IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 15313 of 2011

M.A. Construction & Trading Company Private Limited
-Vs-
State of West Bengal & Ors.

With

WPA 17380 of 2011

M.A. Construction & Trading Company Private Limited
-Vs-
State of West Bengal & Ors.

With

WPA 18409 of 2017

M.A. Construction & Trading Company Private Limited
-Vs-
State of West Bengal & Ors.

For the Petitioner	: Mr. Jayanta Kumar Mitra Mr. Abhrajit Mitra Mr. Satadeep Bhattacharya Mr. Sourav Bhagat Mr. Varun Kedia Mr. Jishnujit Roy Mr. Deveshi Bose
For the State in WPA 15313/2011 WPA 18409/2017	: Mr. Tapan Kumar Mukherjee Mr. Rabindra Narayan Dutta Mr. Hare Krishna Halder
For the State in WPA 17380 of 2011	: Mr. Swapan Kumar Datta Mr. Dipankar Das Gupta
For the Respondent/KMC	: Mr. Alok Kumar Ghosh Mr. Barin Banerjee Ms. Sima Chakraborty
For the Respondents Nos. 4 to 5/	: Mr. Satyajit Talukder Mr. S.M. Hassan Mr. Arindam Chatterjee
For the NBSTC	: Mr. Laxmi Gupta Mr. Srijan Nayak

Mrs. Rituparna Maitra
Mr. Chayan Gupta

Judgment on : 31.08.2026

Ananya Bandyopadhyay, J.:-

1. The petitioner – a private limited company incorporated under the Companies Act, 1956, has invoked the constitutional jurisdiction of this Court against the State of West Bengal, the North Bengal State Transport Corporation (NBSTC), its Managing Director, the Kolkata Improvement Trust, the Kolkata Municipal Corporation and its Commissioner, seeking enforcement of rights resultant on a concluded agreement to lease and consequential statutory obligations resting upon the respondents.
2. The source of conflict relates to a registered deed of sale dated 22nd of November, 1995 whereby the respondent no.4 leased in favour of NBSTC, i.e. respondent no.2 and 3 approximately 7327.13 square metres of land situated at the junction of E.M. By-Pass and Satyen Bose Sarani CIT Scheme VII-M (Ultadanga) for establishment of a modern bus terminus. The lease commenced from 12th October, 1990 for a period of 99 years denoting a further covenant for renewal for an equivalent period. Although the original object contemplated extension of the bus depot, the Deed itself envisaged commercial utilization upon obtaining permission from the competent authority, i.e. Officer on Special Duty in accordance with prescribed procedure.
3. Financial constraints prevented NBSTC from constructing the proposed bus terminus. Consequently, its Board resolved to commercially exploit the property so that the revenue generated could strengthen the corporations' financial resources subject to the approval of respondent

no.4. A tender process commenced during 1996 under the supervision of a committee headed by the then Joint Secretary, Transport Department. SAMCON Developer (P) Ltd. submitted the highest offer of Rs.24.55 crores which obtained approval through the Cabinet decision of the State Government dated 28th February, 2001 preceded by Cabinet Memorandum being No.1350-WT/TR/O/11B-23/99 (Pt) dated 16.02.2001. Since the successful bidder failed to execute the project, the Transport Department, through its Joint Secretary, directed initiation of a fresh tender process vide Memo No.637-AKD/11B-23/99 (Pt) dated 05.10.2001 and fresh tenders were invited through newspapers circulated across Pan-India. Three offers were received, whereupon the petitioner emerged as the highest bidder offering Rs.24.81 crores. The Managing Director of NBSTC placed proposal before the Board during its 177th meeting held on 08.02.2002, the Board of NBSTC accepted the petitioner's offer and authorized issuance of letter of acceptance and the same was issued on 12th February, 2002.

4. During the 178th meeting held on 19th February, 2002, the Board of NBSTC approved the draft agreement to lease which had received wide circulation whereupon the terms and conditions of the same had been accepted. Consequently an agreement to lease dated 22nd February, 2002 came into existence between NBSTC and the petitioner on mutual agreement of all terms and conditions stipulated therein. The petitioner further relied upon the order dated 25th February, 2002, whereupon the Transport Department ratified the action of the Board. Physical possession of the lease of hold property was delivered to the petitioner on

17.04.2002 under a possession certificate of the same date. Subsequently a registered Power of Attorney executed by NBSTC through respondent no.3 dated 21st of August, 2002, authorized the petitioner to undertake every act necessary for implementation of the project.

5. Pursuant to the Cabinet approval according to commercial viability of the said land of NBSTC, the Transport Department vide Memo No.16-JS(P)TR/O/11B-23/99/Pt dated 17th July, 2002, requested NBSTC to pay a sum of Rs. 2 crores to Kolkata Improvement Trust being the cost for obtaining permission from the respondent no.4 for commercial utilization of the said land being the subject matter of the original deed of lease dated 22nd December, 1995 executed between NBSTC and the said respondent no.4.

6. The petitioner further pleaded the respondent no. 4 vide Memorandum No. V/733/1 dated 18th November, 2004 addressed the Joint Secretary, Transport Department, Government of West Bengal agreeing to issue the requisite No Objection Certificate for commercial utilization of the land upon deposit of Rs.2 crores, thereby facilitating sanction of the proposed building plan by Kolkata Municipal Corporation, the respondent no.5. The respondent no.4 thereafter approved the proposed building plan on 31st December, 2004 submitted by the petitioner through NBSTC. Earlier affidavits filed before this Court were relied upon to demonstrate such approval to have already received official acknowledgement.

7. According to the petitioner, strict performance of every contractual obligation thereafter followed. Diverse remittances aggregating Rs.16,68,96,226/- were disbursed between 18th January, 2002 and 19th

May, 2011 against the agreed lease premium of Rs.24.81 crores, excepting the balance amount of Rs.8,12,03,772/- which the petitioner repeatedly expressed its willingness to discharge immediately as and when sought for on behalf of NBSTC. The petitioner had also forwarded a pay order of Rs.2 crores in favour of respondent no.4 through a letter being no. MAPL/10-11/259 dated 12th November, 2010 addressed to NBSTC for transmitting the same to respondent no.4 on the plea of efflux of time and expiry of validity of the pay order. At the request of NBSTC, the petitioner, once again, issued a pay order of Rs.2 crores to NBSTC on 19th May, 2011 revalidating the same. NBSTC, through Memo No.2708/3/STC/EM Cell/PB dated 20th May, 2011, forwarded the pay order to respondent no.4 intimating of such forwarding to the petitioner. Pertinently such payment of Rs.2 crores as aforesaid had been in compliance of the order dated 21st December, 2010 passed by this Court in an earlier writ petition. The petitioner claimed an obligation on the part of NBSTC to obtain necessary clearance from the respondent no.4 to validate and effectuate the terms of the lease agreement as aforesaid for commercial utilization of the land in question.

8. The petitioner thereafter adverts to the sequence of events following registration of the Agreement to Lease and pleads despite substantial compliance with its contractual obligations, progress of the project remained contingent upon issuance of the requisite No Objection Certificate by respondent no.4 and sanction of the building plan by respondent no.5.

9. According to the petitioner, after obtaining permission from NBSTC to pay on its behalf, a Pay Order for Rs.2 crores was forwarded towards the amount payable to respondent no.4 as a pre-condition for issuance of the No Objection Certificate. The petitioner asserted respondent no.4 did not accept the Pay Order, whereby the instrument remained incapable of being acted upon for reasons lying beyond the petitioner's control.
10. The petition further stated that, by reason of the passage of time, the validity of the Pay Order expired before respondent no.4 accepted the same. Consequently, upon being requested by NBSTC, the petitioner caused the Pay Order to be revalidated and once again placed it at the disposal of NBSTC for onward transmission to respondent no.4.
11. The petitioner, however, alleged that respondent no.4 again declined to receive the Pay Order and returned the same to NBSTC. According to the petitioner, no reason was assigned for such refusal. The petition further stated that NBSTC neither informed the petitioner of the circumstances in which the Pay Order had been returned nor restored the instrument to the petitioner, creating a state of complete uncertainty.
12. The petitioner simultaneously pleaded repeated requests were addressed to NBSTC for preparation of a correct statement of accounts after adjusting every payment already made by or on behalf of the petitioner, including the amounts paid towards municipal taxes and the proposed payment of Rs.2 crores. According to the petitioner, reconciliation of accounts was necessary to ascertain the precise balance of the lease premium still payable under the Agreement to Lease.

13. Reference of the petitioner's communications dated 4th October 2010 and 12th November 2010, revealed NBSTC was requested to furnish a final statement of accounts, indicate the balance amount payable after adjustment of all previous remittances, accept such balance and thereafter complete the remaining formalities contemplated under the Agreement to Lease. The petitioner asserted no effective response was received to those communications.

14. The petitioner although was ready and willing to discharge every remaining financial obligation immediately upon receipt of the reconciled statement of accounts. According to the petitioner, the delay in completion of the transaction did not arise from any omission on its part but from the failure of the respondent authorities to complete the procedural steps entrusted to them under the contractual arrangement.

15. It was further pleaded, while the petitioner was pursuing issuance of the requisite No Objection Certificate and sanction of the revised building plan, it came to learn that the Special Secretary, Transport Department, Government of West Bengal, had issued Memo No.158/SSRKM/165/NBSTC-LAND/2010 dated 13th August 2010. The petitioner asserted, the existence of this communication was not disclosed to it contemporaneously. Knowledge thereof was acquired only after the State filed an application for addition of parties in the earlier writ proceeding and annexed copies of the relevant departmental records.

16. The petitioner pleaded the said memorandum requested respondent no.4 not to issue the No Objection Certificate required for commercial utilization of the leasehold property. Simultaneously, the memorandum

requested respondent no.5 should refrain from granting sanction to any building plan relating to the subject property unless prior clearance of the Transport Department had first been obtained.

17. According to the petitioner, the memorandum does not disclose any reason for issuance of such directions. The petition specifically avers that no circumstance, administrative necessity or statutory provision have been referred to in support of the decision embodied therein. The petitioner accordingly contends that the directions contained in the memorandum lack any discernible reasons.

18. The petition further stated another communication, bearing Memo No. 165-SSRKM/165/NBSTC-Land/2010 dated 20th August 2010, was thereafter issued by the same departmental authority. By the said memorandum, respondent no.6 was requested to communicate the departmental decision to the Executive Engineer, Building Department, Borough-III, Kolkata Municipal Corporation, with a request that no building plan concerning the subject property should be processed in view of the instructions issued by the Transport Department.

19. The petitioner pleaded both memoranda were issued after the Government had already accorded approval to commercial utilization of the property, after NBSTC had accepted the petitioner's bid, after execution of the Agreement to Lease, after delivery of possession, and after registration of the Agreement. According to the petitioner, the subsequent departmental communications were in contadiction with the earlier governmental decisions forming the basis of the contractual relationship.

20. The petitioner further asserted the State Government had earlier granted approval to the proposal for commercial development through the Cabinet decision dated 28th February 2001, and thereafter permitted NBSTC to proceed with the transaction. In those circumstances, the subsequent departmental communications directing that no No-Objection Certificate should be issued and that the building plan should not receive sanction had been pleaded to be inconsistent with the earlier governmental policy.

21. The petitioner also emphasized no notice preceded issuance of the aforesaid memoranda and no opportunity of placing its case was afforded to the petitioner before the departmental directions were issued. According to the petitioner, the communications came into existence without any participation on its part, which directly affected the rights claimed under the Agreement to Lease.

22. Proceeding further, the petitioner contended the State Government had no contractual relationship with the petitioner governing performance of the Agreement to Lease. The contractual obligations, according to the petitioner, arose between NBSTC and the petitioner pursuant to the tender process and the Agreement executed in February, 2002. The petitioner therefore questioned the authority of the departmental functionaries to interfere with implementation of obligations resulting from the said agreement.

23. The petitioner thereafter pleaded that NBSTC had been a statutory corporation constituted under the provisions of the Road Transport Corporations Act, 1950, possessing an independent juristic character and empowered to administer its affairs in accordance with the powers

conferred by the statute. Particular reliance was placed upon Section 19(2)(b) of the Act, which, according to the petitioner, authorised the Corporation to acquire, hold and deal with immovable property and to enter into contracts necessary for carrying out its statutory functions. The Agreement to Lease executed in favour of the petitioner is pleaded to be a transaction undertaken in exercise of such statutory authority.

24. The petitioner further asserted the commercial utilization of the leasehold property did not originate from any isolated administrative decision of NBSTC but formed part of a policy expressly sanctioned by the State Government. The Cabinet decision dated 28th February 2001, read with the earlier Cabinet Memorandum dated 16th February 2001, was relied upon to contend that the proposal received approval at the highest executive level before the tender process culminated in execution of the Agreement to Lease.

25. Reference to Section 34 of the Road Transport Corporations Act, 1950, denoted, according to the petitioner, the State Government had already accorded the approval required for implementation of the commercial development. The petitioner therefore contended after granting such approval and permitting NBSTC to proceed with the transaction, the executive authorities could not subsequently issue departmental directions which substantially impeded implementation of the very project earlier sanctioned.

26. The petition further pleaded no statutory provision had been disclosed by the respondents authorising the Special Secretary, Transport Department, to direct respondent no.4 not to issue the requisite 'No Objection

Certificate' or to require the Kolkata Municipal Corporation to withhold sanction of the building plan. According to the petitioner, the impugned memoranda did not indicate the source of power under which such directions were issued.

27. The petitioner next referred to Memo No.666/STC/KOL dated 31st December 2010, issued by the Chairman of NBSTC. According to the pleadings, the said memorandum requested the Commissioner of the Kolkata Municipal Corporation not to accord sanction to any building plan relating to the subject property. The petitioner asserted the Chairman's communication merely perpetuated the restraint already sought to be imposed through the departmental memorandum issued during August 2010.

28. It was specifically pleaded the Chairman's memorandum did not disclose any fresh development or supervening circumstance justifying departure from the earlier decisions of the Board of Directors, which had accepted the petitioner's offer, approved execution of the Agreement to Lease and facilitated implementation of the project over several years. The petitioner accordingly questioned the basis upon which such contrary instructions came to be issued after completion of the contractual formalities.

29. The petitioner further averred that the impugned departmental memoranda and the subsequent communication issued by the Chairman of NBSTC had the practical effect of rendering the Agreement to Lease incapable of performance, although the agreement itself continued to subsist and had never been cancelled, rescinded or otherwise brought to an end in accordance with law.

30. Proceeding on that premise, the petitioner contended the respondents were bound to honour the contractual obligations arising from the Agreement to Lease, to accept the balance consideration after adjustment of accounts, to facilitate transmission of the Pay Order for Rs.2 crores to respondent no.4, to secure issuance of the requisite No Objection Certificate, and thereafter to enable processing of the building plan in accordance with the applicable statutory provisions.

31. The petitioner thereafter pleaded notwithstanding execution and registration of the Agreement to Lease, delivery of possession of the property, acceptance of substantial portions of the agreed consideration and repeated assurances extended during the course of implementation of the project, the respondents failed to complete the remaining statutory formalities indispensable for commencement of construction. According to the petitioner, the project remained in abeyance solely because the requisite No Objection Certificate was not issued and the building plan did not receive statutory sanction.

32. The petitioner stated the existing structures on the property had, with the passage of time, fallen into a state of serious disrepair. Acting upon professional advice received from its architect, the petitioner addressed communications to NBSTC on 15th June 2010 and 18th August 2010, drawing attention to the condition of those structures and expressing the necessity of their demolition before commencement of the proposed commercial development. Those communications, according to the petitioner, formed part of the continuous correspondence exchanged with the respondent authorities regarding implementation of the project.

33. The petition further recorded that, after revising the architectural proposal in conformity with the provisions of the Kolkata Municipal Building Rules, 2009, the petitioner submitted a fresh building plan before the Kolkata Municipal Corporation on or about 6 November 2010. The Corporation acknowledged receipt of the application and every document and drawing required for consideration of the proposal was furnished by the petitioner within the time stipulated by the statutory authorities.

34. According to the petitioner, notwithstanding compliance with every procedural requirement, the building plan did not progress towards sanction. The petitioner attributed this position to the departmental instructions embodied in the memoranda dated 13th August 2010 and 20th August 2010, whereby the respondent authorities were requested not to proceed with issuance of the 'No Objection Certificate' or sanction of the building plan.

35. The petitioner further pleaded the delay occasioned by the impugned departmental communications had materially affected implementation of the project. The financial outlay originally contemplated at the time of execution of the Agreement to Lease had undergone substantial escalation with the passage of time. According to the petitioner, the prolonged delay had correspondingly increased the cost of construction and thrust an additional financial burden upon the project.

36. The petitioner also stated substantial sums already invested towards lease premium, registration charges, municipal taxes and other incidental expenditure was blocked in the project without yielding commercial

benefit originally contemplated under the Agreement to Lease, despite continuous readiness on its part to perform the residual obligations under the agreement.

37. Proceeding further, the petitioner asserted repeated requests addressed to NBSTC for reconciliation of accounts, adjustment of payments on behalf of the Corporation and acceptance of the balance lease premium did not evoke any effective response. According to the petitioner, had such reconciliation been completed within a reasonable time, every financial obligation resting upon the petitioner could have been discharged without further delay.

38. The petitioner reiterated no act or omission attributable to it prevented implementation of the project. On the contrary, it was pleaded that every material step expected from the petitioner, including payment of substantial consideration, execution and registration of the Agreement to Lease, payment of municipal dues, procurement of the Pay Order of Rs.2 crores, submission of the revised building plan and continuous correspondence with the respondent authorities, were completed from time to time.

