cursing themselves of their fate. More than 90 per cent of such investors would rather prefer to forget such investments than making any attempt to secure their money back. Thereby, the promoters put to unlawful gain who always thrive on other peoples money.

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any mis-fortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

43. By no stretch of imagination the above factors, which weighed with the Parliament to introduce Section 11AA can be held to be done with a view to affect any particular category of business activity much less the activity

of agriculture. We are not, therefore, in a position to countenance the stand of the PGF Limited that what it sought to carry out under its scheme was merely sale and development simplicitor of agricultural land and not a collective investment scheme. In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development. In other words, there is no scope to apply Entry 18 of List II of Seventh Schedule in order to strike down the said provision on the ground of legislative competence.

44. When we examine the nature of the activity of the PGF Limited by way of sale and development of agricultural land, it will be necessary to mention the salient features pointed out by Mr. Tripathi, learned senior counsel for the second respondent and find out as to how far Section 11AA of the SEBI Act, would apply and thereby, the validity of Section 11AA has to be upheld and the various grounds raised on behalf of the PGF Limited do not in any way impinge upon the said Section.

45. Some of the relevant documents, which are required to be noted for this purpose are the Application form, which is to be filled in and furnished by an investor with the PGF Limited based on which an agreement is to be first signed by the investor and thereafter, the sale deed is executed in units of 150 sq. yrds. per unit. A perusal of the Application form would show that when the investor applies for purchase

of agricultural units/plots for getting the same developed and maintained by PGF Limited under the PGF Limited's cash down payment plan/installment payment plan, based on the number of units/plots a period plan number, the area of land, the period of plan, the consideration etc., are all noted. An agreement is also entered into based on the application on the same date depending upon the nature of payment either cash down or installment payment and the investor is referred as customer and the appellant No.1 is referred to as PGF, a public limited company who is stated to be engaged in the business of sale, purchase or development of agricultural land. After noting down the desire of the investor for purchase of the number of units/ plots based on the payment plan, the agreement in the forefront states that the PGF Limited would arrange for the allotment of the land within a reasonable period and not exceeding 270 days in respect of cash down payment plan and not exceeding 90 days after the receipt of 50 per cent of consideration in respect of installment payment plans. It is worthwhile to note that while money is received either by way of cash down or 50 per cent through installment facility only an allotment will be intimated by way of a letter without any assurance as to when the sale deed in favour of such applicant customer would be executed. After the allotment letter without prescribing any specific time stipulation, the agreement mentions that sale deed would be executed in favour of the customer and will be duly registered. Such execution was, however, to the condition that if transfer of such small plot of land as prescribed by law is not otherwise possible, practicable or feasible, even such transfer of title would be in favour of a

customer by way of joint holding with other customers, by way of a joint sale deed and the original sale deed will be entrusted with a custodial service company, whose name and addresses would be communicated to the customer respectively. Thereafter, if the customer wants to verify the document he will have to approach the said custodial service company and that too after making a request 15 days before such intended verification.

46. When it comes to the question of development, it is stipulated that such development would be in consultation with agro consultants and experts after taking into account several factors such as soil condition, climate etc., apart from matters pertaining to development including survey, demarcation, clearing, cultivation, planting/raising of crops, trees, plants, saplings etc., as well as use of fertilizers and pesticides, irrigation and all other activities allied or incidental thereto would be decided by the PGF Limited. Insofar as the joint sale deed is concerned only certified copies of the sale deed would be furnished to the customer and if this is not possible/ feasible/ practical, PGF shall provide a copy of the sale deed duly attested by a Notary Public to the customer.

