



NEUTRAL CITATION NO. 2026:MPHC-IND:23132

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SANDEEP N. BHATT  
ON THE 14TH OF AUGUST, 2026**

**WRIT PETITION NO. 30582 of 2023**

***SHREE SAI CORP  
Versus  
THE STATE OF MADHYA PRADESH & OTHERS***

**Appearance:-**

Shri Ravindra Singh Chhabra senior advocate with Shri Aman Arora advocate for the petitioner.

Shri Shrey Raj Saxena, Government Advocate for State.

Shri Prabal Jain, Advocate for respondent/intervenor.

Shri Amol Shrivastava advocate for respondents No. 5 and 6.

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**ORDER**

Heard counsel for the parties.

2. By way of this writ petition, the petitioner has prayed for following reliefs:-

7.1 The impugned show cause notice dated 30.3.2021 issued by the respondent no.4 and the consequential actions/orders passed if any may kindly be set aside;

7.2 The order dated 4.10.2021 passed by the respondent No. 6 cancelling the



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building permission of the petitioner may kindly be set aside;

7.3 The letter dated 30.9.2021 issued by the respondent No. 2 making Section 72B(g) as retrospective effect may kindly be set aside.

7.4 Necessary directions/orders may kindly be passed for renewal of the RERA registration.

7.5 The petitioner may kindly be permitted to carry out construction activity over the subject lands;

7.6 Any other and further relief, as may be deemed fit may be granted to the petitioner.

3. Counsel for the petitioner has submitted that petitioner has purchased land comprised in survey Nos. 307/8/1, 308/2/2, 308/3/2, 308/4/2, 308/5/2, 307/7/1, 307/8/2, 308/2/1, 308/5/3, 308/4(part), 308/5(part) and 308/2(part) total admeasuring 1.293 hectare situated in village Tejpur Gadbad, Tehsil and District Indore which were in the ownership of cooperative society Jyoti Nagar Grih Nirman Sanstha till the year 2007. He has submitted that the subject lands were sold pursuant to sale permission obtained from respondent No.3 authority on 30.3.2007 to Prem Chouhan and Pawan Shrimal to avoid any technical objection. He has submitted that at that point of time there was no requirement for the sale permission still in order to safeguard the action the permission was taken. He has submitted that on 1.4.2010 Section 72-B(g) was incorporated in the statute of Madhya Pradesh Cooperative Societies Act, 1960. He has further submitted that the petitioner being bonafide purchaser, purchased the subject lands on 10.12.2015 and 11.12.2015, Prem Chouhan and Pawan Shrimal sold the subject lands to the present petitioner and on 30.5.2016 by order of competent authority the subject lands were diverted. He has further submitted that on 19.1.2017 thereafter on 14.5.2018 and 7.11.2019 building permissions were granted to the petitioner by the corporation. He has further submitted that after obtaining the permission the petitioner has carried out



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construction on the subject land and invested huge amount and he has constructed four floors for commercial purpose and construction activity was going on. On 22.5.2020, RERA permission for the period of 1.3.2020 to 30.11.2021 was also received. He has further submitted that thereafter without issuing any show cause notice to the petitioner or without following any procedure on 15.2.2021 respondents No.3 after 14 years cancelled the sale permission dated 30.3.2007. He has submitted that on 30.3.2021, respondent no. 4 issued a show cause notice to Prem Chouhan and Pawan Shrima and also to petitioner to stop the construction activity on the subject lands. On 3.8.2021, the respondent No.4 issued another letter whereby letter dated 15.2.2021 was revoked and the sale permission dated 30.3.2007 was again revived. He has further submitted that on 30.9.2021, respondent No.2 again cancelled the sale permission and cancelled the order dated 3.8.2021. He has further submitted that on 30.9.2021, respondent No. 3 has issued letter to respondents No. 4 and 5 directing them not to issue any permission to societies in absence of permission under Section 72-B(g) issued from the Registrar and any sale permission obtained from Sub Registrar/Additional Registrar/Additional Commissioner will be declared void and on 4.1.2021, the building permission granted to the petitioner was cancelled. Therefore, he has submitted that this action is highhanded action and required to be interfered with. In support of his submission, he has placed reliance on the order dated 23.9.2024 passed in WP No. 19852/2023 (**Shri Ji Builders and Developers Vs. MP Real Estate**) by the coordinate Bench whereby it has been held that Section 72-B(g) of the Cooperative Societies Act 1960 cannot apply retrospectively on the purchasers. He has referred to paras 10 and 11 of that order. He has further relied on judgment passed by the Division Bench in writ appeal No. 2857/2024 passed in the matter of **MP RERA Bhopal Vs. Shri Ji Builders and Developers**, wherein the order passed by learned Single Judge was upheld and relevant paragraphs of that judgment is