39. The petition thereafter invoked the constitutional guarantees envisaged in Articles 14, 19 and 300A of the Constitution of India, contending that the conduct of the respondent authorities lacked fairness, departed from the policy previously adopted by the State Government and deprived the petitioner of the valuable commercial and proprietary rights claimed under the subsisting Agreement to Lease. According to the petitioner, the cumulative effect of the impugned departmental communications and the

subsequent inaction of the respondents had frustrated implementation of a project that had already progressed through every significant contractual and administrative stage contemplated by the parties.

40. The petitioner proceeded to plead the respondents, despite having accepted substantial payments and having permitted execution as well as registration of the Agreement to Lease, had failed to discharge the reciprocal obligations vesting upon them under the contractual arrangement. According to the petitioner, the refusal to carry the transaction to its logical conclusion had placed the entire project in a state of prolonged suspension, although the petitioner had remained prepared to fulfil every remaining financial obligation upon reconciliation of accounts.

41. The petitioner specifically asserted respondent nos. 2 and 3 had neither prepared a final statement of accounts nor intimated the precise amount payable after adjustment of the various sums already remitted by the petitioner, including the payments on behalf of NBSTC towards the liabilities of respondent nos. 4 and 5. It was pleaded in the absence of such reconciliation, the petitioner had been deprived of the opportunity of tendering the balance lease premium and securing completion of the contractual formalities.

42. The petitioner further stated the Agreement to Lease had neither been terminated nor rescinded by any competent authority. No proceeding questioning its validity had been initiated, nor had any order been passed cancelling the contractual arrangement. The petitioner, therefore, contended the agreement continued to remain operative and binding upon

every party thereto, and the respondents remained under a corresponding obligation to act in furtherance of its terms.

43. It was next pleaded that possession of the property continued with the petitioner in terms of the possession certificate issued on 17th April 2002. The petitioner asserted that such possession was delivered pursuant to the Agreement to Lease and had never been lawfully recalled. According to the petitioner, the continued subsistence of the agreement, coupled with delivery of possession and acceptance of substantial consideration, left no occasion for the respondents to obstruct implementation of the project through executive communications having no foundation in the contractual documents.

44. The petitioner reiterated that the impugned memoranda issued during August, 2010 and the subsequent communication issued by the Chairman of NBSTC had virtually paralysed the implementation of the project. It was pleaded that the statutory authorities had refrained from issuing the No Objection Certificate and processing the building plan solely because of those administrative directions, although the petitioner had already complied with every condition previously stipulated for commercial utilisation of the property.

45. Reference was thereafter made to the earlier writ proceeding, being W.P. No.24929 (W) of 2010, instituted before this Court against the concerned statutory authorities. The petitioner pleaded at the time of institution of the earlier proceeding, the State Government had not been impleaded as a party because the existence of departmental memoranda dated 13th August 2010 and 20th August 2010 were not within its knowledge. The

petitioner stated copies of those communications were obtained only after the State sought addition as a party in the earlier proceeding and disclosed the relevant departmental records.

46. According to the petitioner, the discovery of those memoranda furnished a fresh and independent cause of action, making it necessary to institute the present writ petition by impleading the State Government and challenging the departmental communications directly. The petition recorded such course was adopted upon legal advice so that the validity of the impugned memoranda could receive independent judicial scrutiny.

47. The petitioner finally pleads that the present proceeding does not seek to reopen any issue pending in the earlier writ petition but seeks adjudication upon the legality of the subsequent departmental actions which, according to the petitioner, have frustrated implementation of the Agreement to Lease despite the earlier governmental approval, the resolutions of the Board of Directors of NBSTC, execution and registration of the Agreement, delivery of possession and substantial financial performance on the part of the petitioner.

48. Accordingly, the petitioner seeks issuance of appropriate constitutional writs for setting aside the impugned governmental memoranda, directing the respondent authorities to complete the remaining contractual and statutory formalities, secure issuance of the requisite No Objection Certificate, process the building plan in accordance with law, reconcile the accounts after giving due adjustment to every payment already made, and permit implementation of the project contemplated under the Agreement to Lease.

49. The petitioner thereafter formulates the constitutional and legal basis of the challenge by asserting that the successive acts of the respondent authorities have deprived the petitioner of the benefits flowing from a subsisting contractual arrangement notwithstanding substantial compliance with every obligation undertaken on its part.

50. It was pleaded that the Agreement to Lease was executed pursuant to resolutions validly adopted by the Board of Directors of NBSTC after completion of an open tender process and with the approval of the State Government. The petitioner contended that, after accepting the bid, executing the Agreement to Lease, delivering possession of the property, authorising its registration and receiving substantial portions of the agreed consideration, the respondents were obliged to carry the transaction to its logical conclusion in accordance with the terms embodied in the agreement.

51. The petitioner further stated the subsequent departmental communications had altered the position which had consistently prevailed from the inception of the transaction. According to the petitioner, every authority concerned with the project had, until issuance of the impugned memoranda, acted in furtherance of the commercial development envisaged under the Agreement to Lease. The later communications are pleaded to have interrupted that course without disclosure of any statutory provision or factual circumstance warranting such departure.

52. It was further pleaded that respondent nos. 4 and 5, being statutory authorities, were required to exercise their respective powers independently and in accordance with the governing statutory provisions.

According to the petitioner, the refusal to issue the No Objection Certificate and the consequential withholding of sanction of the building plan were not relatable to any deficiency in the petitioner's proposal or upon any failure to comply with the prescribed statutory requirements. The petitioner attributed such inaction exclusively to the departmental directions issued during August, 2010.

53. The petitioner reiterated every payment made on behalf of NBSTC, including the amount intended for respondent no.4 and the municipal dues deposited with respondent no.5, ought to have been given due credit while preparing the final statement of accounts. It was pleaded that, despite repeated requests; reconciliation of accounts was never completed, thereby preventing the petitioner from tendering the balance lease premium and concluding the financial obligations arising under the Agreement to Lease.

54. The petition further stated that the conduct of the respondents had occasioned serious financial consequences. The petitioner asserted that substantial amounts already invested towards lease premium, registration expenses, municipal taxes and other project-related expenditure continue to remain committed to the project, while implementation of the commercial development had remained suspended. According to the petitioner, the delay had also resulted in a considerable increase in the cost of construction and has adversely affected the commercial viability originally contemplated by the parties.

55. The petitioner also relied upon the principles governing administrative action, pleading that executive instructions cannot operate in a manner

that defeats contractual rights lawfully created through a statutory corporation acting within the scope of its authority. According to the petitioner, the impugned memoranda have produced precisely such a consequence by preventing completion of the remaining statutory formalities despite the continued existence of the Agreement to Lease.

56. The petitioner accordingly prayed that this Court exercise its constitutional jurisdiction to examine the legality of the impugned departmental communications and to issue appropriate directions restoring the parties to the position that prevailed prior to issuance of the memoranda dated 13th August 2010 and 20th August 2010, thereby enabling the contractual arrangement to proceed in accordance with law.

57. The petitioner further prayed for issuance of an appropriate writ in the nature of Mandamus commanding the respondents, their officers, subordinates and every authority acting under them to withdraw, recall and give no further effect to Memo No.158/SSRKM/165/NBSTC-LAND/2010 dated 13th August 2010, issued by the Special Secretary, Transport Department, Government of West Bengal, whereby respondent no.4 was requested not to issue the requisite No Objection Certificate for commercial utilisation of the leasehold property and respondent no.5 was requested not to accord sanction to any building plan without prior approval of the Transport Department.

58. The petitioner further seeks a corresponding writ directing withdrawal and cancellation of the Memo dated 20th August 2010, by which respondent no.6 has been requested to communicate the aforesaid departmental instructions to the Executive Engineer of the Building

Department of the Kolkata Municipal Corporation, thereby restraining further processing of the petitioner's building proposal.

59. A further direction is sought upon respondent nos.2 and 3, particularly the Managing Director of NBSTC, to forward the Pay Order of Rs.2 crores to respondent no.4 in terms of the contractual arrangement and the earlier correspondence exchanged between the parties, so that the amount payable towards obtaining permission for commercial utilisation of the property may be duly received by the competent authority.

60. Consequential relief is claimed directing respondent no.4 to receive the said amount and thereafter issue the No Objection Certificate contemplated under the Agreement to Lease and the earlier governmental approval, thereby removing the obstacle standing in the way of commercial utilisation of the property.

61. The petitioner simultaneously seeks a direction upon respondent nos.5 and 6, including the Kolkata Municipal Corporation and its Commissioner, to consider and dispose of the building plan submitted by the petitioner strictly in accordance with the provisions of the Kolkata Municipal Corporation Act and the Kolkata Municipal Building Rules, without being influenced by the departmental memoranda impugned in the present proceeding.

62. The petition further prays for directions upon NBSTC to prepare a correct and final statement of accounts after giving adjustment to every payment already made by the petitioner, including the amounts remitted on behalf of NBSTC towards municipal taxes and the proposed payment of Rs.2 crores, to intimate the balance amount, if any, remaining payable under

the Agreement to Lease, and thereafter accept such balance in accordance with law.

63. The petitioner also seeks appropriate writs restraining the respondents from giving any further effect to the departmental communications which, according to the petitioner, have obstructed implementation of the commercial development project despite the continued subsistence of the Agreement to Lease.

64. The petitioner further seeks such additional or consequential writs, orders and directions as this Court may consider appropriate for securing complete implementation of the Agreement to Lease and protection of the rights asserted in the writ petition.

65. The petitioner concluded with the customary prayer for costs and other reliefs to which the petitioner may be found entitled in law.

66. Learned Senior Counsel appearing for the writ petitioners submits that the controversy traces its origin to Plot No.1/20A, CIT Scheme VII-M, Kolkata-700054, originally belonging to the Kolkata Improvement Trust (KIT), a statutory authority functioning under the administrative control of the Urban Development Department, Government of West Bengal. The land had been granted on lease by KIT to the North Bengal State Transport Corporation (NBSTC), a Government undertaking, for a period of ninety-nine years with the avowed object of establishing a bus depot. Subsequently, NBSTC resolved not to proceed with the proposed depot, whereupon, at its instance, the Government considered commercial utilisation of the property. The proposal underwent scrutiny amongst the Finance, Urban Development and Transport Departments before receiving

Cabinet approval pursuant to the Cabinet Memorandum dated 16 February 2001 and the Cabinet decision dated 28 February 2001.

67. It was contended that Samcon Developers, initially selected for commercial exploitation of the property, failed to discharge its contractual obligations, compelling NBSTC to initiate a fresh tender process. The petitioners emerged as the highest bidders, offering a consideration of Rs.24.81 crores, which came to be accepted. Consequent thereto, an Agreement to Lease dated 22 February 2002 was executed in favour of the petitioners, followed by registration of the lease on 23 April 2010. The agreement prescribed a structured payment schedule requiring successive payments of Rs.2 crores, Rs.4.81 crores, Rs.6.50 crores, Rs.2.29 crores and the balance amount of Rs.9 crores by twelve instalments spread over thirty months. The schedule later stood modified by a supplementary agreement dated 31 October 2003. Together with the earnest money of Rs.21 lakhs, the aggregate consideration remained Rs.24.81 crores.

68. Learned Senior Counsel emphasised that possession of the property was delivered to the petitioners on 17 April 2002 and a registered Power of Attorney authorising them to act in relation to the property was executed on 21 August 2002. Thus, every foundational step necessary for implementation of the commercial venture stood completed at the instance of NBSTC itself.

69. Attention was thereafter invited to the Cabinet Memorandum, which required NBSTC to pay Rs.2 crores to KIT as consideration for securing permission for commercial utilisation of the land. NBSTC expressly undertook to discharge such liability upon sanction of the building plan.

KIT, in turn, communicated that the requisite No Objection Certificate would follow upon receipt of the said amount within sixty days of its issuance. Although KIT informed NBSTC on 31 December 2004 that the proposed building plan had been approved, NBSTC neither remitted the stipulated amount to KIT nor intimated the petitioners that such payment had become payable. According to learned Counsel, the petitioners remained entirely unaware that the project had reached a stage requiring compliance by NBSTC.

70. It was further urged that NBSTC had also failed to pay the ground rent payable to KIT. In order to preserve the project from stagnation, the petitioners themselves discharged the outstanding ground rent by remitting Rs.1,31,890/- through demand draft dated 8 November 2007 and thereafter a further sum of Rs.5,93,500/- by demand draft dated 21 May 2010 towards the remaining lease period of eighty-one years. KIT accepted both payments without reservation and appropriated the same towards ground rent, thereby recognizing the petitioners' bona fide performance.

71. It was argued that considerable hardship thereafter arose because the Agreement to Lease remained pending registration. By communication dated 1 February 2008, NBSTC demanded approximately Rs.9 to 10 crores as a pre-condition for registration of the lease. Although the contractual terms did not oblige any further payment before sanction of the building plan, the petitioners nevertheless remitted an additional Rs.9.05 crores during May and June 2008 solely to ensure progress of the project. Subsequently, NBSTC itself directed the petitioners, by letter

dated 19 January 2010, to register the Agreement to Lease on the strength of the already existing Power of Attorney, resulting in registration of the lease deed on 23 April 2010.

72. The Learned Senior Counsel submitted that despite repeated correspondence requesting NBSTC to resolve the pending issues relating to payment of KIT dues and municipal liabilities so that building sanction could be secured, no meaningful progress followed. By that stage, the petitioners had already invested approximately Rs.14,68,96,226/-, particulars whereof have been tabulated in the pleadings. It was further pointed out that the petitioners had recorded, by letter dated 21 December 2009, that a sum exceeding Rs.13 crores had already been paid towards the lease consideration, a factual assertion of acquiescence and consent passed sub silentio.

73. It was further maintained while seeking sanction of the building plan before the Kolkata Municipal Corporation, another impediment surfaced. It transpired that NBSTC had failed not only to pay Rs.2 crores to KIT but had also neglected municipal tax liabilities. With no practical alternative available, the petitioners requested permission to satisfy the outstanding dues amounting to Rs.1,62,96,226/-, which request was accepted by NBSTC with an assurance that such payments would receive due adjustment against the contractual consideration. The petitioners accordingly discharged the municipal liabilities.

74. The essence of the petitioners' grievance, according to Learned Senior Counsel, lies in the subsequent conduct of the State authorities. By communications dated 13 August 2010 and 20 August 2010, the

Transport Department directed KIT and the Kolkata Municipal Corporation not to proceed with issuance of the No Objection Certificate or sanction of the building plan. NBSTC complied the same by a communication dated 31 December 2010 requesting KMC not to sanction the building plan without prior clearance from the Transport Department. Significantly, none of these communications was disclosed to the petitioners contemporaneously, although those administrative directions effectively paralysed the project.

75. It was submitted after NBSTC continued to default in remitting the mandatory payment of Rs.2 crores to KIT, the petitioners themselves prepared a demand draft for the said amount on 4 October 2010. KIT declined to accept the amount directly, citing absence of contractual privity. The petitioners therefore requested NBSTC to forward the demand draft to KIT. Since NBSTC remained inactive, the petitioners approached this Court in W.P. No. 24929(W) of 2010, whereupon directions were issued requiring NBSTC to transmit the demand draft. Although the draft ultimately reached KIT on 20 May 2011, KIT declined acceptance by reason of the earlier governmental directive dated 13 August 2010 restraining issuance of the requisite permission.

76. Learned Senior Counsel submitted that the petitioners thereafter applied before KMC for sanction of the building plan after satisfying all municipal dues. Nevertheless, by letter dated 24 September 2011, KMC rejected the application solely because of the embargo created by the Transport Department. Thereafter, despite the petitioners having fulfilled every substantial contractual obligation, NBSTC purported to terminate the

Agreement to Lease on 31 May 2017 on grounds that, according to the petitioners, bear no nexus either to the contractual stipulations or to the conduct of the parties over the preceding years.

77. It was submitted that these successive administrative actions compelled the petitioners to institute three writ petitions. W.P. No.15313(W) of 2011 challenged the governmental memoranda restraining commercial utilisation of the property and prohibiting sanction of the building plan. W.P. No.17380(W) of 2011 questioned the decision of the Kolkata Municipal Corporation refusing building sanction. W.P. No.18409(W) of 2017 assailed the decision of NBSTC seeking rescission of the Agreement to Lease and cancellation of the registered lease.

78. Emphasizing the legal submissions, Learned Senior Counsel contended that the impugned actions are vitiated by arbitrariness, absence of recorded reasons, breach of natural justice and infraction of Article 14 of the Constitution. The State and its instrumentalities, notwithstanding the contractual setting, remain subject to constitutional discipline. Administrative decisions affecting valuable civil rights must disclose rational reasons capable of judicial scrutiny. Failure to furnish reasons betrayed lack of due application of mind and renders the decision legally infirm. The obligation to act fairly neither evaporated nor diminished merely because the relationship originated in contract.

79. In support of these propositions, reliance is placed upon *Maharashtra Chess Association v. Union of India [(2020) 13 SCC 285]* to emphasise the amplitude of the writ jurisdiction in matters involving public law elements notwithstanding the existence of contractual arrangements. Further

reliance is placed upon *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293]*, *Mahabir Auto Stores v. Indian Oil Corporation [(1990) 3 SCC 752], Kumari Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212], Cyril Lasrado v. Juliana Maria Lasrado [(2004) 7 SCC 431], State of Punjab v. Bandeep Singh [(2016) 1 SCC 724], ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. [(2004) 3 SCC 553]* and *Maharashtra Chess Association* (supra). These authorities, it is urged, affirm that State action in contractual matters remains amenable to judicial review where arbitrariness, absence of reasons, breach of fairness or abuse of statutory authority forms the foundation of the challenge.