47. Under the heading 'Common Services & Facilities' it is stipulated in the agreement that in respect of certain common facilities such as irrigation and drainage systems, pipelines, electrical lines (which may be passing through, whether underground or overground, the customer's plot), motors, pump sets, temporary sheds and structures etc., the customer

will have no ownership rights and cannot interfere in any manner with the same and that such common services and facilities would be the properties of the PGF. As far as consequences of any breach by the PGF Limited, under Clause 13 some skeleton provision is made that the customer will be entitled to terminate the agreement, in which event PGF Limited would refund the amounts along with simple interest @ 12.5% per annum from the date of the contract, (i.e.) if such breach related to the development of plot(s), then again the customer will be entitled to terminate the agreement, in which event the PGF Limited would refund the amounts paid by the customer after deducting the cost of land, registration expenses, development charges and other incidental expenses and the balance amount, if any, would be refunded together with simple interest @ 12.5% per annum from the date of contract and the PGF Limited shall not be liable to pay any cost/expense/damage whatsoever in any case other than what has been provided under Clause 13(a) & (b).

48. But when it comes to the question of breach by the customer under Clause 14(A) as many as sub-clauses (a) to (f) are stipulated and if it related to any default before allotment of land under Clauses 14(B) sub-clauses (a) to (e) providing for stringent conditions have been laid down. Under Clause 18 all possible situations are mentioned in order to ensure that under no circumstance PGF Limited will be liable for any consequence for non-performance of its part of the contract. Under Clause 20 it is stipulated that any dispute pertaining to the agreement would be

referred for arbitration to a retired judicial officer appointed by the PGF Limited as sole arbitrator and settled in accordance with the Arbitration and Conciliation Act, 1996 and the jurisdiction for any further agitation of legal rights would be only in the Civil Courts at Delhi, to the exclusion of all other Courts.

49. Thus, as rightly pointed out by Shri Tripathi, learned senior counsel for the second respondent, once the customer signs the application form and the agreement, virtually he would be left high and dry with no remedy, in the event of any breach being committed by the PGF Limited, while on the other hand he will have everything to loose if such breach happened to occur at the instance of the customer. The agreement, thus, demonstrates to be wholly one sided and arbitrary in all respects.

50. When we refer to such incongruities existing in the predrafted/standard format agreement to be signed by the customers, it will also be worthwhile to the so called sale deeds, which were placed before the Division Bench as sample documents. A perusal of those sale deeds are much more revealing. One of the sample documents was executed by one Mr. Malkiat Singh s/o Sh. Sadhu Singh resident of Village Vhoje Majra, Punjab through his authorized attorney Mr. Rajesh Agarwal s/o Sh. Ram Agarwal in favour of one Mr. Pankaj Karnatak s/o Sh. V.D. Karnatak R/o Delhi. The said vendor Malkiat Singh stated to have purchased an extent of 9.37 acres of dry land in Survey No.113 in

village Velugudari for total consideration of Rs.1,19,100/- from one Ganga Reddy s/o Raja Reddy. The said Malkiat Singh is stated to be a resident of Punjab. Out of the said extent of 9.37 acres an extent of 150 sq. yrds. was sold to the said Pankaj Karnatak of Delhi by sale deed dated 23.10.2001. The sale consideration was shown as Rs.1515/- while the value of the document is shown as Rs.4000/-. The revealing fact was that the photocopy of the said document disclose the signature of Malkiat Singh at the bottom of each page of the document. But the signature of the Power of Attorney is not found in the said document though in the opening paragraph it is claimed that the sale deed was executed only by the Power Agent. The said Rajesh Agarwal has only signed on the back side of the first page of the document before the Registrar. Of the two witnesses to the document, one of the witnesses stated to be the resident of New Delhi, while the other witness was stated to be the resident of Nirmal. The addresses of the witnesses are not mentioned and the document was registered in the office of Sub-Registrar of Nirmal. In the schedule, the boundaries have been simply mentioned as surrounded on the East by 5 ft. wide road, West by 5 ft. wide road, North by Plot No.140 and South by Plot No.142. Along with the document a site plan is annexed and the authenticity of the said plan is not disclosed, while the name of the person who drew the sketch alone is mentioned. Thus, in very many respects the genuineness of the document appears to be doubtful. In fact, the Division Bench has dealt with this aspect of the nature of document *in extenso* in paragraph 56 of the judgment impugned with which observation we fully concern.