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para 27. He has submitted that the contention which is raised by respondent-State that the alternative remedy is available when the alternative remedy is not bar, when a petition is already entertained relegating the matter is not appropriate. He has also placed reliance upon judgment in the matter of **Satyam Cineplexes Ltd. Vs. State of MP, reported in 2021 SCC Online MP 2228** of the Division Bench, in that judgment he has relied on para 15. He has drawn attention of this Court that in present matter this Court has already granted interim relief in favour of petitioner on 20.12.2023 and the petition is pending from last 3 years. In support of his contention the alternative remedy is not bar in the facts of the present case, he has referred to another judgment in the matter of **Alok Kumar Choubey Vs. State of MP reported in 2021(1)MPLJ 348** and has referred to paras 16 and 21. He has further drawn attention of this Court towards the order of coordinate Bench dated 21.4.2025 passed in WP No. 7617/2021 in case of **M/s Shriram Builders Through its Partner Shashibhushan Vs. Cooperative Department** whereby the Hon'ble Court has observed in para 18 and 27 that when the huge investment has been made on the development of the land and in such circumstances after a long lapse of time revocation of permission is not justifiable. Therefore, he has submitted that the petition deserves to be allowed by granting all the reliefs including retrospective applicability of Section 72-B(g) of Act may kindly be declared as void and letter dated 30.9.2021 may kindly be set aside and consequently, building permission dated 4.10.2021 and development permission dated 27.3.2021 which have already been revoked on account of giving retrospective effect to section 72-B(g) may kindly be restored. He has further prayed that the order dated 30.3.2021 passed by respondent no. 4 and the consequential actions/orders passed may be also quashed and set aside. He has also prayed that on account of illegal action of the cooperative department RERA and other permissions have been revoked and therefore,



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necessary direction may be passed for its renewal and petition may be permitted to carry out construction activity over the subject lands as the said construction work is stopped since 2023.

4. Counsel for State has strongly opposed the same by submitting that the petitioner has alternative efficacious remedy. He has submitted that it cannot be said that the petitioner was not heard before cancellation of development permission. He has further submitted that the TNCP has issued development permission and revoked the same and before that the TNCP issued show cause notice and petitioner was given opportunity to represent his case. He has further submitted that in view of provisions of Indore Development Plan, the development permission is required to be cancelled and accordingly cancelled. In addition to the fact that the cooperative department has cancelled the permission by exercising power Section 72-B(g) of Act, 1960. Therefore, he has submitted that in absence of challenge to the development permission which is not specifically made in the present petition, the present petition is not maintainable under Article 226 of Constitution of India and petitioner is having alternative remedy by way of appeal pursuant to the order passed by the Cooperative Department and therefore, petition deserves to be dismissed. He has further submitted that the authorities are seeking implementation of the provisions of law and there is delay in exercising power is no ground to interfere with the impugned action of the respondent authorities which is otherwise in accordance with law and in view of the powers available with the authorities, they had taken steps in accordance with law. Therefore, no interference is called for. He has drawn attention towards the reply which reiterated the similar contention which is made by the respondent/State in oral submission.

5. Counsel for the respondent/Corporation has submitted that the corporation has



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taken action in accordance with the direction given by the cooperative department not to grant any such permission to the societies which are in view of the provisions of Section 72-B(g) and therefore, the action taken by corporation is based on the instructions more particularly, the permission cancelled by respondent authority under Section 72-B(g). The respondent corporation has no other option but to cancel the building permission.