80. In the case of ***Dwarkadas Marfatia and Sons v. Port of Bombay*** [1]**,** the Hon'ble Supreme Court made the following observation:

> ***"22.*** *Our attention was drawn to the observations of this Court in Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : (1977) 3 SCR 249] . Reliance was also placed on the observations of this Court in Life Insurance Corpn. of India v. Escorts Ltd. [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] , in support of the contention that the public corporations dealing with tenants is a contractual dealing and it is not a matter for public law domain and is not subject to judicial review. However, it is not the correct position. The Escorts decision [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] reiterated that every action of the State or as instrumentality of the State, must be informed by reason. Indubitably, the respondent is an organ of the State under Article 12 of the Constitution. In appropriate cases, as was observed in the last mentioned decision, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the*

[1] (1989) 3 SCC 293

Constitution. But it has to be remembered that Article 14 cannot be construed as a charter for judicial review of State action, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

23. *The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible.*

24. *The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/governmental character. The legislative assumption or expectation as noted in the observations of Chagla, C.J. in Rampratap Jaidayal case [1952 LR 54 Bom 927, 934] cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations. In this connection, reference may be made on the observations of this Court in Som Prakash Rekhi v. Union of India [(1981) 1 SCC 449 : (1981) 2 SCR 111] , reiterated in M.C. Mehta v. Union of India [(1987) 1 SCC 395] , wherein at p. 148 this Court observed: (SCC p. 480, para 55)*

> *"It is dangerous to exonerate corporations from the need to have constitutional conscience; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien, amenable to constitutional limitations must be adopted by*

the court as against the alternative of permitting them to flourish as an imperium in imperio."

25. *Therefore, Mr Chinai was right in contending that every action/activity of the Bombay Port Trust which constituted "State" within Article 12 of the Constitution in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. Reliance may be placed on the observations of this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] , Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : (1978) 2 SCR 621] , R.D. Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : (1979) 3 SCR 1014] , Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1 : (1980) 3 SCR 1338] and Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : (1981) 2 SCR 79] . Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14. The observations in paras 101 and 102 of the Escorts case [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] read properly do not detract from the aforesaid principles.*

26. *The High Court had relied on the observations of this Court in Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1 : (1980) 3 SCR 1338] that the State was not totally freed of the duty to act fairly and rationally, merely because it could do so under a contract. The High Court stated that though it might be accepted that a public body like the respondent should not act unreasonably or unfairly but it did not follow that every time they decided to take action against the contractual tenants, they had to decide the said action in terms of fairness, equity and good faith. In support of this proposition, reliance was placed on the observations of this Court in LIC v. Escorts [(1986) 1 SCC 264 : 1985*

Supp 3 SCR 909] . In this connection, Mr Chinai appearing for the appellant reiterated before us as he did before the High Court, that the basis of the legitimate assumption or expectation of which the statutory exemption had been granted by the legislature to the Bombay Port Trust provided a guideline or touchstone by which the conduct of the public authority which had been granted exemption, should be judged. And, according to him, the necessity of eviction in the instant case, must have been only in public interest. Reliance was placed on several decisions referred to hereinbefore.

27. *We are inclined to accept the submission that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard. If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. See the observations of this Court in Kasturi Lal Lakshmi Reddy [(1980) 4 SCC 1 : (1980) 3 SCR 1338] and R.D. Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : (1979) 3 SCR 1014] (SCC pp. 505-06 : SCR p. 1034).”*

81. In the case of ***Mahabir Auto Stores v. Indian Oil Corpn.*** [2]**,** the Hon’ble Supreme Court made the following observation:

“12. *It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the*

[2] (1990) 3 SCC 752

observations of this Court in Radha Krishna Agarwal v. State of Bihar [(1977) 3 SCC 457] . It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radha Krishna Agarwal v. State of Bihar [(1977) 3 SCC 457] at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State of Tamil Nadu [(1974)

4 SCC 3 : 1974 SCC (L&S) 165] , Maneka Gandhi v. Union of India [(1978) 1 SCC 248] , Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] , R.D. Shetty v. International Airport Authority of India [(1979) 3 SCC 489] and also Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] . It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

…

***18.** Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of corporation like IOC when without informing the parties concerned, as in the case of the appellant-firm herein on alleged change of policy and on that basis action to seek to bring to an end to course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the*

nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is discrimination between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.

19. *Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation of transaction between the parties for nearly two decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted (sic is expected) to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence.*

20. *Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work."*

82. In the case of ***Shrilekha Vidyarthi v. State of U.P.*** [3]**,** the Hon'ble Supreme Court made the following observation:

> ***"19.*** *Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.*
>
> ***20.*** *Even apart from the premise that the 'office' or 'post' of DGCs has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.*
>
> ***21.*** *The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directives Principles of State*

[3] (1991) 1 SCC 212

Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

22. *There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.*

However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

23. *Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.*

24. *The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in pubic interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in*

which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity."

83. In the case of ***Cyril Lasrado v. Juliana Maria Lasrado*** [4]**,** the Hon'ble Supreme Court made the following observation:

> ***"11.*** *Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.*
>
> ***12.*** *Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed : (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed:"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."*

[4] (2004) 7 SCC 431

84. In the case of ***State of Punjab v. Bandeep Singh*** [5]**,** the Hon'ble Supreme Court made the following observation:

> ***"4.*** *There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272] of which the following paragraph deserves extraction : (SCC p. 417, para 8)*
>
> > *"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 Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16 : 1952 SCR 135] : (AIR p. 18, para 9)*
> >
> > > *'9. … 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."*
>
> ***…***
>
> ***8.*** *In the impugned judgment, the High Court has rightly concluded that no sustainable justification and rationalisation was recorded in writing*

[5] (2016) 1 SCC 724

at the relevant time for ordering the re-auction of only the two subject properties. However, we should not be understood to have opined that the Government is bound in every case to accept the highest bid above the reserve price. Needless to say, the presence of cartelisation or "pooling" could be a reason for the cancellation of an auction process. In addition, a challenge on the ground that the property has fetched too low a bid when compared to the prevailing market price, would also be valid and permissible provided this approach has been uniformly adhered to. In the case at hand, however, while the latter was ostensibly the reason behind the decision for conducting a fresh auction, no evidence has been placed on the record to support this contention. The highest bids, marginally above the reserve price, have been accepted in the selfsame auction. The factual scenario before us is clearly within the mischief which was frowned upon in Mohinder Singh Gill [(1978) 1 SCC 405 : (1978) 2 SCR 272] . We, therefore, uphold the impugned judgment for all the reasons contained therein. The assailed action of the appellant is not substantiated in the noting, which ought at least to have been conveyed to the respondents."

85. In the case of ***ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*** [6], the Hon'ble Supreme Court made the following observation:

"8. *As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.*

...

12. *The learned counsel appearing for the first respondent, however, submitted that this Court has taken a different view in the case of LIC of India v. Escorts Ltd. [(1986) 1 SCC 264] wherein this Court held: (SCC p. 344, para 102)*

> *"If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily*

[6] (2004) 3 SCC 553

examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder."

(emphasis supplied)

...

15. *The learned counsel then contending that this Court will not entertain a writ petition involving disputed questions of fact relied on a judgment of this Court in the case of State of Bihar v. Jain Plastics and Chemicals Ltd. [(2002) 1 SCC 216] wherein this Court held: (SCC p. 218, para 7)*

"7. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the

appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs."

…

***16.** A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Gunwant Kaur v. Municipal Committee, Bhatinda [(1969) 3 SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)*

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral

evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

17. *The above judgment of Gunwant Kaur [(1969) 3 SCC 769] finds support from another judgment of this Court in the case of Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582] wherein this Court held: (SCC p. 587, para 13)*

"Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit

against a public body. The questions of fact raised by the petition in this case are elementary."

…

***19.** Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.*

…

***23.** It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:*

> *"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."*

Para 11 of the said object reads thus:

> *"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."*

86. On the strength of the aforesaid facts and legal principles, the Learned Senior Counsel submitted that the impugned governmental communications, the consequential refusal to grant sanction of the building plan and the subsequent termination of the Agreement to Lease constitute a continuous chain of arbitrary administrative action, frustrating a project in which the petitioners had invested substantial amounts while faithfully performing every obligation cast upon them. The petitioners, therefore, seek quashing of the impugned communications and consequential reliefs restoring their contractual and statutory entitlements.

87. It was contended that the presence of contractual rights does not denude the High Court of its constitutional authority where the conduct of the State or its instrumentalities bears the imprint of arbitrariness, absence of fairness or disregard of statutory obligations. Reliance is placed upon the decision of the Supreme Court in ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors., (2004) 3 SCC

553, particularly paragraph 27, wherein the Court held that a writ petition directed against the State or its instrumentalities, even though arising from contractual obligations, remains maintainable in an appropriate case. Learned Senior Counsel emphasises that the existence of disputed questions of fact cannot, by itself, furnish a ground for declining constitutional scrutiny, nor does the circumstance that consequential monetary relief may arise render the writ petition incompetent.

88. Further reliance is placed upon *Maharashtra Chess Association v. Union of India & Ors., (2020) 13 SCC 285*, wherein the Supreme Court reaffirmed the amplitude of the jurisdiction vested in the High Court under Article 226 of the Constitution of India. The Learned Senior Counsel submitted that the constitutional power entrusted to the High Court served as an instrument for preservation of the rule of law and administration of justice, and no rigid technical doctrine may curtail that jurisdiction where executive action departed from constitutional standards. The authority of the High Court, it is argued, extends wherever State action bears the imprint of arbitrariness, regardless of the contractual backdrop.

89. In the case of ***Maharashtra Chess Assn. v. Union of India***[7]***,*** the Hon'ble Supreme Court made the following observation:-

> ***"11.*** *Article 226(1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. ["****226. Power of High Courts to issue certain writs****.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in*

[7] (2020) 13 SCC 285

relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."] The text of Article 226(1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or "for any other purpose". A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

> *"The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanours [...] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law...." [James Bagg's case, (1572) 11 Co Rep 93b : 77 ER 1271]*

12. *Echoing the sentiments of Lord Coke, this Court in U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon [U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon, (2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352] observed that : (SCC p. 53, para 35)*

> *"35. ... It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found"."*

13. *The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In*

order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani [A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani, (1962) 1 SCR 753 : AIR 1961 SC 1506] a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it : (AIR p. 1510, para 10)

"10. … We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

***14.** While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well-settled principle that the writ jurisdiction of a High Court cannot be completely*

excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution. [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577].”

90. Proceeding further, the Learned Senior Counsel submits that each of the impugned administrative decisions has been rendered in complete disregard of the elementary requirement of affording the petitioners an opportunity of hearing. Neither the governmental memoranda nor the consequential decisions affecting the petitioners' valuable proprietary rights were preceded by any notice or hearing. The decision-making process, therefore, stands vitiated by breach of the cardinal principle of *audi alteram partem*.

91. For this proposition, reliance is placed upon the celebrated decision in *Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405*, particularly paragraph 66, wherein Justice Krishna Iyer observed that civil consequences extend far beyond deprivation of proprietary rights and embrace every consequence affecting the civil life of a citizen. Learned Senior Counsel submits that once administrative action visits a person with civil consequences, observance of natural justice becomes an indispensable constitutional obligation.

92. In the case of ***Mohinder Singh Gill v. Chief Election Commr.***[8]**,** the Hon'ble Supreme Court made the following observation:-

> ***"66.*** *It was argued, based on rulings relating to natural justice, that unless civil consequences ensued, hearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by observations in Ram Gopal [Ram Gopal Chaturvedi v. State of M.P., (1969) 2 SCC 240 : (1970) 1 SCR 472] , Col. Sinha [Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458 : (1971) 1 SCR 791] . Of course, we agree that if only spiritual censure is the penalty, temporal laws may not take cognizance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, bypassing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. "Civil" is defined by Black (Law Dictionary, 4th Edn.) at p. 311:*
>
> > *"Ordinarily, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.*
> >
> > *The word is derived from the Latin civilis, a citizen .... In law, it has various significations.*
> >
> > * * *
> >
> > *'Civil Rights' are such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of Government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury etc.... Or, as otherwise*

[8] (1978) 1 SCC 405

> *defined, civil rights are rights appertaining to a person in virtue of his citizenship in a State or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the Constitution, and by various acts of Congress made in pursuance thereof.*
>
> *(p. 1487, Black's Legal Dictionary)*

The interest of a candidate at an election to Parliament regulated by the Constitution and the laws comes within this gravitational orbit. The most valuable right in a democratic polity is the "little man's" little pencil-marking, assenting or dissenting, called his vote. A democratic right, if denied, inflicts civil consequences. Likewise, the little man's right, in a representative system of Government, to rise to Prime Ministership or Presidentship by use of the right to be candidate, cannot be wished away by calling it of no civil moment. It civics mean anything to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be captivated by catchwords. The straight forward conclusion is that every Indian has a right to elect and be elected and this is a constitutional as distinguished from a common law right and is entitled to cognizance by courts subject to statutory regulation. We may also notice the further refinement urged that a right accrues to a candidate only when he is declared returned and until then it is incipient, inchoate and intangible for legal assertion — in the twilight zone of expectancy, as it were. This too, in our view, is logicid sophistry. Our system of "ordered" rights cannot disclaim cognizance of orderly processes as the right means to a right end. Our jurisprudence is not so jejune as to ignore the concern with means as with the end, with the journey as with the destination. Every candidate, to put it cryptically, has an interest or right to fair and free and legally run election. To draw lots and decide who wins, if announced as the electoral methodology, affects his right, apart from his luckless rejection at the end. A vested interest in the prescribed process is a processual right, actionable if breached, the Constitution permitting. What is

inchoate, viewed from the end, may be complete, viewed midstream. It is a subtle fallacy to confuse between the two. Victory is still an expectation; qua mado is a right to the statutory procedure. The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import. But, in the present case, the Election Commission contends that a hearing has been given although the appellant retorts that a vacuous meeting where nothing was disclosed and he was summarily told off would be strange electoral justice. We express no opinion on the factum or adequacy of the hearing but hold that where a candidate has reached the end of the battle and the whole poll is upset, he has a right to notice and to be heard, the quantum and quality being conditioned by the concatenation of circumstances."

93. It is thereafter argued that the petitioners derived valuable proprietary rights by virtue of the registered lease executed in their favour. Such rights embraced not merely possession of the property but also the corresponding entitlement to develop the premises in accordance with the contractual arrangement and the applicable municipal laws. The said rights could not be exercised solely through executive directions issued by the respondents without assigning reasons and without extending any opportunity of hearing.

94. According to the Learned Senior Counsel, the memorandum issued by the Government of West Bengal dated 13 August 2010 restraining KIT from issuing the requisite No Objection Certificate, the communications addressed by NBSTC to the Kolkata Municipal Corporation directing refusal of sanction of the building plan, the municipal decision dated 24 September 2011 declining building sanction, together with the

subsequent communication dated 31 May 2017 seeking rescission of the registered lease, form successive links of a single administrative course that cannot survive constitutional scrutiny when tested upon the touchstone of Article 14 of the Constitution of India.

95. The Learned Senior Counsel submits that the respondents have proceeded in complete disregard of the statutory framework governing determination of leases under the Transfer of Property Act, 1882, in terminating the lease agreement.

96. Reference is made to Section 111 of the Act, particularly clause (g), which governs forfeiture. Learned Senior Counsel submits that forfeiture may arise only where the lease expressly reserves such right upon breach of a specified condition together with the lessor's right of re-entry, followed by notice expressing the intention to determine the lease. Each constituent element prescribed by statute constitutes a condition precedent before forfeiture can legally take effect.

97. It is submitted that the registered lease dated 23 April 2010 contains no covenant providing for forfeiture or conferring any right of re-entry upon the lessor. Consequently, the statutory element necessary for determination of the lease was entirely absent. Even assuming such covenant existed, the respondents have failed to identify any breach attracting forfeiture or any reason capable of supporting termination. The communication dated 31 May 2017 merely purports to rescind the lease without assigning any discernible basis in law or fact.

98. The Learned Senior Counsel therefore submits that the purported notice of termination suffers from two incurable legal infirmities. First, it lacks

statutory authority under Section 111(g) of the Transfer of Property Act. Secondly, it has been issued in complete disregard of the principles governing fair administrative action.

99. Reliance is placed upon *Raghuram Rao & Ors. v. Eric P. Mathias & Ors., (2002) 2 SCC 624*, particularly paragraphs 22 to 24, in support of the statutory requirements governing forfeiture.