51. A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investors' concerned. The above factors and the factors, which weighed with the Division Bench in this respect definitely disclose that PGF Limited under the guise of sale and development of agricultural land in units of 150 sq. yrds. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc., and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them.

52. The above conclusion of ours can be culled out from the sample documents placed by the appellants before the Court. The appellants, however, failed to supply any material till date to demonstrate as to how and in what manner any of the lands said to have been sold to its customers were developed and thereby any of the customer was or would be benefited by such development. It is imperative that the transaction of

the PGF Limited *vis-à-vis* its customers has necessarily to be examined as to its genuineness by subjecting itself to the statutory requirement of registration with the second respondent followed by its monitoring under the regulations framed by the second respondent. All the above factors disclose that the activity of sale and development of agricultural land propounded by the PGF Limited based on the terms contained in the application and the agreement signed by the customers is nothing but a scheme/arrangement. Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time. It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are

stated to be from different parts of the country it is well-neigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002. We also hold that while ensuring compliance of the order dated 06.12.2002, the second respondent shall also examine the claim of the PGF Limited that it had stopped its joint venture scheme as from 01.02.2000 is correct or not by holding necessary inspection, enquiry and investigation of the premises of the PGF Limited in its registered office or any of its other offices wherever located and also examine the account

books other records and based on such inspection, enquiry and investigation issue any further directions in accordance with law. Whatever amount deposited by the PGF Limited pursuant to the interim orders of this Court relating to joint venture scheme shall be kept in deposit by the second respondent in an Interest Bearing Escrow Account of a Nationalized Bank. The second respondent shall also verify the records of the PGF Limited relating to the refund of deposits of the customers who invested in the joint venture schemes and ascertain the correctness of such claim and based on such verification in the event of any default noted, appropriate further action shall be taken against the PGF Limited for settlement of the monies payable to such of those investors who participated in any such joint venture schemes operated by the PGF Limited. It will also be open to the second respondent while carrying out the above said exercise to claim for any further payment to be made by the PGF Limited towards settlement of such claims of the participants of the joint venture schemes and charge interest for any delayed/defaulted payments. As far as the deposit made by the PGF Limited with the second respondent on the ground that the such amount could not be disbursed to any of the investors for any reason whatsoever the second respondent, based on the verification of the records of the PGF Limited, arrange for refund/disbursement of such amount back to the participants of the joint venture schemes with proportionate interest payable on that amount. The above directions are in addition to the directions made by the Division Bench of the High Court.

54. Having noted the conduct of the PGF Limited in having perpetrated this litigation which we have found to be frivolous and vexatious in every respect, right from its initiation in the High Court by challenging the *vires* of Section 11AA of the SEBI Act without any substantive grounds and in that process prolonged this litigation for more than a decade and thereby provided scope for defrauding its customers who invested their hard earned money in the scheme of sale of land and its development and since we have found that the appellants had not approached the Court with clean hands and there being very many incongruities in its documents placed before the Court as well as suppression of various factors in respect of the so called development of agricultural land, we are of the view that even while dismissing the Civil Appeal, the PGF Limited should be mulcted with the exemplary costs. We also feel it appropriate to quote what Mahatma Gandhi and the great poet Rabindranath Tagore mentioned about the greediness of human being which are as under:

> *"Earth provides enough to satisfy every man's need, but not every man's greed.*
>
> *-Mahatma Gandhi-*

> *The greed of gain has no time or limit to its capaciousness. Its one object is to produce and consume. It has pity neither for beautiful nature nor for living human beings. It is ruthlessly ready without a moment's hesitation to crush beauty and life out of them, molding them into money."*
>
> *-Rabindranath Tagore-*