6. Counsel for the petitioner has drawn attention of this Court towards the rejoinder filed by the petitioner and has submitted that in view of the judgment passed by Hon'ble Apex court in the matter of **Hitendra Vishnu Thakur Vs. State of Maharashtra reported in AIR 1994 SC 2623** whereby it is categorically held that a statute which affects substantive rights is presumed to be prospective in operation unless made retrospective. He has further drawn attention towards the revocation order passed by the authorities which was never communicated to petitioner and respondent No. 4 has passed the order without following the principle of natural justice and without affording any opportunity of hearing to the petitioner and without prejudice to the aforesaid, he has further contended that petitioner has not only challenged the revocation proceeding but also the illegal, arbitrary and unconstitutional act of the respondents in issuing various annexures which are Annexures P-13 and P-14 whereby the sale permission of the society has been cancelled and therefore, alternative remedy though not applicable to the present case cannot determine the legality of impugned annexures and therefore, the present petition is maintainable. He has further submitted that the contention raised by the respondents that the order is passed in 2021 and petitioner has challenged the same by filing writ petition in 2023 and therefore, there is delay. In reply, counsel has drawn attention of this court towards the order passed by



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the Hon'ble Supreme court in Suo Moto Writ petition 3 of 2020, whereby it is observed that during covid 19 pandemic the Hon'ble Supreme court has already suspended the limitation period falling from March 2022 and thereafter 23.9.2023 petitioner has submitted a representation before respondent authority, however, till date of hearing of this petition, no heed is paid to it and therefore, he has submitted that there is no delay in approaching this Court and therefore, he has submitted that in any case as per Clause 6.20 of Indore Master Plan, 2021, the construction and usage of shopping complex is permissible on the residential plots subject to the obtainment of permission from the authorities which were already there with the petitioner. Therefore, he has submitted that though initially the subject lands were agricultural land and by order 30<sup>th</sup> May 2016, passed by learned SDO, the subject lands were diverted and permission was granted for development of multiplex-cum-shopping mall. Rules 95 and 96 of MP Bhumi Vikas Rules, 2012 provides certain norms for establishment of multiplex-cum-shopping mall. Shopping Mall can be constructed on the land having minimum plot area of 2500 sq.mt. or above with minimum road width of 30 meters in front of the plot. In the instant case, the petitioner fulfills the aforesaid criteria for the construction of shopping mall and therefore, the building permission dated 19.1.2017 and revised building permissions dated 14.5.2018 and 7.11.2019 were also granted to the petitioner. He has submitted that the present petition is required to be allowed as all the contentions raised by respondents are misconceived and not tenable in law and require to be dismissed and as respondents have acted in arbitrary manner after much delay of 14 years without following necessary procedure under the law and without hearing the petitioner, and therefore, petition deserves to be allowed by granting prayers made in the present petition and as submitted by the petitioner.



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7. I have considered the rival submissions made at the bar, I have also considered the fact that the chronology of events that the subject lands were sold pursuant to sale permission obtained from respondent No.3 authority on 30.3.2007 to Prem Chouhan and Pawan Shrimal to avoid any technical objection. He has submitted that at that point of time there was no requirement for the sale permission still in order to safeguard the action the permission was taken. He has submitted that on 1.4.2010 Section 72-B(g) was incorporated in the statute of Madhya Pradesh Cooperative Societies Act, 1960. He has further submitted that the petitioner being bonafide purchaser, purchased the subject lands on 10.12.2015 and 11.12.2015, Prem Chouhan and Pawan Shrimal sold the subject lands to the present petitioner and on 30.5.2016 by order of competent authority the subject lands were diverted. He has further submitted that on 19.1.2017, thereafter on 14.5.2018 and 7.11.2019 building permissions were granted to the petitioner by the corporation. He has further submitted that after obtaining the permission, the petitioner has carried out the construction on the subject land and invested huge amount and he has constructed four floors for commercial purpose and construction activity was going on. On 22.5.2020, RERA permission for the period of 1.3.2020 to 30.11.2021 was also received. He has further submitted that thereafter without issuing any show cause notice to the petitioner or without following any procedure on 15.2.2021 respondent No.3 after 14 years cancelled the sale permission dated 30.3.2007. He has submitted that on 30.3.2021, respondent no. 4 issued a show cause notice to Prem Chouhan and Pawan Shrimal and also to petitioner to stop the construction activity on the subject lands. On 3.8.2021, the respondent No.4 issued another letter whereby letter dated 15.2.2021 was revoked and the sale permission dated 30.3.2007 was again revived. He has further submitted that on 30.9.2021, respondent No.2 again cancelled the sale permission and cancelled the order