100. In the case of ***Raghuram Rao v. Eric P. Mathias*** [9]**,** the Hon'ble Supreme Court made the following observation:

> ***"22.*** *Further, Section 111(g) itself requires that for forfeiture, the lessee should commit breach of "an express condition" which provides that on breach thereof, the lessor may re-enter. The words "express condition" themselves stipulate that condition must be clear, manifest, explicit, unambiguous and there is no question of drawing any inference. In our view, as there is no express condition restraining partial alienation of the leasehold property, it would not be open to the transferee of the lessor's right to invoke the forfeiture clause for determining the perpetual lease and such conditions cannot be inferred by implication.*
>
> ***23.*** *On similar clause, it appears that there is uniformity of interpretation by various High Courts that unless there is an express condition restraining partial alienation, forfeiture clause would not apply.*
>
> ***24.*** *In A. Venkataramana Bhatta v. Krishna Bhatta [AIR 1925 Mad 57] the Court held thus: (AIR p. 58)*
>
> > *"A clause for forfeiture must always be construed strictly as against the person who is trying to take advantage of it, and effect should be given to it only so far as it is rendered absolutely necessary to do so by the wording of the clause.*
> >
> > *A covenant against assignment does not prevent the tenant from assigning for any part of the term or from assigning a portion of the premises and unless the covenant is expressly worded to*

[9] (2002) 2 SCC 624

exclude a partial alienation of the premises, a partial alienation will not work forfeiture under a clause which prevents alienation of the premises. It is always open to the landlord to put into his lease a covenant against alienation either complete or partial, if he intends that forfeiture should result from partial alienation as well, but where he does not do so, the covenant will not apply to a partial alienation — Grove v. Portal [(1902) 1 Ch 727 : 86 LT 350] .”

101. Attention is also invited to the principle embodied in Section 92(4) of the Indian Evidence Act. Learned Senior Counsel submits that once rights have crystallised through a registered instrument, rescission likewise requires an instrument recognised by law. Executive correspondence cannot annul rights created by a registered deed.

102. The Learned Senior Counsel thereafter addresses the principal defence advanced on behalf of NBSTC, namely, that the original Agreement to Lease dated 22 February 2002 being an unregistered document did not confer enforceable rights and, therefore, its cancellation carried no legal consequence.

103. This submission, according to Learned Senior Counsel, overlooks the true nature of the present controversy. The petitioners do not claim rights merely under the Agreement to Lease executed in 2002. Their rights presently arise from the registered lease deed executed and registered on 23 April 2010, which conferred lawful possession together with the authority to develop the property. Such rights could never be extinguished save in accordance with the statutory scheme governing determination of leases.

104. It is therefore submitted that the reliance placed by NBSTC upon *Korukonda Chalapathi Rao & Anr. v. Korukonda Annapurna Sampath*

Kumar, (2022) 15 SCC 475, is wholly misplaced. The said decision concerns an unregistered document and bears no resemblance to the factual matrix presently before the Court, where the rights asserted by the petitioners emanate from a duly registered lease.

105. The respondents have also questioned the extent of authority conferred upon the petitioners by the registered Power of Attorney dated 21 August 2002. Learned Senior Counsel submits that such contention likewise proceeds upon an erroneous reading of the document.

106. The Power of Attorney expressly authorises the petitioners to hold, occupy, possess and develop the demised property. Particular reliance is placed upon clauses (a), (b), (c), (j), (n) and (w), each of which, according to Learned Senior Counsel, demonstrates the comprehensive authority vested in the petitioners in relation to the development of the property.

107. Reference is further made to the communication dated 19th January 2010 issued by NBSTC itself directing the petitioners to exercise the authority conferred under the registered Power of Attorney for registration of the lease deed. Acting strictly upon those directions, the petitioners completed registration of the lease. Learned Senior Counsel therefore submits that NBSTC cannot now assume a contrary position by contending that the very authority which it had itself invoked was inadequate to facilitate development of the property. Such inconsistent conduct, it is argued, strikes at the heart of fair administrative dealing.

108. Even independently of the registered lease, Learned Senior Counsel submitted that valuable rights had already accrued to the petitioners by virtue of Section 105 of the Transfer of Property Act. Reliance is placed

upon *Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394*, wherein the Supreme Court held that the absence of registration does not eclipse the factual creation of a lease where possession has been delivered and the conduct of the parties manifests an intention to create such relationship. Registration may affect evidentiary efficacy of the instrument, but it cannot erase the legal reality created by the conduct of the parties.

109. In the case of ***Anthony v. K.C. Ittoop & Sons*** [10]**,** the Hon'ble Supreme Court made the following observation:

> ***"12.*** *But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:*
>
> > *"All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."*

[10] (2000) 6 SCC 394

13. *When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.*

14. *When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact-situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107 of the TP Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.*

16. *Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted."*

110. The principle has subsequently received affirmation in *Park Street Properties (P) Ltd. v. Dipak Kumar Singh, (2016) 9 SCC 268*, particularly paragraphs 16 to 19, wherein the Supreme Court reiterated that substantive rights flowing from the relationship of landlord and tenant

cannot be disregarded merely because of defects attending registration of the foundational instrument.

111. In the case of ***Park Street Properties (P) Ltd. v. Dipak Kumar Singh*** [11], the Hon'ble Supreme Court made the following observation:

> ***"16.*** *At the outset, it would be useful to refer to the statutory provisions at play in the instant case, which are Sections 106 and 107 of the Act, which read as under:*
>
> > *"**106. Duration of certain leases in absence of written contract or local usage**.—In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of tenancy.*
> >
> > *Every notice under this section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.*
> >
> > ***107. Leases how made**.—A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*
> >
> > *All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.*

[11] (2016) 9 SCC 268

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

(emphasis supplied)

17. *A perusal of Section 106 of the Act makes it clear that it creates a deemed monthly tenancy in those cases where there is no express contract to the contrary, which is terminable at a notice period of 15 days. The section also lays down the requirements of a valid notice to terminate the tenancy, such as that it must be in writing, signed by the person sending it and be duly delivered. Admittedly, the validity of the notice itself is not under challenge. The main contention advanced on behalf of the respondents is that the impugned judgment and order is valid in light of the second part of Section 107 of the Act, which requires that lease for a term exceeding one year can only be made by way of a registered instrument.*

18. *At this stage, it will also be useful to examine Clause 6 of the agreement dated 7-8-2006, which reads as under:*

"6. Default.— In the event of any default on the part of the tenants in making payment of the rent for 3 consecutive months or in the event of any breach of any of the terms and conditions herein contained and on the part of the tenants to be performed and observed and the landlord shall be entitled to serve a notice on call upon the tenants to make payment of the rent and to remedy for the breach of any of the remaining terms and conditions herein contained and if within a period of 30 days, the

tenants shall fail to remedy the breach, the landlord shall be entitled to determine or terminate the tenancy."

(emphasis supplied)

Thus, in terms of Clause 6 of the agreement, the landlord was entitled to terminate the tenancy in case there was a breach of the terms of the agreement or in case of non-payment of rent for three consecutive months and the tenants failed to remedy the same within a period of thirty days of the receipt of the notice. The abovesaid clause of the agreement is clearly contrary to the provisions of Section 106 of the Act. While Section 106 of the Act does contain the phrase "in the absence of a contract to the contrary", it is a well-settled position of law, as pointed out by the learned Senior Counsel appearing on behalf of the appellant that the same must be a valid contract.

19. *It is also a well-settled position of law that in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from the other evidence on record as well as the conduct of the parties. A three-Judge Bench of this Court in Anthony v. K.C. Ittoop & Sons [Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394] , held as under : (SCC pp. 399 & 400, paras 12-13 & 16)*

"12. … A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property, a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to

create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second paragraph. Thus, dehors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus….

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.

***

16. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted."

(emphasis supplied)

Thus, in the absence of registration of a document, what is deemed to be created is a month-to-month tenancy, the termination of which is governed by Section 106 of the Act."

112. The Learned Senior Counsel therefore submitted every contention advanced by NBSTC rests upon legal propositions having no application to the present factual setting. The petitioners derive their rights from a registered lease, fortified by possession, substantial financial

performance, continuous recognition by the respondents themselves and the statutory incidents attaching to such tenancy.

113. In culmination, the Learned Senior Counsel submits that the cumulative conduct of the respondents portrays a continuous departure from constitutional fairness. Administrative directions lacking reasons, deprivation of hearing, departure from statutory requirements governing forfeiture of leases, inconsistent executive conduct and successive decisions frustrating rights crystallised through a registered lease together constitute a pattern of State action that cannot receive judicial approval. The petitioners, having invested substantial sums in faithful performance of their contractual obligations and having acquired valuable proprietary rights recognised by law, seek restoration of those rights through exercise of the constitutional jurisdiction of this Court by setting aside each of the impugned governmental, municipal and corporate decisions that have impeded implementation of the project.

114. The Learned Advocate appearing for the State respondent no.1 submits that the challenge addressed in the writ petitions proceeds upon a fundamental misconception of the statutory framework governing the affairs of the North Bengal State Transport Corporation (NBSTC) and the supervisory authority vested in the State Government under the Road Transport Corporations Act, 1950.

115. At the threshold, it is contended that NBSTC owes its creation to the provisions of the Road Transport Corporations Act, 1950. By virtue of Section 34 of the said enactment, the State Government possesses the authority to issue binding directions to the Corporation in matters

concerning administration, management and disposal of its assets. Reference is also made to Section 19(2)(m) of the Act, which empowers the Corporation to conduct its affairs subject to the statutory scheme governing its functioning. Learned Counsel therefore submits that the State Government possesses ample statutory authority to intervene whenever the affairs of the Corporation demand correction in aid of legality and public interest.

116. It is submitted that the genesis of the commercial venture lies in the Cabinet Memorandum dated 16th February 2001, whereby the State Government accorded approval permitting commercial exploitation of the entire NBSTC complex at Ultadanga exclusively through M/s Samcon Developer (P) Ltd. Such Cabinet approval, according to learned Counsel, was confined to the proposal concerning Samcon Developer alone and did not embrace any subsequent arrangement that NBSTC might choose to enter into with any other entity.

117. The Learned Counsel submits after Samcon Developer failed to comply with its financial obligations under the original arrangement, NBSTC, at its 176th Board Meeting held on 12th October 2001, initiated a fresh tender process and selected the present writ petitioner for commercial utilisation of the property. Such decision, however, was taken entirely at the level of the Corporation without obtaining fresh approval from the State Government. The Cabinet decision having been confined solely to Samcon Developer, the subsequent engagement of the writ petitioner lacked governmental sanction from its inception.

118. It is further argued that the offer submitted by the writ petitioner departed materially from the terms embodied in the tender conditions framed by NBSTC. The petitioner expressly stipulated wherever inconsistency arose between the tender conditions and its own offer, the latter would prevail. NBSTC accepted those altered conditions, thereby permitting the contractual framework to be governed substantially by the terms dictated by the petitioner rather than those originally notified to the public. Learned Counsel submits that such departure from the tender conditions strikes at the functional basis of fairness governing public procurement.

119. Reference is thereafter made to Memo No. 3044/LC/PB/NBSTC dated 31 May 2017 whereby NBSTC cancelled the contractual relationship by rescinding the Agreement to Lease dated 22nd February 2002, the supplementary agreement dated 21st October 2003, the Power of Attorney executed on 21st August 2002 and the subsequent document executed through exercise of the said Power of Attorney on 23rd April 2010. Learned Counsel submits that each of those instruments merely constituted successive manifestations of the original contractual arrangement which itself suffered from legal infirmity.

120. Learned Counsel further submitted that the Cabinet approval dated 16th February 2001 could not be construed as a general permission authorising commercial exploitation of the property by any developer of NBSTC's choice. Paragraph 4 of the Cabinet Memorandum expressly confined governmental approval to M/s Samcon Developer (P) Ltd. No

material had been produced demonstrating that any corresponding approval was ever granted in favour of the present writ petitioner.

121. In such circumstances, it was argued that the State Government remained fully competent to restrain the Kolkata Improvement Trust from issuing the requisite 'No Objection Certificate' and likewise to request the Kolkata Municipal Corporation to refrain from granting sanction of the proposed building plan in favour of the petitioner. Such communications, according to Learned Counsel, merely preserved statutory discipline by preventing implementation of a project lacking governmental approval.

122. The Learned Counsel further submitted the Transport Department, acting on behalf of the State Government, possessed both the authority and the obligation to prevent execution of an agreement contrary to the statutory scheme governing the Corporation. Intervention by the State, therefore, represented a legitimate exercise of supervisory authority conferred by the Road Transport Corporations Act, 1950.

123. In elaboration of this submission, four principal grounds have been advanced.

124. Firstly, paragraph 23 of the original tender document prescribed a specific schedule governing payment of consideration. The agreement ultimately executed between NBSTC and the writ petitioner materially altered those financial terms without obtaining approval from the State Government. Such alteration, it is argued, exceeded the authority vested in the Corporation.

125. Secondly, the writ petitioner's offer expressly declared that wherever inconsistency existed between the tender conditions and the petitioner's

proposal, the latter would prevail. NBSTC accepted that stipulation despite functioning as a statutory corporation falling within the ambit of Article 12 of the Constitution. Learned Counsel submits that a public authority cannot permit contractual obligations to be dictated solely by private commercial preference where such terms conflict with the public interest or with conditions originally published for competitive bidding.

126. Thirdly, it is argued that once the Corporation departed from the terms publicly notified in the tender process, fairness demanded initiation of a fresh tender rather than acceptance of substantially altered conditions in favour of a single bidder. Acceptance of a proposal materially varying the notified conditions, followed by subsequent modification of contractual terms to the petitioner's advantage, defeated the principles governing public contracts and occurred without approval of the State Government.

127. Fourthly, the Learned Counsel submits that since the original agreement itself lacked legal validity, every subsequent document executed in continuation thereof—including the supplementary agreement, the Power of Attorney and the registered lease—derived no greater legitimacy than the initial arrangement being its source of origin. The subsequent documents, according to the State, necessarily extinguishes with the original transaction.

128. Proceeding further, The Learned Counsel submits that the communications issued by the State Government requesting KIT not to issue the requisite ‘No Objection Certificate’ and directing the Kolkata Municipal Corporation to refrain from sanctioning the building plan represented lawful administrative action taken in exercise of statutory

authority under the Road Transport Corporations Act. Such directions, according to the State, were necessary to prevent further implementation of a process lacking governmental approval.

129. On these premises, the Learned Counsel contends that the writ petitions disclose no enforceable legal right and consequently deserve dismissal.

130. The State therefore maintains that every consequential action—including withholding of the 'No Objection Certificate', refusal of municipal sanction and cancellation of the contractual arrangement—flows naturally from the original defect attending the transaction between NBSTC and the writ petitioner.

131. Accordingly, it is submitted that the writ petitions are devoid of legal merit and deserve rejection in their entirety.

132. The Learned Senior Counsel appearing for the respondent no.2 and 3 North Bengal State Transport Corporation (NBSTC) commenced by delineating the factual matrix which, according to the Corporation, remained beyond controversy and furnished the indispensable foundation for adjudication of the present writ proceedings.

133. It was submitted that NBSTC obtained from the Kolkata Improvement Trust, presently the Kolkata Metropolitan Development Authority (KMDA), a lease in respect of land measuring 7,327.13 square metres situated at Manicktala for a period of ninety-nine years commencing from 12th October 1990, the purpose of the grant being extension of its bus depot. Owing to financial constraints affecting execution of the intended project, the Corporation sought permission from the Government of West Bengal for commercial exploitation of the property through engagement of a

private developer. Pursuant thereto, a Cabinet decision dated 28th February 2001 accorded permission for development exclusively through M/s Samcon Developer (P) Ltd. An agreement followed, though the said developer failed to perform its contractual obligations, compelling termination of that arrangement. Thereafter, with the approval of the Transport Department, Government of West Bengal, a fresh tender process was initiated.

134. The Learned Senior Counsel submitted that the writ petitioner emerged as the highest bidder by offering Rs.24.60 crores, whereupon NBSTC accepted the bid and executed an Agreement to Lease dated 22nd February 2002. The said instrument, however, never underwent compulsory registration. A registered Power of Attorney came to be executed on 21st August 2002. Several years thereafter, on 11th January 2010, the petitioner sought permission to register the Agreement to Lease. By communication dated 19th January 2010, NBSTC referred to the earlier Power of Attorney, whereafter the petitioner executed another lease deed on 23rd April 2010, professedly acting for both the lessor and the lessee, and presented that instrument for registration by asserting that it represented registration of the lease executed in the year 2002.

135. The Corporation pointed out that by letter dated 16th September 2010, the petitioner acknowledged payment of only Rs.13.06 crores towards premium, leaving an outstanding balance of Rs.11.75 crores, while simultaneously offering Rs.2 crores towards KIT dues relatable to municipal taxes. During the same period, the petitioner also sought sanction of the building plan.

136. The Learned Senior Counsel thereafter traced the subsequent litigation. A writ petition, being WP No.15313(W) of 2011, had been instituted seeking implementation of the lease deed of 2010, though the same later came to be withdrawn. Meanwhile, on 13th August 2010, the Transport Department requested the Kolkata Municipal Corporation not to sanction the building plan and called upon KIT not to issue the requisite 'No Objection Certificate'. Corresponding communications were thereafter issued by NBSTC on 31st December 2010. Those communications became the subject matter of WP No.18380(W) of 2010. The Kolkata Municipal Corporation declined sanction under Rule 16(1) of the KMC Building Rules. Subsequently, the Board of NBSTC, at its meeting held on 30th November 2015, resolved to terminate the lease and refund the amounts received. Formal cancellation followed on 31st May 2019, whereafter the petitioner instituted WP No.18409(W) of 2019 questioning the said decision.

137. Proceeding to the legal submissions, the Learned Senior Counsel first addressed the petitioner's reliance upon the arbitration clause contained in the lease deed of 2010. It is submitted that although the petitioner contends that the writ petition survives notwithstanding the arbitration clause since the controversy extends beyond the contracting parties and embraces the State Government, KMDA and the Kolkata Municipal Corporation, no objection concerning maintainability on the strength of the arbitration clause has in fact been advanced by NBSTC. Consequently, the authorities cited by the petitioner on that issue,

including 2020 (13) SCC 285, bear little relevance to the present controversy.