55. In this respect, it will be worthwhile to note what the PGF Limited disclosed before the second respondent in its letter dated 15.01.1998 alongwith the covering letter dated 20.05.2002. The details mentioned

therein disclose that the total amount received by the PGF Limited under different schemes from 01.01.1997 to 31.12.1997 was approximately Rs.186.84 crores. Its paid up capital was stated to be Rs.94,90,000/- and it mobilized Rs.815.23 crores under joint venture schemes from 01.04.1996 to 30.06.2002. The future liabilities towards joint venture schemes was projected in a sum of Rs.655.41 crores. Total outstanding liabilities payable to investors under the old closed schemes as on 30.06.2002 was stated to be Rs.497 crores. As against the above, till 31.10.2002, the PGF Limited stated to have made a net payment of Rs.115.93 crores leaving the balance due in a sum of Rs.393.69 crores approximately. The above details have been noted by the second respondent while mentioning the submission of the PGF Limited in its order dated 06.12.2002. Thus, we are convinced that the PGF Limited deliberately did not furnish the amounts till this date what was collected from the customers who made their investments in the so-called venture of sale and development of agricultural lands. Therefore, it is explicit that the PGF Limited was playing a hide and seek not only before the second respondent, but was also taking the Courts for a ride. We have noted in more than one place in our order that inspite of our repeated asking the appellants did not come forward to disclose the details of any development it made in respect of the lands alleged to have been sold to its customers. There is also no valid reason for not disclosing the details before the court. As in one of its activities, namely, joint venture scheme alone, it had mobilized Rs.815.23 crores, it can be easily visualized that in its activities of sale and development of land such mobilization would have

far exceeded several thousand crores. In such circumstances, the appeal is liable to be dismissed which may have costs.

56. Apart from imposing cost for having wasted the precious time of the High Court as well as of this Court, in order to ensure that none of the investors/customers of the PGF Limited, who have parted with their valuable savings and earnings by falling a prey to the promise extended to them are deprived of their investments, we feel it just and necessary to direct for proper investigation both by the Central Bureau of Investigation as well as the Department of Income Tax and in the event of any malpractice indulged in by the PGF Limited, to launch appropriate proceedings, both Civil, Criminal and other actions against the PGF Limited, as well as, all those who were responsible for having indulged in such malpractice. We also direct the second respondent to proceed with its investigation/enquiry and inspection of the PGF Limited as well as all its other officers and other premises and after due enquiry to be carried out in accordance with law, take necessary steps for ensuring the refund of the monies collected by the PGF Limited in connection with the sale and development of land to its various customers. In order to enable the second respondent to carry out the various directions contained in this judgment, we direct the PGF Limited to appoint a nodal officer, not below the rank of a Director, of its company who shall be responsible for furnishing whatever information, documents, account books or other materials that may be required by the second respondent, the Central

Bureau of Investigation as well as the Income Tax Authorities. While intimating appointment of such nodal officer, the PGF Limited shall also furnish the contact number i.e., landline/mobile numbers, e-mail address and other details of its nodal officer, its registered office, administrative office and other offices. It is made clear that if the PGF Limited failed to comply with any of the directions contained in this judgment, the second respondent shall be at liberty to bring it to the notice of this Court by filing appropriate application for initiating necessary proceedings against the PGF Limited-appellant No.1, its Chairman-cum-Managing Director-appellant No.2 and other Directors and other responsible officers. With the above directions, the appeal stands dismissed with cost of Rs.50,00,000/-(Rupees fifty lacs only) to be deposited by the PGF Limited with the Registry of the Supreme Court within eight weeks from the date of receipt of copy of this judgment. On such deposit being made, the Registry shall arrange to deposit the said sum with the Supreme Court Legal Services Committee. In the event of PGF Limited failing to comply with the direction for payment of costs within the stipulated time limit, the Registry shall bring the same to the notice of the Court for initiating appropriate proceedings against the PGF Limited for non-compliance.

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.....J.

[Dr. B.S. Chauhan]

.....J.

[Fakkir Mohamed Ibrahim

Kalifulla]

New Delhi;
March 12, 2013