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dated 3.8.2021. He has further submitted that on 30.9.2021, respondent No. 3 has issued letter to respondents No. 4 and 5 directing them not to issue any permission to societies in absence of permission under Section 72-B(g) issued from the Registrar and any sale permission obtained from Sub Registrar/Additional Registrar/Additional Commissioner will be declared void and 4.1.2021, the building permission granted to the petitioner was cancelled.

8. In the background of this chronology, it is relevant to note that the respondent authority have granted permission at the respective time for diversion as well as for the building permission also, even RERA permission is also granted and petitioner has constructed fourth floors pursuant to such permission. The petitioner is bonafide purchaser who has purchased property from Prem Chouhan and Pawan Shrimal vide registered sale deed in December 2015 and said Prem Chouhan and Pawan Shrimal have purchased the land from the Cooperative Society after getting permission from the Registrar in the year 2007. The respondent authority has passed the order after 14 years in the year 2021 as initially permission is granted on 30.3.2007 by respondent no.3. It is also relevant to note that at that point of time, there is no requirement for taking such sale permission still in order to safeguard the action, the permission was taken by the concerned party. Thereafter sold the land to Prem Chouhan and Pawan Shrimal. It also transpires that on 1.4.2010, Section 72-B(g) was incorporated in the statute that means provisions of Cooperative Societies Act 1960. Section 72-B(g) reads as under;-

**72-B. Member's entitlement for plot, house and amenities and the liability of the cost.-**

(1) (a) Every member of a housing society shall be entitled to a plot for housing including low density housing, dwelling house or a flat, as the case may be, and in



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case dwelling houses or flat have already been acquired, the common amenities and services including housing finance.

b) The list of seniority of a member comprising his name, his father and mother's name, his date of birth and permanent account number of income tax if any shall be maintained by the society and such list shall be prepared strictly in accordance with his admission in the society. The list so prepared shall be published at the end of every co-operative year by the housing society. The list shall be updated every year by the society concerned and shall be sent to the Joint/Deputy/Assistant Registrar concerned of the district.

(c) Where a society gets any land from Government or any other agency on concessional rate for the housing purposes, it shall be compulsory for the member thereof to submit an affidavit to the effect that there is no plot/flat/house in his name or in the name of his family member in that Municipal area.

(d) Along with the seniority list of members prepared under clause (b) every housing society shall submit its yearly balance sheet and particulars of assets and liabilities to the Joint/Deputy/Assistant Registrar concerned of the district. This information shall also be made available to general public on the web-site of the society. For this purpose service charge equivalent to 10% of the audit fee shall be recovered from the society, which shall be credited to the account of Housing Federation maintaining the web-site. (e) Every member of a housing society shall pay his share of cost of land, development, construction, legal expenses, maintenance and services, as the case may be, within the specified time as decided by the committee of the society.

(f) If a member fails to pay such share of cost of land, development and construction within the prescribed time, the society shall charge interest at the rate at which the housing society is availing housing finance and in case the default continues beyond a period of two years, it shall cancel the allotment of plot, dwelling house or flat, as the case may be.

(g) If a member fails to pay his share of legal expenses, maintenance and services, as the case may be, within the prescribed time, the society shall impose a surcharge at the rate of 20% for a period not exceeding three months and if default continues beyond three months, the services shall be discontinued forthwith:

Provided that such services shall not be discontinued unless the member concerned is given a reasonable opportunity of being heard by the committee in this behalf.