138. The Learned Senior Counsel next contests the cancellation orders. Reliance placed by the petitioner upon *Kumari Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212*, is said to rest upon an erroneous premise. Although administrative action affecting vested rights ordinarily requires disclosure of reasons, the present matter, according to NBSTC, concerns no legally enforceable right. The lease deed of 2002, requiring compulsory registration, never attained legal efficacy by reason of its non-registration. Since no proprietary interest ever came into existence, termination of a legally ineffective arrangement neither demanded elaborate reasons nor attracted the procedural incidents ordinarily associated with deprivation of an existing legal right.

139. The Learned Senior Counsel thereafter answered the petitioner's submission that cancellation of the registered deed of 2010 could only be accomplished through execution of another registered instrument. It was emphasized that the document registered in 2010 merely represented an attempt to secure registration of the lease deed executed in 2002 after an interval of nearly eight years, despite the Power of Attorney containing no authority permitting such exercise. According to the Corporation, where the foundational transaction lacks legal efficacy, no separate formal instrument becomes necessary for its annulment. The principles embodied in Section 92 of the Evidence Act and the ratio reported in (2000) 7 SCC 104 therefore bear no application.

140. The submission founded upon Section 111 of the Transfer of Property Act also was detailed thereafter. Learned Counsel contended that absence of prior notice assumed significance only where a legally operative lease existed. Since the lease itself never acquired legal efficacy, the statutory incidents governing determination of a valid tenancy cannot be invoked.

141. Addressing the petitioner's plea founded upon equitable considerations, Learned Senior Counsel submitted that subsequent payments, deposit of municipal dues or sanction earlier granted by KIT could not breathe legal vitality into instruments which never satisfied mandatory statutory requirements. Equity, according to the Corporation, cannot substitute statutory compliance. Reliance upon *M/s Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293*, is distinguished by contending that the present controversy proceeds in the absence of any legally operative contract. Likewise, the purported registration effected in 2010 stood hopelessly beyond the period prescribed by Section 23 of the Registration Act, which requires presentation of an executed document within four months. Decisions reported in *Mahabir Auto Stores v. Indian Oil Corporation, (1990) 3 SCC 752, Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, ABL International Ltd. v. Export Credit Guarantee Corporation, (2004) 3 SCC 553*, and *State of Punjab v. Bandeep Singh, (2016) 1 SCC 724*, are each said to have little bearing since the petitioner never acquired a legally enforceable right capable of protection through constitutional remedies. Moreover, no enforceable contract was legally executed between the parties entailing State’s liability in obliging contractual terms.

142. The Learned Senior Counsel then advanced the principal submission on behalf of the Corporation. The Agreement to Lease dated 22nd February 2002, being a long-term lease of immovable property, attracted compulsory registration under Section 17 of the Registration Act. By operation of Section 49 of the Registration Act, failure to register deprived the document of efficacy to create, assign or transfer any right, title or interest in the property. Reliance is placed upon the decision reported in (2022) 15 SCC 475, particularly paragraphs 13, 25, 26, 36, and 37, wherein the legal incidents of non-registration received authoritative exposition. According to Learned Senior Counsel, the lease deed of 2002 consequently conferred no proprietary interest upon the petitioner and furnished no basis for enforcement before a writ court.

143. In the case of ***Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar[12]***, the Hon'ble Supreme Court made the following observation:

> ***"13.*** *Section 17(2) provides nothing in clauses (b) and (c) of sub-section (1) applies, inter alia, to any instrument of partition made by the revenue officer. Section 49 of the Registration Act reads as follows:*
>
> > *"**49. Effect of non-registration of documents required to be registered**.—No document required by Section 171 [Added by Act 21 of 1929, S. 10.] [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*
> >
> > *(a) affect any immovable property comprised therein, or*
> >
> > *(b) confer any power to adopt, or*
> >
> > *(c) be received as evidence of any transaction affecting such property or conferring such power,*

[12] (2022) 15 SCC 475

unless it has been registered:

[Added by Act 21 of 1929, S. 10.] [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877) [The words "or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882," omitted by Act 48 of 2001, S. 6.] [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]"

...

25. *The expression "affect" has been explained by the Full Bench judgment of the Madras High Court in Murdga Mudaliar v. Subba Reddiar [Murdga Mudaliar v. Subba Reddiar, 1950 SCC OnLine Mad 136 : AIR 1951 Mad 12] . We may notice only the following discussion in the judgment of Satyanarayana Rao, J. : (SCC OnLine Mad)*

"... As pointed out by Spencer J. in Atluru Saraswatamma v. Atluru Paddayya [Atluru Saraswatamma v. Atluru Paddayya, 1922 SCC OnLine Mad 203 : ILR (1923) 46 Mad 349 : AIR 1923 Mad 297] , the verb "affect" in Section 49 is only a compendious term employed by the Legislature to express the meaning of the longer phrase 'purporting or operating to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent to' (See also Kanjee and Mooljee Bros. v. T. Shanmugam Pillai [Kanjee and Mooljee Bros. v. T. Shanmugam Pillai, 1932 SCC OnLine Mad 102 : ILR (1933) 56 Mad 169 : AIR 1932 Mad 734] , where the view of Spencer, J. was accepted)."

(emphasis supplied)

26. *Section 49(c) of the Registration Act prohibits the admitting of compulsorily registrable documents which are unregistered as evidence of any transaction affecting immovable property unless it has been registered. In the very same judgment, we notice the following discussion : (Murdga Mudaliar case [Murdga Mudaliar v. Subba Reddiar, 1950 SCC OnLine Mad 136 : AIR 1951 Mad 12] , SCC OnLine Mad)*

> *"… The other consequence of non-registration is to prohibit the document from being received not "in" evidence, but "as" evidence of any transaction affecting such property. The emphasis on the word "as" was, in my opinion, rightly laid by Venkatasubba Rao, J. in Atluru Saraswatamma v. Atluru Paddayya [Atluru Saraswatamma v. Atluru Paddayya, 1922 SCC OnLine Mad 203 : ILR (1923) 46 Mad 349 : AIR 1923 Mad 297] , where the learned Judge observed : (SCC OnLine Mad)*
>
> *'What is prohibited by the section is receiving a document as evidence of a transaction, not merely receiving it in evidence that is, as a piece of evidence having a bearing on the question to be ultimately decided.'*

In other words, the prohibition is to prevent a person from establishing, by the use of the document in evidence a "transaction, affecting immovable property". A person should not be permitted to establish indirectly by use of the document what he is prevented from doing directly under Clause (a)."

(emphasis in original and supplied)

...

36. *If we apply the test as to whether the Khararunama in this case by itself "affects" i.e. by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the*

arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(a) of the Registration Act.

37. *As far as Section 49(c) of the Registration Act is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, under Section 49(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(a). Thus, it prevents an unregistered document being used "as" evidence of the transaction, which "affects" immovable property. If the Khararunama by itself, does not "affect" immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent [See Murdga Mudaliar [Murdga Mudaliar v. Subba Reddiar, 1950 SCC OnLine Mad 136 : AIR 1951 Mad 12]]. Thus, the transaction or the past transactions cannot be proved by using the Khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the Khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question."*

144. Referring to the lease deed executed on 23rd April 2010, Learned Senior Counsel submitted that the Power of Attorney dated 21 August 2002, read with NBSTC's subsequent communications, authorised nothing beyond

matters connected with the original deed of 2002. A Power of Attorney, being an instrument demanding strict construction, could never authorise execution and registration of a fresh lease deed in 2010. Reliance is placed upon (2012) 8 SCC 706, particularly paragraphs 19 to 21, in support of the principle governing construction of such authority.

145. In the case of ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust***[13], the Hon'ble Supreme Court made the following observation:

> ***"19.*** *Next, we have to consider the power of attorney. It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorise the power to agent to execute the sale agreement/sale deed i.e. (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, shows that it only authorises certain specified acts but not any act authorising entering into an agreement of sale or to execute sale deed or admit execution before the Registrar.*
>
> ***20.*** *In a recent decision of this Court in Suraj Lamp and Industries (P) Ltd. (2) v. State of Haryana [(2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351] , the scope of the power of attorney has been explained in the following words: (SCC pp. 666-67, paras 20-21)*
>
> > *"20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of*

[13](2012) 8 SCC 706

Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52)

'13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

***

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.'

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

21. *It is clear that from the date the power of attorney is executed by the principal in favour of the agent and by virtue of the terms, the agent derives a right to use his name and all acts, deeds and things done by him are subject to the limitations contained in the said deed. It is further clear that the power-of-attorney holder executes a deed of conveyance in exercise of the power granted under it and conveys title on behalf of the grantor."*

146. It is therefore argued that the document dated 23 April 2010 neither constitutes a legally operative registered lease nor possesses efficacy capable of altering proprietary rights within the contemplation of Section 49 of the Registration Act, as explained in (2022) 15 SCC 175, paragraph 25. The Power of Attorney and the contemporaneous correspondence of NBSTC relate solely to the lease deed executed in 2002. Neither instrument authorised execution of an entirely new lease in 2010. The latter document, according to the Corporation, remains legally stillborn from its inception and cannot be received in evidence to establish any transaction affecting immovable property, save perhaps for a limited purpose in a properly constituted suit for specific performance under Chapter II of Specific Relief Act.

147. The Learned Senior Counsel emphasises that no suit for specific performance was instituted within the limitation prescribed by Article 54 of the Limitation Act, namely three years. Having allowed the statutory period to expire, the petitioner cannot, through the medium of a writ

petition, secure either enforcement of the lease deed of 2010 or annulment of the order cancelling it.

148. On these premises, Learned Senior Counsel submitted that neither the lease deed of 2002 nor the document executed in 2010 conferred any legally enforceable right upon the petitioner; the cancellation decision adopted by the Board of NBSTC rests upon firm statutory substation the petitioner's reliance upon equitable doctrines and judicial precedents stands misplaced; and the writ petitions, being devoid of any enforceable legal foundation, deserve dismissal.

149. The Learned Senior Counsel further submits that the writ petition, in substance, seeks enforcement of contractual obligations arising out of the lease deed dated 23rd April 2010. Such relief, it is argued, is nothing but a claim for specific performance masquerading as a constitutional remedy. A writ court exercising jurisdiction under Article 226 of the Constitution of India cannot assume the role of a civil court in compelling performance of contractual covenants. Reliance is placed upon the decision reported in (2022) 15 SCC 536, paragraph 9, wherein the Supreme Court has held that a decree for specific performance cannot be secured through a writ petition.

150. Attention is thereafter invited to the reliefs claimed in the third writ petition, W.P. No. 18409(W) of 2019, particularly the prayer for issuance of a writ of mandamus commanding the respondents to act strictly in accordance with the lease deed of 2010. Learned Counsel submits that an identical relief had earlier been sought in W.P. No. 15313(W) of 2011, instituted upon the very same foundation. The earlier writ petition,

however, came to be withdrawn without liberty to institute a fresh proceeding on the same cause of action or upon fuller particulars. Such withdrawal, according to learned Counsel, amounts in law to abandonment of the claim itself. Reliance is placed upon the judgment reported in (1987) 1 SCC 5, paragraph 7, wherein the Supreme Court recognised that withdrawal of proceedings without liberty precludes revival of the same cause in a subsequent proceeding. The principle, it is submitted, extends beyond writ jurisdiction and forecloses institution of any subsequent civil action founded upon the same asserted right.

151. In the case of ***Sarguja Transport Service v. S.T.A.T.*** [14]**,** the Hon'ble Supreme Court made the following observation:

> ***"7.*** *The Code as it now stands thus makes a distinction between "abandonment" of a suit and "withdrawal" from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. Invito beneficium non datur — the law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission*

[14](1987) 1 SCC 5

of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court."

152. The Learned Senior Counsel, therefore, maintains that the present proceedings suffer from a dual infirmity. Apart from the absence of any legally enforceable right flowing from either the unregistered lease deed of 2002 or the purported registered instrument of 2010, the petitioner has, by reason of withdrawal of the earlier writ petition without obtaining liberty to commence fresh proceedings, relinquished the very foundation upon which the present claim is erected. The constitutional remedy invoked before this Court consequently stands barred both on principle and precedent.

153. Drawing together the entire spectrum of submissions, the Learned Senior Counsel contends that the petitioner has failed to establish the existence of any subsisting legal right, proprietary interest or enforceable contractual entitlement. The cancellation effected by NBSTC rests upon statutory provisions governing registration of documents, the law relating to powers of attorney, limitation, and the settled principles regulating public contracts. The authorities cited by the petitioner, it is argued, bear no application to the factual complexion of the present controversy, whereas the precedents relied upon by the Corporation decisively sustain its stand. The writ petitions, therefore, neither satisfy the threshold of maintainability nor disclose any constitutional infirmity warranting interference under Article 226 of the Constitution. The inevitable consequence, according to the Learned Counsel, is dismissal of the writ petitions. The Learned Senior Counsel however categorically admitted the petitioner is entitled to receive the refund of the expenditure incurred in the entire process to have culminated in his ultimate disfavor.

154. The Learned Counsel appearing for Respondent Nos. 4 and 5, the Kolkata Metropolitan Development Authority (formerly Kolkata Improvement Trust), commenced by placing the three writ petitions in their proper factual setting. It was submitted that the first writ petition, WPA No. 15313 of 2011, arose from the refusal of the Kolkata Municipal Corporation to sanction the building plan and sought, inter alia, quashing of the Corporation's communication bearing No. B/164/III/2011-2012 dated 24 September 2011. The second writ petition questioned the very same communication issued by the Kolkata Municipal Corporation. The

third writ petition, WPA No. 18409 of 2017, assailed Memo No. 3044/LC/PB/NBSTC dated 31 May 2017, whereby NBSTC terminated its contractual arrangement with the writ petitioner.

155. At the threshold, the Learned Counsel submitted that neither of the writ petitions contains any substantive pleading nor any specific prayer directed against the erstwhile Kolkata Improvement Trust, presently KMDA. Although the subject property belongs to KMDA, the petitioner has failed to seek any identifiable relief against its owner. Yet, any direction in favour of the petitioner would inevitably curtail proprietary rights vested in KMDA. It was argued that a constitutional court cannot grant relief dehors the pleadings or beyond the reliefs claimed. Reliance was placed upon *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi, (2010) 1 SCC 234* (paragraphs 29 and 30) and *Bharat Singh v. State of Haryana, (1988) 4 SCC 534* (paragraph 13) to emphasise that adjudication in writ jurisdiction remains circumscribed by the pleadings and prayers presented before the Court.

156. In ***Bharat Amrital Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors.***[15], the Hon'ble Apex Court held as follows:-

> *"... 29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any*

[15] (2010) 1 SCC 234

particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very vide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

157. In ***Bharat Singh & Ors. Vs. State of Haryana & Ors.***[16], the Hon'ble Apex Court held as follows:-

"... 13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and

[16] (1988) 4 SCC 534

prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter, affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us PG NO 1060 by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

158. The Learned Counsel further submitted that KMDA had already disclosed its position through affidavits-in-opposition affirmed on 2 December 2015 in WPA No. 15313 of 2011 and on 11 August 2021 in WPA No. 18409 of 2017, wherein the factual background and the legal position governing the subject property had been comprehensively narrated. Instead of reproducing those averments, learned Counsel adopted and relied upon the statements contained therein.

159. Proceeding to the genesis of the transaction, learned Counsel submitted that the land measuring 7327.12 square metres, situated at the junction of Satyen Bose Sarani and E.M. Bypass, belongs to the erstwhile KIT, now KMDA. The property was leased to NBSTC under a registered Indenture of

Lease dated 22 November 1995 for a period of ninety-nine years, subject to carefully framed conditions governing its enjoyment and use.

160. Particular emphasis was laid upon Clauses 3 and 7 of the lease deed. The demised land, it was submitted, could be utilised exclusively for extension of the bus depot unless the lessor granted prior written permission for any different use. Equally significant, NBSTC possessed no authority to assign, mortgage, transfer, sub-divide, alienate or amalgamate the demised premises with adjoining land except upon prior written approval of the lessor. These restrictions constituted the very foundation of the contractual relationship.

161. According to the Learned Counsel, NBSTC acted in complete departure from these binding stipulations by embarking upon commercial development of the property through third parties without obtaining the written sanction contemplated by the lease. Such conduct, it was argued, attracted Clause IV(1), conferring upon the lessor the right to determine the lease and resume possession upon breach of the contractual conditions.

162. The Learned Counsel thereafter referred to the events of 2010, when the petitioner, M.A. Construction and Trading Company, forwarded a demand draft of Rs. 2 crores to KIT on behalf of NBSTC. The amount was immediately returned, since the petitioner had no contractual relationship whatsoever with KIT in respect of the subject land. Subsequently, NBSTC itself forwarded a revalidated pay order of identical value under Memo No.2708/STC/EM/CELL/PB dated 20 May 2011, which was likewise

returned, KIT reiterating its inability to accept any amount intended for commercial exploitation of the leased property.

163. It was submitted that no privity of contract ever came into existence between the petitioner and KMDA. No written consent permitting commercial exploitation or transfer of rights had ever been granted by KMDA. Likewise, no direction had been issued by the Urban Development and Municipal Affairs Department compelling KMDA to accord approval to the proposed arrangement. Every step undertaken by NBSTC in favour of the petitioner, therefore, stood in direct conflict with the conditions governing the original lease and consequently conferred no right, title or interest upon the petitioner.

164. The Learned Counsel devoted considerable attention to the Cabinet Decision dated 28th February 2001, upon which the petitioner sought to build its case. According to KMDA, the said decision possessed no binding force against the lessor. Firstly, KIT had never been consulted before the Cabinet Memorandum dated 16th February 2001 was placed for consideration. Secondly, no instruction emanating either from the State Government or from the Urban Development Department was communicated to KIT directing implementation of the Cabinet decision. Thirdly, the decision itself was confined exclusively to development through M/s Samcon Developers (P) Ltd. and could not be extended to any other developer. Fourthly, following the abandonment of the Samcon proposal, no fresh Cabinet approval authorising engagement of another developer was ever secured. Lastly, the Cabinet decision dated 28.02.2001 itself was never communicated to erstwhile KIT. Relying upon

Greater Mohali Area Development Authority v. Manju Jain, (2010) 9 SCC 157 (paragraphs 23, 24 and 25), learned Counsel argued that an administrative decision, unless communicated to the authority concerned, creates no enforceable legal consequence.

165. In ***Greater Mohali Area Development Authority & Ors. Vs. Manju Jain & Ors.***[17], the Hon'ble Apex Court held as follows:-

> *"... 23. In Laxminarayan R. Bhattad v. State of Maharashtra this court held that the order of the authority must be communicated for conferring an enforceable right and in case the order has been passed and not communicated, it does not create any legal right in favour of the party.*
>
> *24. Thus, in view of the above, it can be held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated.*
>
> *25. Clause 4 of the allotment letter read as under:*
>
> > *"In case you accept this allotment, you should send your acceptance by registered post along with amount of balance of twenty-five percent of price within sixty days from the date of receipt of the allotment letter.""*

166. The communication dated 18th November 2004 issued by KIT granting a no-objection certificate in favour of the Transport Department was also addressed. Learned Counsel submitted that the permission was conditional in nature and remained dependent upon fulfilment of

[17] (2010) 9 SCC 157

stipulated requirements by NBSTC and the Transport Department. Such conditions having remained unfulfilled, the permission exhausted its efficacy by operation of its own terms. More importantly, the communication did not recognise the petitioner as possessing any legal status in relation to the property.

167. Similarly, acceptance of lease rent tendered through the petitioner did not, according to the Learned Counsel, amount to recognition of any legal relationship between KIT and the petitioner. The payment represented discharge of NBSTC's own contractual obligation under the lease of 22nd November 1995, the covering letter dated 14th November 2007 itself recording that the payment was made on account of NBSTC. Such receipt, therefore, could not elevate the petitioner's status beyond that of a person making payment on behalf of the lessee.

168. It was emphatically argued that every communication exchanged between the petitioner and NBSTC remained incapable of fastening any obligation upon KMDA, since no contractual nexus existed between them. Conversely, the conduct of NBSTC in entering into arrangements with the petitioner respecting the leased premises, without the lessor's written consent, constituted a direct violation of the lease conditions.

169. Learned Counsel thereafter submitted that the lease dated 22nd November 1995 represented a valid contractual arrangement between KMDA and NBSTC, governing their reciprocal rights and obligations. The contractual terms alone regulated the field. Reliance was placed upon *Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457* (paragraphs 10, 11 and 12) and *Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116*

(paragraphs 17, 19, 20, 21 and 22) to contend that contractual disputes of this nature cannot ordinarily invite interference under Article 226.

170. In ***M/s Radhakrishna Agarwal & Ors. Vs. State of Bihar & Ors.***[18], the Hon'ble Apex Court held as follows:-

> *"... 10. It is thus clear that the Erusian Equipment & Chemicals Ltd.'s case (supra) involved discrimination at the very threshold or at the time of entry into the field o,f consid- eration of persons. with whom the Government could contract at all. At this stage, no doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the rela- tions are no longer governed by the constitutional provi- sions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitu- tional provision when the State of its agents, purporting to act within this field, perform any act. In this sphere,_ they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.*

[18] (1977) 3 SCC 457

11. In the cases before us the contracts do not contain any statutory terms or obligations and no statutory power of obligation which could attract the application of Article 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of compet- ing claims before an entry into the field of contract facts have to be investigated and found before the question ,of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can ,only be tested satisfactorily by taking de- tailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article '226 of the Constitution. Such proceedings are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, "pre- rogative" powers of the Court are invoked. We are certain that the cases before us are not such in which powers under Article 226 of the Constitution could 'be invoked.

12. The Patna High Court had, very rightly divided the types of cases 'in which breaches of alleged obligation by the State units agents can be set up into three types. These were stated as follows:-

> *"(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where an assurance or promise made by the State he has acted to*

his prejudice and predicament, but the agreement is short of a contract within the meaning of article 299 of the Constitution.

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the pan of State; and

(iii) Where the contract entered into between the State, and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

171. In ***Bareilly Development Authority & Anr. Vs. Ajai Pal Singh & Ors.***[19], the Hon'ble Apex Court held as follows:-

"17. Only on the basis of the written acceptance, the name of the first respondent was included in the draw and he has successful in getting the allotment of House No. 37 in MIG type which fact if clearly borne out by the letter from the second respondent (Annexure 'F'). In this connection, it is worthwhile to note that the first respondent, Shri Ajay Pal Singh is the Principal of Shri Guru Govind Singh Inter College and his educational qualifications are M.A. (Econ. & Hist.), B.Sc., B.Ed., LL.B. From the above, it is clear that all the respondents who have sent their

[19] (1989) 2 SCC 116

applications for registration with initial payment only after having fully understood the terms and conditions of the brochure inclu- sive of the Clauses 12 and 13 and Notes 1 and 2 of the General Information Table as per which the BDA has reserved its right to change, enhance or amend any of the terms and/or conditions as and when felt necessary, and also the right to relax any of the conditions at its discretion, and that the cost shown in the column 4 of the brochure was only estimated cost subject to increase or decrease according to the rise or fail in the price at the time of completion of the property. This is not only the case of the applicants of MIG scheme but also of the other applicants falling under the other categories i.e. HIG, LIG and EWS. So it cannot be said that there was a mis-statemennt or incorrect statement or an fraudulent concealment in the information supplied in the brochure published by the BDA on the strength of which all the applicants falling under the various categories applied and got their names registered. In such a circum- stance the respondents cannot be heard to say that the BDA has arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents.

…

19. The respondents were under no obligation to seek allot- ment of houses/flats even after they had registered them- selves. Notwithstanding, they voluntarily registered them- selves as applicants, only after fully understanding the terms and

conditions of the brochure inclusive of Clauses 12 and 13 and Notes 1 and 2 of the General Information Table which we have reproduced above, they are now trying to obtain the houses/flats at the price indicated in the bro- chure at the initial stage conveniently ignoring the other express conditions by and under which the BDA has reserved its right to change the terms and conditions as and when felt necessary, evidently depending upon the escalation of the prices. One should not loose sight of the fact that the BDA did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly instalments. On the contrary, the option was left over only to the allottees. In fact, the respond- ents in Civil Appeal No. 2809 of 1986 except the four above mentioned have unconditionally accepted the changed terms and conditions.

20. Thus the factual position in this case clearly and unambiguously reveals that the respondents after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence the respondents can only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. In the case before us, the contract between the respondents and the BDA does not con- tain any statutory terms and/or conditions. When the factual position is so, the High Court placing

reliance on the decision in Ramana Dayaram Shetty case (AIR 1979 SC 1628) has erroneously held:-

> *"It has not been disputed that the contesting opposite party is included within the term 'other authority' mentioned under Article 12 of the Constitution. Therefore, the contesting opposite parties cannot be permitted to act arbitrarily with the principle which meets the test of reason and relevance. Where an author- ity appears acting unreasonably this Court is not powerless and a writ of mandamus can be issued for performing its duty free from arbitrariness or unreasonableness."*

21. This finding, in our view, is not correct in the light of the facts and circumstances of this case because in Ramana Dayaram Shetty case there was no concluded contract as in this case. Even conceding that the BDA has the trap- pings of a State or would be comprehended in 'other authori- ty' for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the 'authority' or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the

part of the authority (i.e. B.D.A. in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple Radhakrishna Agarwal & Ors. v. State of Bihar & Ors., [1977] 3 SCR 249; Premji Bhai Parmar & Ors. etc. v. Delhi Development Authority & Ors, [1980] 2 SCR 704 and D.F.O. v. Biswanath Tea Company Ltd., [1981] 3 SCR 662."

172. Referring to Clause 7 of the lease deed, the Learned Counsel submitted that the clause expressly prohibited alienation or dealing with the leased property without prior written approval of the lessor. Clause IV(1) simultaneously empowered the lessor to re-enter upon the property and determine the lease in the event of breach. NBSTC admittedly executed arrangements with the petitioner without obtaining the consent mandated by the lease. Such conduct furnished a complete contractual foundation for exercise of the lessor's rights.

173. The Learned Counsel further contended that the petitioner acquired no legal estate through the lease deed dated 22nd February 2002, the instrument remaining compulsorily registrable yet never registered. The subsequent deed executed on 23rd April 2010 represented an altogether fresh document incapable of retrospectively validating the earlier

instrument. Even otherwise, the Power of Attorney dated 21st August 2002 contained no clause authorising execution and registration of a fresh lease in substitution of the earlier document.

174. While substantially adopting the submissions advanced on behalf of NBSTC, the Learned Counsel laid additional emphasis upon two propositions, namely, the legal consequences flowing from a compulsorily registrable document remaining without registration under Sections 17 and 49 of the Registration Act, 1908, and the settled doctrine that powers conferred under a Power of Attorney require strict construction and cannot be enlarged by implication. Reliance was placed upon *Korukonda Chalapathia Rao v. Korukonda Annapurna Sampath Kumar, (2022) 15 SCC 475, SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd., (2011) 14 SCC 66, Church of Christ Charitable Trust v. Ponniamman Educational Trust, (2012) 8 SCC 706*, together with the decision of this Court in *Paul Rubber Industries Pvt. Ltd. v. Amit Chand Mitra, 2022 SCC OnLine Cal 2031* (paragraphs 18, 23, 25-33 and 41).

175. In the case of ***SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.***[20]**,** the Hon'ble Supreme Court made the following observation:

> ***"10.*** *Section 17(1)(d) of the Registration Act and Section 107 of the TP Act provides that leases of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Section 49 of the Registration Act, 1908, sets out the effect of non-registration of documents required to be registered. The said section is extracted below:*

[20](2011) 14 SCC 66

"49.Effect of non-registration of documents required to be registered.—No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882),] to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

11. *Section 49 makes it clear that a document which is compulsorily registerable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily registerable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to Section 49 of the Registration Act.*

12. *When a contract contains an arbitration agreement, it is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract. It is as if two contracts—one in regard to the substantive terms of the main contract and the other relating to resolution of disputes—had been rolled into one, for purposes of convenience. An arbitration clause is therefore an agreement independent of the other terms of the contract or the instrument. Resultantly, even if the contract or its performance is terminated or comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract.*

13. *Similarly, when an instrument or deed of transfer (or a document affecting immovable property) contains an arbitration agreement, it is a collateral term relating to resolution of disputes, unrelated to the transfer or transaction affecting the immovable property. It is as if two documents—one affecting the immovable property requiring registration and the other relating to resolution of disputes which is not compulsorily registerable—are rolled into a single instrument. Therefore, even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer.*

14*. These principles have now found statutory recognition in sub-section (1) of Section 16 of the Arbitration and Conciliation Act, 1996 which is extracted below:*

> *"16.Competence of Arbitral Tribunal to rule on its jurisdiction.—(1) The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose—*

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause."

15. *But where the contract or instrument is voidable at the option of a party (as for example under Section 19 of the Contract Act, 1872), the invalidity that attaches itself to the main agreement may also attach itself to the arbitration agreement, if the reasons which make the main agreement voidable, exist in relation to the making of the arbitration agreement also. For example, if a person is made to sign an agreement to sell his property under threat of physical harm or threat to life, and the said person repudiates the agreement on that ground, not only the agreement for sale, but any arbitration agreement therein will not be binding.*

16. *An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of the Registration Act read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registerable document can be acted upon and enforced for the purpose of dispute resolution by arbitration."*

176. In the case of ***Paul Rubber Industries (P) Ltd. v. Amit Chand Mitra***[21]**,** this Court had held the following:

"18. *Mr Mitra, the learned Senior Counsel submits that in absence of any registered agreement between the parties the terms of the said lease would not be looked into and the said unregistered lease should*

[21] 2022 SCC OnLine Cal 2031

be treated to be a lease month by month determinable with a notice of 15 days. Mr Mitra in this regard has relied upon the decision of the Supreme Court in Anthony v. K.C. Ittoop& Sons [Anthony v. K.C. Ittoop& Sons, (2000) 6 SCC 394] paras 11, 12 and 13 which reads: (SCC p. 399, paras 11, 12 and 13)

> *"11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay [Shantabai v. State of Bombay, 1958 SCC OnLine SC 20 : AIR 1958 SC 532] , Satish Chand Makhan v. Govardhan Das Byas [Satish Chand Makhan v. Govardhan Das Byas, (1984) 1 SCC 369] and Bajaj Auto Ltd. v. Behari Lal Kohli [Bajaj Auto Ltd. v. Behari Lal Kohli, (1989) 4 SCC 39] .*
>
> *12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second*

paragraph. Thus, dehors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus:

'All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.'

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed."

…

23. *First, we discuss the effect of an unregistered lease agreement.*

Section 105 of the Transfer of Property Act defines lease. Section 107 of the Transfer of Property Act (hereinafter referred as to the "said Act") provides the manner in which a lease of an immovable property is required to be made. The said section reads as follows:

"107. Leases how made.— A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any

class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

…

25. *The said section prescribes the procedure for making of a lease between the parties mentioned therein. It classifies the classes of lease in two categories. Mainly, (i) a lease of immovable property from year to year, or for a term exceeding a year, or lease reserving a yearly rent, to be made by a registered document; and (ii) all other leases other than the above, to be made by registered instrument, or the said lease to be made by an oral agreement accompanied by delivery of possession.*

26. *It thus makes clear that all the leases of immovable property not covered in the second category shall have to be necessarily made by a registered instrument only.*

27. *The effect of non-registration of a lease deed is inadmissible in evidence. Section 17(1)(d) of the Registration Act, 1908 provides that leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent have to be necessarily registered.*

28. *Section 49 of the same Act, inter alia, provides that no instrument which is compulsorily required to be registered shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. However, an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act to be registered, may be received as evidence of any collateral transaction not required to be effected by registered instrument.*

29. *The principle was reiterated by the Supreme Court in Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd. [Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd., (2020) 11 SCC 782] , where it observed as under: (SCC p. 786, para 11)*

"11. In terms of the provisions of Section 107, a lease of immovable property for a term exceeding one year can only be made by a registered instrument. Admittedly, in the present case, the indenture of lease has not been registered. In consequence, the contents of the indenture would be inadmissible in evidence for the purpose of determining the terms of the contract between the parties. This is the plain consequence of the provisions of Sections 17 and 49 of the Registration Act, 1908. The only purpose for which the lease can be looked at is for assessing the nature and character of the possession of the respondent."

30. *The unregistered lease of an immovable property is inadmissible but for collateral purpose. The essential terms of the lease cannot be treated as for collateral purpose. The recitals of an unregistered lease cannot be used for collateral purpose and at best can be used to explain the character of possession of a person holding the property on a month to month tenancy liable to be evicted after notice under Section 106 of the Transfer of Property Act.*

31. *The Full Bench of the Calcutta High Court in Ulfatunnissa v. Hosain Khan [Ulfatunnissa v. Hosain Khan, ILR (1883) 9 Cal 520] has held the words "no document required by Section 17 to be registered shall be received as evidence of any transaction affecting immovable property" to mean that no document required by Section 17 to be registered shall be received as evidence of any transaction so far as it affects immovable property.*

32. *An unregistered deed cannot be used to prove the term of a lease as held in Satish Chand Makhan v. Govardhan Das Byas [Satish Chand Makhan v. Govardhan Das Byas, (1984) 1 SCC 369] .*

…

33. *The period of tenancy is an essential requisite of a valid lease. Accordingly, an unregistered lease deed cannot be looked into for purposes of period of tenancy. In respect of the leases classified in first category under Section 106 of the Act it requires compulsory registration for making of a lease in law under Section 107 of the said*

Act and if not so registered, the said instrument cannot be used for the purpose of establishing that it created, declared, assigned, limited or extinguished any right to the property comprised in the said document, and the said document can only create a month to month tenancy or year to year depending upon the purpose for which it is made.

41. *The cumulative effect of Sections 106 and 107 of the Transfer of Property Act, Sections 17 and 19 of the Registration Act is that an unregistered lease deed cannot be looked into for the purpose of deciding the rights and liabilities of the lessors and lessees and for its duration. The very lease in the instant case must be treated as month to month tenancy terminable at 15 days notice expiring with the end of the month of the tenancy."*

177. The Learned Counsel concluded by submitting that the cumulative effect of the contractual stipulations, the admitted conduct of NBSTC, the absence of any written consent from the lessor, the want of contractual privity between the petitioner and KMDA, the ineffectual reliance upon the Cabinet Decision, the absence of any enforceable right arising from the communications exchanged between the petitioner and NBSTC, together with the legal consequences flowing from the absence of registration of the foundational lease and the limited authority contained in the Power of Attorney, leaves the petitioner without any legally cognisable claim against KMDA. Every facet of the petitioner's case, according to learned Counsel, rests upon transactions to which KMDA was never a consenting participant and were in direct conflict with the express conditions governing the principal lease executed on 22 November 1995.