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Therefore, it is required to be taken into consideration that when the permission is granted on 30.3.2007, this Section 72-B(g) was not in force. Thereafter the authorities have time and again granted permission. It is also interesting to note that on 15.2.2021, respondent No.3 without following any procedure of law and principle of natural justice, after delay of 14 years, cancelled the sale permission dated 30.3.2007 and thereafter respondent no. 4 issued a show cause notice to Prem Chauhan and Pawan Shrimal and also to the present petitioner to stop the construction activity on the subject land and then on 3.8.2021, the respondent No.4 issued another letter whereby the letter dated 15.2.2021 was revoked and the sale permission dated 30.3.2007 was again revived. Thereafter again on 13.9.2021, the respondent no.2 issued order of cancellation of sale permission and cancelled the order dated 3.8.2021 and thereafter on 30.9.2021 respondent no. 3 has written letter to respondents no. 4 and 5 directing them not to issue any permission to the society in absence of permission under Section 72-B(g) issued from the Registrar and thereafter 4.10.2021, the building permission granted to petitioner was cancelled. By that time the petitioner has put up the fourth storied building after getting all necessary permissions. It is very strange to note that all of sudden respondent no. 3 authority by relying on Section 72-B(g) which is incorporated in year 2010 in the Act has cancelled the permission which was granted on 30.3.2007 by respondent no.3 that too without affording any opportunity of hearing and thereafter what prompted the authority to again cancelled the earlier order dated 15.2.2021 by communication dated 3.8.2021, that communication is granted by respondent no.4 by revoking the communication by which the permission dated 30.3.2007 is cancelled by respondent no.3 and said order dated 15.2.2021 is revoked and again on 13.9.2021, respondent No.2 again cancelled the sale permission and cancelled the order dated 3.8.2021. All this chronology creates great suspicion about the



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conduct of the respondent authorities who are acted in very suspicious manner and also in arbitrary manner without following due procedure of law. Initially the permission is cancelled on 15.2.2021 itself is without following any procedure of law and without considering the fact that whether the provisions of Section 72-B(g) of the Act which is incorporated from 1.4.2010 in the statute can be applicable to the permission granted prior to that Section i.e. on 30.3.2007 that too after so much development has taken place in the subject land by change of the ownership in the land in question, by diversion by putting up further construction etc. and that too by obtaining all relevant permissions by the petitioner from the concerned authorities. This speaks about the volume about the intention of the respondents which is nothing but to harass the petitioner.

9. In view of this factual background, the citations which are relied on by the petitioner is required to be referred to:-

(I) **Shri Ji Builders And Developers (supra)** paras 10 and 11 which read as under:

10. Section 72-B(1)(g) was substituted by M.P. Act, 2010 w.e.f. 04.01.2010. Transaction of land took place on 29.12.1999. On said date, there was no provision seeking permission of Registrar for transfer of land. Relevant Provisions are quoted as under:- "Previous Provision

"Previous Provision: (g) If a member fails to pay his share of legal expenses, maintenance and services, as the case may be, within the prescribed time, the society shall impose a surcharge at the rate of 20% for a period not exceeding three months and if default continues beyond three months, the services shall be discontinued forthwith:

Provided that such services shall not be discontinued unless the member concerned is given a reasonable opportunity of being heard by the Board of Directors in this behalf."

Substituted (New Provision) Substituted (New Provision): The land held by the



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society or any part thereof shall not be sold or leased out and no action for transferring of such land shall be taken without permission of the Registrar."

11. On going through aforesaid section, it is found that no permission of Registrar was required for transferring of land prior to 04.01.2010. Said amendment introduce a liability on societies to seek permission of Registrar before entering into transactions. Since liability is imposed by said amendment, therefore, said amendment will not operate retrospectively. It will be applicable prospectively i.e. on transactions which are done after 04.01.2010. Question No.III is answered in negative.