178. It was, therefore, urged that the petitioner possesses no *locus standi* to maintain any of the three writ petitions against the erstwhile Kolkata

Improvement Trust, now Kolkata Metropolitan Development Authority. No enforceable legal or equitable relief can be claimed against KMDA in relation to the subject property, since no corresponding legal obligation is shown to exist. The proprietary rights of KMDA, being founded upon a subsisting lease governed by express contractual restrictions and fortified by settled principles regulating public law remedies, remain incapable of dilution through collateral arrangements entered into by NBSTC with third parties. Consequently, the writ petitions, insofar as they seek relief against Respondent Nos. 4 and 5, merit outright dismissal.

179. The Learned Advocate appearing for the State further commenced by submitting that the three writ petitions, having arisen from the same factual matrix and concerning the same parcel of land, were heard together for a comprehensive adjudication of the controversy. Particular emphasis was placed upon the third writ petition, wherein the petitioner assails the order dated 31st May 2017 issued by the Managing Director, NBSTC terminating the alleged contractual arrangement and revoking the Power of Attorney executed on 21st August 2002.

180. Tracing the legal character of the property, the Learned Counsel submitted that, after the commencement of the Constitution, the land vested in the State of West Bengal through the Calcutta Improvement Trust, now the Kolkata Metropolitan Development Authority, by operation of Article 294 of the Constitution of India. Consequently, the State continues to be the proprietor of the land and retains the exclusive authority to determine the manner in which such public property may be leased, transferred or otherwise dealt with. No person can claim an

interest in State property save in accordance with law and through a process sanctioned by the competent authority.

181. Attention was thereafter invited to the lease executed on 22nd November 1995, whereby the Calcutta Improvement Trust granted NBSTC a lease for ninety-nine years, operative from 12th October 1990, for the construction of a bus terminus, coupled with an option of renewal for a further period of ninety-nine years. The Learned Counsel pointed out that the grant itself had received the consent of the State Government. The lease, however, was hedged by express contractual restraints. Clause 7 expressly prohibited the lessee from assigning, mortgaging, transferring or otherwise alienating the demised land measuring 7,327.13 square metres at Ultadanga, Kolkata, thereby preserving the State's dominion over the property.

182. The Learned Counsel submitted that the Cabinet Resolution dated 28th February 2001 merely accorded approval to NBSTC for development of the land through the specified developer, M/s Samcon Developers (P) Ltd. (Compilation, page 16). Such administrative approval neither constituted a lease in favour of the petitioner nor conferred authority upon NBSTC to induct any other developer or create proprietary interests in favour of third parties. A mere agreement contemplating a future lease does not, in law, attain the character of a completed lease within the meaning of the Transfer of Property Act. The alleged arrangement between NBSTC and the petitioner, therefore, never acquired statutory recognition nor received the sanction of the State Government.

183. Proceeding to the question of maintainability, the Learned Counsel argued that the writ jurisdiction cannot be employed either to compel execution of a lease or to secure a decree in the nature of specific performance. The controversy projected by the petitioner is essentially contractual and revolves around alleged breaches of contractual obligations. Such disputes lie within the province of the competent civil forum and cannot be transformed into proceedings under Article 226 of the Constitution of India. Reliance was placed upon the decisions reported in (2020) 16 SCC 759 (paragraphs 28 and 30), (2000) 6 SCC 293 (paragraph 10) and (2023) 3 Indian Civil Cases (SC) 236 (paragraph 20), in support of the proposition that contractual controversies and claims seeking specific performance fall beyond the permissible ambit of writ jurisdiction.

184. In the case of ***Bharat Coking Coal Ltd. v. AMR Dev Prabha***[22], the Hon'ble Supreme Court made the following observation:

> ***"28.*** *The scope of judicial review in tenders has been explored in-depth in a catena of cases. It is settled that constitutional courts are concerned only with lawfulness of a decision, and not its soundness. [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106; Siemens Aktiengeselischaft& Siemens Ltd. v. DMRC, (2014) 11 SCC 288] Phrased differently, the courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. [Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617] However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction*

[22](2020) 16 SCC 759

and remedy such ills. This is especially true given our unique domestic circumstances, which have demonstrated the need for judicial intervention numerous times. Hence, it would only be the decision-making process which would be the subject of judicial enquiry, and not the end result (save as may be necessary to guide determination of the former).

…

30. *But merely because the accusations made are against the State or its instrumentalities does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the relief prayed for. Thus, although every wrong has a remedy, depending upon the nature of the wrong there would be different forums for redress."*

185. In the case of ***Kerala SEB v. Kurien E. Kalathil***[23], the Hon'ble Supreme Court made the following observation:

"10. *We find thatthere is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the*

[23](2000) 6 SCC 293

purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature."

186. In the case of ***Gwalior Development Authority v. Bhanu Pratap Singh***[24]**,** the Hon'ble Supreme Court made the following observation:

> ***"20.*** *The submission made by the respondent that the tender floated by the appellants on 13th March, 1997 was called upon to the bidders to submit their bid for 27887.50 sq. meters and which could not have been segregated, more so after the bid has been finalized @Rs.725/- per sq. meter and that alone has been taken care of by the High Court by directing to execute the lease deed for the remainder of the land, in our considered view, is bereft of merit for the reason that so far as the tender floated by the Authority on 13th March, 1997 is concerned, the transaction was concluded on execution of the lease deed executed without demur for 18262.89 sq. meters on 29th March, 2006 and after the transaction is concluded and the instrument being registered under the law, it was not open to either party to question at least in the writ jurisdiction of the High Court under Article 226 of the Constitution and the mandamus issued by the High Court to execute the lease deed for the remainder of the area without any consideration is completely contrary to the settled principles of law and deserves to be set aside."*

187. The Learned Counsel further submitted that the Power of Attorney dated 21st August 2002 did not derive recognition under either the Registration Act or the Transfer of Property Act so as to authorise M.A. Construction to create or register any lease in respect of State property. Equally, no approval had ever been granted by the State Government empowering M.A. Construction to execute any lease on behalf of the State or NBSTC.

[24] 2023 (3) Indian Civil Cases 236 (S.C.)

Consequently, every subsequent act resting upon such authority lacked legal efficacy.

188. Addressing the evidentiary worth of the documents relied upon by the petitioner, learned Counsel contended that the lease document remained compulsorily registrable. Read conjointly with Section 35 of the Indian Stamp Act, 1899 and Section 49 of the Registration Act, an instrument requiring registration but remaining unregistered cannot be received in evidence to establish rights affecting immovable property. Reliance was placed upon the decision of the Privy Council reported in AIR 1945 PC 196. It was submitted that the writ petition, resting substantially upon such document, therefore lacks a legal foundation. The Court, exercising writ jurisdiction, cannot convert itself into a civil forum for adjudication of disputed contractual claims or for enforcement of specific performance. Reference was also made to (2008) 8 SCC 564 (paragraphs 22, 23, 27, 34 and 36), reiterating the settled distinction between public law remedies and civil adjudication.

189. In the case of ***K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd.***[25], the Hon'ble Supreme Court made the following observation:

> ***"22.*** *In order to appreciate the submissions made by Mr Mukherjee, the learned counsel appearing on behalf of the appellant, it would be necessary for us to look into Section 107 of the Transfer of Property Act which would be, in our view, material for rendering proper decision in this appeal. Accordingly, Section 107 of the Transfer of Property Act may be quoted which runs as under:*

[25](2008) 8 SCC 564

"107. Lease how made.—A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

23. *Another section which would also be material for us to decide this appeal is Section 49 of the Registration Act which runs as under:*

"49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

.....

27. *Section 49 clearly provides that a document purporting to be a lease and required to be registered under Section 107 will not be admissible in evidence if the same is not registered. Proviso to this section, however, as noted hereinabove, provides that an unregistered lease deed may be looked into as evidence of collateral facts. Mr Mukherjee, learned counsel for the appellant argued before us that the tenancy in question was exclusively granted for the benefit of the named officer and his family and unless the landlord gave his consent, no other person could use it and such condition in the lease agreement is admissible for ascertaining the purpose of allotting the suit premises which according to the appellant is a collateral fact.*

…

34*. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a

transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

…

36. *Before we part with this judgment, let us deal with another ground, which the High Court had also taken into consideration. This is with regard to the violation of provisions of Section 108(o) of the Transfer of Property Act. Section 108(o) clearly provides that the lessee must not use or permit another to use the property for a purpose other than that for which it was let out or leased. Relying on this provision, the learned counsel for the appellant argued that since the purpose of the lease was for the use and occupation of one of the officers of the respondent, after the said officer had vacated the suit premises, the respondent, by refusing to hand over the possession of the suit premises to the appellant and by giving the same to another officer, had violated the provisions of Section 108(o) of the Transfer of Property Act."*

190. The Learned Counsel adopted, in its entirety, the submissions advanced on behalf of KMDA, particularly those concerning the legal effect of the lease conditions, the absence of authority in the Power of Attorney, the contractual restraints governing alienation of the demised property, and the legal consequences flowing from the absence of a validly registered instrument.

191. It was further urged that no writ of mandamus can issue directing sanction of the building plan unless the petitioner first establishes a subsisting legal right to hold the property either as owner, lessee or any

other person possessing a recognised proprietary interest. Since no such right ever vested in the petitioner, the ancillary prayer seeking sanction of the building plan necessarily falls.

192. The Learned Counsel concluded by submitting that the subject property constitutes valuable public property intended for the establishment and functioning of a public bus terminus. That public purpose cannot be permitted to suffer at the instance of private contractual claims which possess no statutory or proprietary foundation. The petitioner, having failed to establish any enforceable legal right against the State or any corresponding public duty resting upon the respondents, has failed to lay the jurisdictional foundation necessary for invocation of Article 226 of the Constitution of India. The writ petitions, therefore, deserve dismissal in their entirety.

193. The present batch of writ petitions presents a contest where public law and private commercial arrangements converge upon a parcel of public property, compelling the Court to determine the permissible limits of judicial review when governmental action intersects with contractual obligations. The controversy extends beyond the validity of isolated administrative orders. It traverses the legal incidents of a long-term lease executed by a statutory authority, the authority of a statutory corporation to commercially exploit leasehold property, the legal efficacy of an Agreement to Lease that remained without registration, the ambit of a registered Power of Attorney, the consequences flowing from a subsequent registered instrument executed nearly eight years thereafter, the supervisory authority of the State Government under the Road Transport

Corporations Act, 1950, and the extent to which constitutional remedies may be invoked for enforcement of rights asserted to arise from contractual arrangements.

194. The litigation also raises a larger constitutional question concerning the distinction between judicial review of executive action and judicial enforcement of contractual obligations. Although the petitioner invokes Articles 14, 19 and 300A of the Constitution, the respondents contend that the foundation of every relief claimed lies in the enforcement of private contractual rights and reciprocal obligations, matters ordinarily reserved for adjudication by the civil court or the arbitral forum contemplated by the parties.

195. The Court is, therefore, called upon to examine not merely the legality of the impugned governmental memoranda or the subsequent decision of the North Bengal State Transport Corporation ("NBSTC"), but the entire legal architecture upon which the petitioner's claim is constructed. Each document executed between the parties must receive careful scrutiny in the light of the governing statutory provisions and the authorities cited across the Bar.

196. Since all three writ petitions originate from the same transaction, concern the same parcel of land, involve substantially identical parties and raise interconnected questions of fact and law, they were heard analogously and are being disposed of by this common judgment.

197. The controversy has its inception in the lease created by the Kolkata Improvement Trust (KIT) in favour of the North Bengal State Transport Corporation (NBSTC) in respect of the premises in question. The deed of

lease was executed on 22 November 1995, with the tenure taking effect from 12 October 1990 and extending over 99 years, accompanied by an option for a further renewal of 99 years. The covenants embodied in the instrument acquire considerable relevance in appreciating the subsequent course of the transaction. Clause 7 regulates the creation of a sub-lease and requires the prior permission of KIT. Clause II(3) regulates any change in the user of the premises and requires the approval of the O.S.D. of KIT. The lease further incorporates a requirement of six months' notice to the O.S.D., KIT, in the circumstances contemplated by the covenant. The contractual scheme thus reserves to KIT a defined supervisory role in relation to both the creation of a subordinate leasehold interest and any alteration in the prescribed user of the property.

198. The lease in favour of NBSTC has its genesis in the proposal for establishment of a bus terminus upon the premises. The contemplated public utility project did not attain fruition in the manner originally envisaged. In 1996, NBSTC consequently embarked upon a course for commercial development of the leasehold property and floated a tender inviting participation for such purpose. The exercise proceeded under the supervision of a committee headed by the Joint Secretary, Transport Department, while the proposed commercial utilisation remained subject to the approval of KIT. The shift in the intended user of the property therefore brought into play, from the outset, the contractual stipulations governing change of user and the requirement of KIT's approval.

199. The first tender culminated on 16 February 2001, when Samcon Developers (P) Limited (Samcon) was declared the highest bidder. The

proposal, however, required the imprimatur of the Cabinet of Ministers of the State Government. A Cabinet note/memorandum was accordingly prepared and forwarded by the Principal Secretary, Transport Department, for consideration and approval. The proposal contemplated a fee of Rs.2 crores for commercial exploitation, whereas Samcon's offer aggregated to Rs.24.55 crores. The valuation material available on record reflected an assessment of Rs.21 crores by the Inspector General of Registration and Rs.20 crores by the Calcutta High Court Valuers. The Cabinet memorandum dated 16 February 2001 received the approval of the Cabinet on 28 February 2001. The Samcon proposal, however, did not mature into commercial development of the premises, and the Transport Department, by its communication dated 5 October 2001, intimated NBSTC that the property could be subjected to a fresh tender exercise.

200. At its 176th meeting held on 12 October 2001, the Board of NBSTC resolved that a fresh tender be invited for the commercial development and exploitation of the premises**.** Pursuant to the said resolution, NBSTC floated another tender on 9/10 December 2001. The stipulated period for submission of bids expired without a single offer being received. The period was consequently enlarged up to 21 January 2002, and the extension was publicised through newspapers. On 21 January 2002**,** M.A. Construction and Trading Company Private Limited (MA Construction) emerged as the successful bidder. The action taken pursuant to the tender was placed before NBSTC and received the consideration of its Board at the 177th meeting held at Siliguri on 8

February 2002, when the bid of MA Construction was accepted. The acceptance was formally communicated on 12 February 2002.

201. The acceptance of the bid occasioned the next stage in the contractual evolution. On 22 February 2002, NBSTC executed an unregistered deed of lease in favour of MA Construction. Possession of the premises was delivered on 17th April 2002, and a possession certificate was issued in that connection. MA Construction thus entered into physical possession pursuant to the contractual arrangement with NBSTC, although the deed had not, at that stage, acquired the incidents attaching to a registered instrument.

202. The question of KIT's sanction for the proposed commercial utilisation remained a live component of the transaction. On 17 July 2002, the Joint Secretary, Transport Department, advised NBSTC to arrange Rs.2 crores for payment to KIT towards obtaining its permission for commercial utilisation of the leasehold premises. The contemporaneous correspondence recorded KIT's agreement to permit such commercial exploitation upon payment of the said amount. The communication assumes added relevance when read with Clause 7 and Clause II(3) of the original lease, since the contemplated arrangement involved both the creation of a subordinate leasehold interest and a departure from the user for which the original lease had been constituted.

203. On 21 August 2002, NBSTC executed a registered Power of Attorney in favour of MA Construction, empowering it to act on behalf of NBSTC in matters pertaining to the leasehold premises. A supplementary agreement followed on 31st October 2003. These successive instruments

enlarged the documentary corpus governing the relationship between NBSTC and MA Construction and supplied additional terms to the contractual framework within which the proposed development was to proceed.

204. The issue of KIT's approval and the monetary consideration associated with such approval surfaced again on 8 September 2004, when NBSTC furnished an undertaking to KIT to pay Rs.2 crores upon sanction of the building plan. KIT, by its communication dated 18 November 2004, in reply to the letter dated 8 October 2004 addressed to the Joint Secretary, Transport Department, stated that it would issue an NOC to NBSTC for commercial utilisation of the premises so as to facilitate sanction of the building by the Kolkata Municipal Corporation, subject to NBSTC depositing Rs.2 crores with KIT within sixty days from the date of issuance of the NOC or approval of the building plan by KIT. KIT subsequently informed NBSTC on 31 December 2004 that the building plans for the proposed construction at the premises had been approved by it.

205. The intervening years also disclose continued fiscal and contractual dealings in relation to the premises. On 14 November 2007, the ground rent paid by MA Construction to KIT on behalf of NBSTC was forwarded to KIT by NBSTC. The sum of Rs.1,31,890/- was received by KIT and the corresponding demand draft was encashed.

206. A further impediment emerged on 4 January 2008, when MA Construction drew the attention of NBSTC to the difficulty in proceeding with the project arising from the absence of registration of the deed

executed in its favour and sought steps for registration. NBSTC, by its letter dated 1 February 2008, called upon MA Construction to arrange approximately Rs.9–10 crores for facilitating registration of the lease agreement. MA Construction made a substantial monetary outlay pursuant thereto, paying Rs.6 crores on 27 March 2008 through several cheques and a further Rs.3 crores 5 lakhs on 16 June 2008, again through several cheques.