(ii) In Case of **MP Real Estate Regulatory Authority Bhopal (supra)** the Division Bench in para 27 has held as under:-

27. After carefully considering the above-mentioned legal provision, we are the opinion the writ court has rightly held that, there is no permission of Registrar was required for transferring of land prior to 04.01.2010. Said amendment introduces a liability on societies to seek permission of Registrar before entering transactions. Since liability is imposed by said amendment, therefore, said amendment will not operate retrospectively. It will be applicable prospectively i.e. on transactions which are done after 04.01.2010. secondly there is no force on the argument of the appellant that the according the provision of section 36 and 38, the previous section of registry is required for transfer the property to other then the member of society, we are agreeing the argument of the respondent that the above provision are required for only the lone transitions.

(iii) In the matter of **Satyam Cineplax (supra)** the Division Bench has held in para 15 as under:-

15. Before dealing with rival contentions on merits, it is apposite to decide the question of availability of alternative remedy. Indisputably, an alternative remedy is available to the petitioner against the impugned order. However, it is noteworthy that this petition despite availability of that remedy was entertained by this Court way back on 28.07.2014. The question involved in the present matter is legal in nature and no factual inquiry is required. In our opinion, after almost six years from the date present petition was entertained, it will not be proper to relegate the petitioner to avail the alternative remedy. We find support in our view from the judgment of this Court reported in 1995 MPLJ 969 (Chambal Ghati



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Shiksha Prasar Samiti vs. State of M.P.). After considering the judgment of Supreme Court reported in 1970 (2) SCC 355 (Hriday Narain vs. ITO Bareilly), this Court came to hold as under:

“There is no dispute with the proposition that when an alternate remedy is available then normally aggrieved party should be relegated to his ordinary remedy provided under the statute. But there is another well known principle of law enunciated by the Supreme Court. In Hriday Narain v. Income Tax Officer, Bareilly, (1970) 2 SCC 355 : AIR 1971 SC 33, the Supreme Court has held in categorical terms that if a petition is entertained and during the pendency of the petition the remedy for seeking alternate remedy expires then the petitioner should be heard on merits and the parties should not be relegated to remedies under the statute.”

(Emphasis Supplied)

(iv) In the matter of **Alok Kumar Choubey (supra)**, in paras 16 and 21 it has been held as under:-

16. Seven well recognized exceptions to the rule of alternative remedy, which can be culled out from the afore-discussed judgments of the Supreme Court for entertaining a writ petition under Article 226/227 of the Constitution, can be summarized thus: (i) where the writ petition has been filed for enforcement of fundamental rights; (ii) where there has been violation of principle of natural justice; (iii) where the order of proceedings is wholly without jurisdiction; (iv) where the vires of any Act is under challenge; (v) where availing of alternative remedy subjects a person to very lengthy proceedings and unnecessary harassment; (vi) where the writ petition can be entertained despite alternative remedy if the question raised is purely legal one, there being no dispute on facts; and (vii) where State or its intermediary in a contractual matter acts against public good/interest unjustly, unfairly, unreasonably and arbitrarily. Despite afore-noted exceptions, especially fifth and seventh of the above, whether or not in a particular case the writ court should entertain a petition under Article 226/227 of the Constitution of India rather than requiring the petitioner to avail alternative remedy, would always depend on the facts situation of a given case, upon the petitioner making out a strong case. If it is shown that the facts of the case are not disputed and the Government or its instrumentality has been found acting unjustly, unfairly and unreasonably even in regard to its contractual obligations, the High Court would be justified in entertaining the writ petition despite availability of alternative remedy.

21. In the facts of the case, action of the respondents in withholding the amount of the performance guarantee (security) of the petitioner is held to be arbitrary and unreasonable, being violative of Article 14 of the Constitution of India. The respondents are therefore not justified in withholding the amount of performance guarantee (security) deposited by the petitioner and



then insisting upon the petitioner to invoke arbitration clause rather than invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. When the facts are not in dispute and it has been established to the satisfaction of this Court that the respondents have acted arbitrarily and contrary to the relevant stipulations in the agreement and the contract data, the availability of alternative remedy, in the facts of the present case, cannot justify rejection of the present writ petition on the spacious plea of alternative remedy. The alternative remedy of dispute resolution system by way of an application to the competent authority and thereafter to the appellate authority and then thereafter to the Arbitration Tribunal, in the facts of the present case, cannot be taken as an efficacious alternative remedy, particularly when Section 17 of the Adhinyam of 1983 bars the Tribunal from granting any interim relief. In the facts of the present case, requiring the petitioner to go through the process of dispute resolution system provided for under Clause 12 of the agreement, would amount to subjecting him to lengthy proceedings without there being any remedy of interim relief, inasmuch as the question raised in the present writ petition is purely legal one, based on interpretation of Clause 29 of the Contract Data and the impugned action of the respondent is totally against the public good, being highly unjust, unfair, unreasonable and arbitrary. Clauses v, vi & vii of the exceptions to the rule of alternative remedy, as enumerated in Para-16 above, are therefore clearly attracted in the present case.

Thereafter, Hon'ble Apex Court in various judgments observed that the alternative efficacious remedy is not absolute bar to exercise power under Article 226 of Constitution of India where there is violation of principle of natural justice and also action is found bad in law.

(v) In **M/s Shriram Builders Through its Partner Shashibhushan (supra)** in para 18 and 27 it has been held as:

18. It is well settled in law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. Though the authorities on this point are numerous but suffice it would be to refer to the decision of the Apex Court in Mohinder Singh Gill and Another versus Chief Election Commissioner, New Delhi and Others, 1978 (1) SCC 405 in which it was held as under:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in



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Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] : “Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.” Orders are not like old wine becoming better as they grow older.”

27. The permission was granted to the society on 28.02.2003 for sale of the land to the petitioner which was sold in the year 2003 itself. Thereafter, the petitioner was mutated over the disputed land. It submitted plan for development of the land which was approved by the Town and Country Planning Department in accordance with the usage of the land. The disputed land was proposed to be acquired for the scheme of the IDA on two occasions, which was contested by the petitioner by institution of legal proceedings which terminated in its favour. The disputed land has been diverted for commercial usage and the Municipal Corporation has also granted building permission and has approved the map for construction of building on the land for commercial and PSP use. In that process, the Joint Registrar also verified the fact that the land has been sold to the petitioner after due permission. An amount of Rs.2,58,38,859/- has been deposited by the petitioner for development of the land. As stated by the petitioner, it has already commenced the construction work. It is hence evident that the permission dated 28.02.2003 has been acted upon and has in fact been effectively exhausted hence after such a long lapse of time, it is wholly illegal, unjustifiable and inequitable to revoke the same and in fact nothing remained to be revoked.

10. For the purpose of constituting the amendment carried out in statute by Section 72-B(g) can apply prospectively or retrospectively. For this aspect it is fruitful to refer judgment reported in **AIR 2013 SC 2113** in case of **Government of Andhra Pradesh Vs. Ch. Gandhi**. Paras 21, 22, 25 and 33 of the judgment are reproduced as under:-

21. At this juncture, we may state with profit that the amended Rule has not been given any retrospective effect. In *Tejshree Ghag v. Prakash Parashuram Patil* [(2007) 6 SCC 220 : (2007) 2 SCC (L&S) 451] it has been ruled that: (SCC p. 224, para 12)

“12. ... the State has the power to alter the terms and conditions of service even with



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retrospective effect by making rules framed under [the] proviso appended to Article 309 of the Constitution of India, but it is also well settled that the rules so made ordinarily should state so expressly.”

**22.** In *Marripati Nagaraja v. Govt. of A.P.* [(2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , this Court has ruled that: (SCC pp. 526-27, para 16)

“16. The State, in exercise of its power conferred upon it under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retroactive operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date.”

**25.** In *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] this Court dwelled upon the ambit and sweep of the amending Act and the concept of retrospective effect and, eventually, ruled thus: (SCC p. 633, para 26)

“(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.(iv) A procedural statute should not, generally speaking, be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

**This extract is taken from *State of A.P. v. Gandhi*, (2013) 5 SCC 111 : (2013) 2 SCC (Cri) 884 : 2013 SCC OnLine SC 165 at page 124**

**33.** In this context, we may refer to the observations made in *Govt. of India v. Indian Tobacco Assn.* [(2005) 7 SCC 396] as follows: (SCC p. 403, para 26)

“26. We are not oblivious of the fact that in certain situations, the court having regard to the purport and object sought to be achieved by the legislature may construe the word ‘substitution’ as an ‘amendment’ having a prospective effect but such a question does not arise in the instant case.”

We may also note that in the said case, the Court observed that the doctrine of fairness also is to be considered to be a relevant factor for construing the retrospective operation of a statute.



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**This extract is taken from *State of A.P. v. Gandhi*, (2013) 5 SCC 111 : (2013) 2 SCC (Cri) 884 : 2013 SCC OnLine SC 165 at page 127.**

11. In view of this factual background and also considering Article 300-A of Constitution of India, I am of the view that when the impugned action of the respondent No.3 dated 15.2.2021 is not tenable in eyes of law on the ground of delay and laches and without following necessary procedure and also without following principle of natural justice and therefore, required to be quashed and set aside and also the subsequent cancellation of the development permission as well as building permission cancelled by respective respondents which are essentially based on the order passed by respondent No.3 dated 15.2.2021 is also required to be set aside and it is appropriate to direct the respondents by holding that the section 72-B(g) cannot be operated retrospectively more particularly considering the judgment passed in case of Jitendra Thakur (supra). Therefore, consequently this is a fit case where this Court should exercise power under Article 226 of Constitution of India, though there is alternative remedy for individual orders are available but petition is pending since 2023 and interim relief is granted. Therefore considering the judgments of this Court which are cited by petitioner, there is no question no absolute bar to exercise power under Article 226 of Constitution of India more particularly when the impugned actions of respective respondents authority is exfacie bad in eyes of law, is found arbitrary against the principle of natural justice as no opportunity of hearing was given to the petitioner and also violative of the provisions of Constitution of India, therefore, this is fit case where the Court must exercise extraordinary power under Article 226 of Constitution of India. Therefore, by allowing this petition under Article 226 of Constitution of India, it is required to be directed that the building permission dated 4.10.2021 and development permission dated 27.3.2021 which have already been revoked on account of retrospective effect of Section 72-B(g) of the Cooperative Societies Act is hereby



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directed to be restored. The order passed by respondent no. 4 dated 30.3.2021 is ex facie improper, erroneous and can be considered as extraneous consideration and required to be set aside. It is also required to be directed that due to illegal action of respondent No.3 and 4, the permission which is granted by RERA and other permission which are revoked due to such illegal action of respondents require to be renewed immediately, preferably within one month from the receipt of copy of this order by the concerned authorities and it is also required to be noted that the petitioner is facing great financial difficulty due to its construction activity is stopped from the year 2023 after putting up construction upto fourth floor. It is appropriate to direct the all concerned authorities to grant respective permissions immediately within 15 days from this order and petitioner is permitted to carry out the construction activity accordingly on the subject land by following necessary procedure and in accordance with law.

**12.** With above directions, the petition is required to be allowed by holding that the respondents authorities have committed grave error and therefore, looking to the conduct of respondent No.2 and 4, who were incharge at relevant time and acted in arbitrary and inappropriate manner as observed earlier in the order, this is fit case where petition is required to be allowed by imposing cost of Rs. 1,00,000/- (Rs. One Lakh) which is required to be recovered from the respondents No. 2 and 4 who are incharge of the said post at the relevant point of time when the orders were passed and shall be deposited said cost before the Madhya Pradesh Legal Services Authority within three weeks from the receipt of copy of the order. The respondent/State shall deposit the said cost first and thereafter recover the same from the authorities as the respondent authorities have exercised power in contravention of the settled position of law and with intention to harass the petitioner for some extraneous consideration. The State should



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take note of such conduct of such officers who were incharge at relevant point of time, and do needful to correct the system accordingly.

**13.** The writ petition is allowed accordingly with above mentioned observations.

**(SANDEEP N. BHATT)**  
**JUDGE**

BDJ