207. The municipal component of the proposed development acquired its own financial dimension. On 24 November 2008, KMC issued a demand notice to MA Construction specifying the aggregate fees and other charges payable towards sanction of the building plan at Rs.7,45,94,573/-, as against the earlier figure of Rs.7,77,26,221/-.

208. On 21 December 2009, MA Construction sought permission from NBSTC to remit Rs.2 crores directly to KIT towards obtaining the requisite NOC, besides discharging the outstanding municipal taxes payable to the Kolkata Municipal Corporation (KMC). NBSTC, by its communication dated 24 December 2009, conveyed its consent to MA Construction making the payments directly to KIT and KMC.

209. The contractual relationship thereafter acquired a further degree of legal formality. On 19 January 2010, NBSTC permitted MA Construction to register the lease deed dated 22 February 2002. On 23 April 2010, a registered deed of lease was executed between NBSTC and MA Construction. The earlier contractual arrangement thus came to be embodied in a registered instrument, an aspect which assumes

considerable relevance in the later contest concerning the rights claimed by MA Construction and the subsequent decision of NBSTC.

210. The endeavour to translate the contractual arrangement into an operational development continued. On 20 May 2010, MA Construction requested NBSTC to make the payments due to KIT and KMC so that the building plan could receive expeditious sanction. NBSTC replied on 4 June 2010 that the matters raised were under examination and that action would follow in due course. MA Construction renewed the request on 18 June 2010 and again on 15 July 2010, seeking appropriate intervention for progression of the project.

211. A supervening alteration in the administrative posture became apparent on 13 August 2010, when the Special Secretary, Transport Department, requested KIT not to issue an NOC for commercial utilisation of the leased premises. The substance of the direction was communicated by the Special Secretary to the Municipal Commissioner, KMC**,** on 20 August 2010. This development acquired a pronounced legal significance when juxtaposed with the earlier correspondence in which KIT had contemplated commercial utilisation upon payment of Rs.2 crores, its communication regarding approval of the building plans in December 2004, and the subsequent execution of the registered lease deed dated 23 April 2010.

212. The monetary proposal to KIT nevertheless remained in circulation. On 4 October 2010, MA Construction forwarded to KIT a pay order for Rs.2 crores, drawn on behalf of and for the account of NBSTC. KIT returned

the amount on 5 October 2010, taking the position that it was not a party to any agreement between NBSTC and MA Construction.

213. The municipal liabilities were being attended to in parallel. On 12 November 2010, MA Construction informed NBSTC that it had deposited Rs.1,62,96,226/- with KMC towards arrears of municipal taxes relating to the premises. The Rs.2-crore instrument returned by KIT was forwarded to NBSTC for necessary action, while MA Construction further offered to pay the balance amount of Rs.8 crores.

214. The building-plan application had, in the meantime, been submitted by MA Construction to KMC on 6 November 2010. The dispute consequently assumed a constitutional dimension. In December 2010, MA Construction instituted W.P. No.24929(W) of 2010 before the High Court at Calcutta, seeking, inter alia, a direction upon NBSTC to take steps in terms of the registered lease deed dated 23 April 2010, thereby facilitating commercial exploitation of the premises and procurement of the requisite NOC from KIT. KIT was impleaded as a party to the proceeding.

215. On 21 December 2010, the writ petition was heard by the Hon'ble Court. Upon consideration of the submissions advanced on behalf of the parties, NBSTC was directed to forward the Rs.2-crore pay order to KIT, and directions were issued concerning the filing of affidavits. The writ petition was subsequently withdrawn.

216. The administrative resistance to the proposed construction nevertheless persisted. On 31 December 2010, NBSTC, referring to the earlier communications issued by the Transport Department, requested KMC not to sanction any building plan in respect of the leased premises.

217. The judicial direction dated 21 December 2010 precipitated another attempt to place the Rs.2-crore payment before KIT. On 6 April 2011, NBSTC forwarded a pay order for Rs.2 crores to the O.S.D., KIT. The instrument subsequently lapsed. NBSTC communicated that circumstance to MA Construction on 7 May 2011 and sought its revalidation. MA Construction, on 17 May 2011, requested delivery of the original pay order for that purpose. On the same date, the Managing Director of NBSTC instructed the Officer-in-Charge, Chandni Chowk Office, NBSTC, to hand over the original instrument to MA Construction. The instrument was forwarded on 18 May 2011.

218. On 19 May 2011, MA Construction forwarded to NBSTC the revalidated pay orders aggregating to Rs.2 crores, expressly referring to the order dated 21 December 2010. NBSTC once again forwarded the instrument to KIT on 20 May 2011.

219. KIT, by its communication dated 1st June 2011, returned the pay order to NBSTC. KIT referred to the specific instruction issued by the Special Secretary, Transport Department, on 13th August 2010, and stated that no NOC could be issued. KIT also recorded its receipt of the order dated 21 December 2010 passed by the High Court. It further conveyed that, even if the Transport Department were to reconsider its position in favour of NBSTC at a later stage, KIT could not issue the NOC unless an additional amount corresponding to the prevailing market valuation of the land was paid.

220. The dispute thereafter crystallised through successive writ proceedings. On 8 September 2011, MA Construction instituted W.P. No.15313 of

2011, seeking various reliefs concerning the leasehold premises, the contractual arrangement and the proposed development. On 23 September 2011, NBSTC informed MA Construction that KIT had returned the Rs.2-crore pay order dated 19 May 2011.

221. The municipal proceeding reached its own decisive stage on 24 September 2011, when KMC informed MA Construction that its application for sanction of the building plan dated 6 November 2010 had been refused under Rule 16(1), read with Rule 13(1)(b), of the KMC Building Rules, 2009.

222. On 10 October 2011, MA Construction instituted W.P. No.17380 of 2011, raising further reliefs concerning the premises and the proposed development. The litigation subsequently generated an interlocutory proceeding, CAN No.9899 of 2011, filed on 1st November 2011 in W.P. No.15313 of 2011. An order dated 13 February 2013 directed the parties to exchange affidavits.

223. The interlocutory matter was taken up on 15 October 2015. No interim order was passed; time for exchange of affidavits in both writ petitions was extended and the matters were directed to appear on 2 December 2015 as specially fixed matters. On 15 December 2015, the writ petitions appeared pursuant to the earlier direction, when further time was granted for exchange of affidavits and the matters were directed to appear on 15 January 2016 as specially fixed matters.

224. By this stage, a fresh institutional decision had intervened. In its affidavit-in-opposition filed on 8 January 2016 in W.P. No.15313 of 2011, NBSTC disclosed that its Board, at its meeting held on 30 November 2015, had

resolved to terminate the sub-lease with MA Construction and refund the money.

225. The proposed implementation of that resolution immediately occasioned another interlocutory challenge. On 18 January 2016, MA Construction filed CAN No.489 of 2016 in W.P. No.15313 of 2011, seeking an injunction restraining NBSTC, its men and agents from interfering with its khas, peaceful and vacant possession of the premises, and further seeking restraint against NBSTC from giving effect to the decision attributed to its Board at the meeting of 30 November 2015.

226. The application was taken up on the same day. The Court posted the matter for further hearing on 21 January 2016 and recorded that, until 22 January 2016, no effect should be given to the decision of NBSTC. On 21 January 2016, the matter was again considered. Apart from directions relating to exchange of affidavits, the Court directed that, if NBSTC decided in the meantime to resume possession of the premises, such resumption should take place only after giving at least three weeks' advance notice to MA Construction.

227. The interlocutory application was withdrawn on 29 March 2016. The Court directed that W.P. No.15313 of 2011 and W.P. No.17380 of 2011 be included in the monthly list for April 2016 and clarified that withdrawal of the application would not foreclose a fresh proceeding founded upon a subsequent cause of action.

228. The Board decision dated 30 November 2015 was formally communicated to MA Construction by NBSTC on 31 May 2017. The communication referred, inter alia, to the decision concerning termination of the

agreement and the Power of Attorney, together with the other decisions taken at the Board meeting of 30 November 2015.

229. The third writ proceeding followed in July 2017, when MA Construction instituted W.P. No.18409 of 2017, raising its grievances arising from the termination and the consequential acts of NBSTC.

230. The three writ petitions thereafter remained connected by their common factual matrix and the successive administrative and contractual developments concerning the same leasehold premises. On 22 March 2021, all three writ petitions appeared before the Hon'ble Justice Amrita Sinha. Directions were issued for completion of pleadings in W.P. No.18409 of 2017, and the matters were directed to appear thereafter.

231. The chronology, read as an integrated whole, reveals a transaction whose juridical complexion underwent successive transformations. It commenced with a 99-year lease from KIT to NBSTC for establishment of a bus terminus, subject to express covenants concerning sub-lease, alteration of user, prior permission of KIT and notice to its O.S.D. It proceeded through the first tender culminating in the selection of Samcon, the collapse of that proposal, the second tender resulting in the selection of MA Construction, acceptance of its bid by the NBSTC Board, delivery of possession, execution of the deed dated 22 February 2002, creation of the registered Power of Attorney, execution of the supplementary agreement, repeated dealings with KIT concerning commercial utilisation, and ultimately execution of the registered lease deed dated 23 April 2010.

232. The monetary trail running through the chronology is equally material: Rs.2 crores contemplated as the fee for commercial exploitation; Samcon's offer of Rs.24.55 crores; property valuations of Rs.21 crores and Rs.20 crores; payments of Rs.6 crores and Rs.3 crores 5 lakhs by MA Construction to NBSTC; the KMC demand of Rs.7,45,94,573/-; payment of Rs.1,62,96,226/- towards municipal arrears; repeated tendering and revalidation of the Rs.2-crore pay order; and KIT's subsequent insistence upon an additional payment referable to the prevailing market valuation of the land.

233. Against this background, the later administrative developments acquire a character which cannot be appreciated by severing them from the preceding course of dealings. KIT had earlier contemplated commercial utilisation upon payment of Rs.2 crores; it had communicated approval of the building plans in December 2004; the parties had thereafter proceeded through further contractual documentation culminating in the registered lease deed dated 23 April 2010. The communication dated 13 August 2010 from the Special Secretary, Transport Department, directing KIT not to issue the NOC**,** followed by the communication to KMC dated 20 August 2010, introduced a supervening administrative impediment. The subsequent return of the Rs.2-crore pay order, the refusal of the building-plan application under the KMC Building Rules, 2009, the direction of NBSTC to KMC not to sanction the building plan, and the eventual decision of the NBSTC Board dated 30 November 2015 to terminate the sub-lease and refund the money represent successive manifestations of that altered administrative posture.

234. The litigation that followed consequently constitutes not a series of disconnected proceedings but successive juridical responses to successive developments within the same transaction**:** the writ petition of December 2010, the order dated 21 December 2010, the repeated tendering of the Rs.2-crore payment, its ultimate return by KIT, the institution of W.P. No.15313 of 2011 and W.P. No.17380 of 2011, the interlocutory proceedings culminating in the directions of January 2016, the formal communication of termination on 31 May 2017, and the institution of W.P. No.18409 of 2017.

235. It is against this extended factual and contractual continuum that the competing claims require examination. The original lease covenants, the subsequent tender decisions, the successive instruments executed between NBSTC and MA Construction, the correspondence emanating from KIT and the Transport Department, the building-plan proceedings before KMC, the monetary commitments undertaken at different stages, and the eventual resolution of the NBSTC Board are facets of one evolving transaction. Their legal effect, therefore, cannot be satisfactorily ascertained by isolating any individual letter, resolution or instrument from the circumstances in which it came to be issued or executed.

236. The controversy presented before this Court traverses several branches of law. The rival submissions require examination of constitutional principles regulating exercise of public power, statutory provisions governing State Corporations, the law relating to leases of immovable property, compulsory registration of documents and the incidents of delegated authority. Before embarking upon determination of the issues

framed for adjudication, it becomes necessary to notice the statutory framework within which the competing rights of the parties require examination.

237. The writ petitions invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, alleging infringement of Articles 14, 19 and 300A of the Constitution of India.

238. Article 226 confers upon every High Court a constitutional jurisdiction of wide amplitude to issue appropriate writs for enforcement of fundamental rights as well as "for any other purpose". The width of the jurisdiction, however, does not imply that every dispute involving a State instrumentality necessarily attracts constitutional review. Judicial review under Article 226 of the Constitution of India is principally directed towards examining the legality of decision-making, observance of constitutional discipline, adherence to statutory obligations and prevention of arbitrary exercise of public power.

239. Where the dispute substantially concerns reciprocal contractual obligations, adjudication of disputed questions of title, interpretation of contractual instruments, reconciliation of accounts or grant of relief substantially resembling specific performance, the writ court ordinarily exercises restraint unless the impugned action independently discloses a constitutional infirmity.

240. Article 14 of the Constitution of India embodies the constitutional guarantee against arbitrary State action. Fairness, reasonableness and transparency remain indispensable incidents of every executive decision affecting civil rights. At the same time, Article 14 of the Constitution of

India does not obliterate the distinction between public law remedies and private law disputes. Every contractual disagreement with the State does not, merely because one of the contracting parties answers the description of "State" under Article 12 of the Constitution of India, mature into a constitutional cause.

241. Article 19 of the Constitution of India, relied upon by the petitioner, protects certain freedoms including the freedom to practise any profession or to carry on trade or business. Such protection necessarily presupposes the existence of a lawful right capable of exercise within the framework of law. It does not enlarge contractual rights nor dispense with statutory requirements governing transfer of immovable property.

242. Article 300A of the Constitution of India protects property from deprivation save by authority of law. The protection extends only to rights recognised by law. Whether the petitioner acquired such legally enforceable interest constitutes one of the principal questions arising in the present proceedings.

243. Article 294 of the Constitution of India also bears significance. Property which vested in the State upon commencement of the Constitution continues to remain public property subject to statutory regulation. Dealings with such property necessarily attract a higher degree of public accountability than transactions between purely private parties.

244. The petitioner places considerable reliance upon Sections 19 and 34 of the Road Transport Corporations Act, 1950, whereas the respondents invoke those very provisions in support of an opposite conclusion.

245. Section 19 of the Said Act enumerates the powers exercisable by a Road Transport Corporation. Clause (b) authorises the Corporation to acquire, hold and dispose of property necessary for the purposes of the said Act. The provision, however, cannot be read in isolation.

246. The authority to deal with property remains subject to the statute creating the Corporation, the contractual obligations voluntarily assumed by it and every statutory restriction governing the property itself.

247. Section 19 of the Said Act does not confer an unrestricted power to alienate public property irrespective of contractual limitations. Nor does it authorise the Corporation to create interests contrary to the covenants governing the principal lease under which it itself claims possession. Section 34 of the said Act assumes equal significance. The provision preserves governmental control by authorising the State Government to issue directions involving policy.

248. The petitioner's submission proceeds upon the premise that governmental approval had already been granted through the Cabinet Decision dated 28 February 2001, thereby exhausting the authority contemplated under Section 34 of the said Act.

249. The respondents, on the other hand, contended the supervisory authority preserved by Section 34 of the said Act continued throughout and authorised issuance of the communications dated 13 August 2010 and 20 August 2010.

250. Prior to assess the petitioner’s grievance through the writ petitions, the documents on record, the submission of the Learned Advocates representing the respective parties, this Court on its own accord has felt it

prudent to replicate the following decisions which have meticulously dealt with the scope extent and functions of a Writ Court to deal with cases where State has been a party in contractual transactions, presence of arbitration clause in a contract with the State whereby recourse to it shall be mandatory, the applicability of alternative remedy, the public law element involved, the arbitrariness and violation of principles of natural justice which immediately require the intervention of a Court to exercise its jurisdiction under Article 226 of the Constitution of India.

251. The Supreme Court in the case of ***Subodh Kumar Singh Rathour Vs The Chief Executive Officer***[26], held the following:-

> *"37. Similar view as above, was reiterated by this Court in Premji Bhai Parmar& Ors. v. Delhi Development & Ors. reported in (1980) 2 SCC 129 at para 8 and in Divisional Forest Officer v. Bishwanath Tea Co. Ltd. reported in (1981) 3 SCC 238 wherein it was held that any right to relief flowing from a breach of contract cannot be entertained under the extraordinary writ jurisdiction of the court, even if the action of the State or its instrumentality was unauthorized in law. The relevant observations read as under: -*
>
> > *"9. Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the civil court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a civil court where a suit for specific performance of contract or for damages could be filed. This is so well- settled that no authority is needed.*
>
> *38. We do not propose to dwell any further, on the position of law that existed earlier, and leave it at rest with one last reference to the decision of this Court in Bareilly Development Authority & Anr. v. Ajai*

[26] 2024 INSC 486

Pal Singh & Ors. reported in (1989) 2 SCC 116, wherein this Court once again reiterated that no writ can be issued in contractual disputes between the State and an aggrieved party where the rights or claims arise or stem only from the terms of the contract. The relevant observations read as under: -

> *"22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple [...]"*

39. Thus, for a period of time the courts recognized that there was a clear brightline distinction between when a State or its instrumentalities could be said to be acting in its executive capacity and when it could be said to be acting in its private capacity, with the existence of a 'contractual relation' inter-se the parties being the determinative factor. Wherever, there was a contract, the State's relations and all its actions were said to be within the field of a contract i.e., within the realm of private law, and the courts would resile from interfering with the same under their writ jurisdiction or embarking upon a judicial review of such actions.

40. Such reluctance on the part of the courts stemmed from its understanding that State or any of its instrumentalities must have the flexibility or the discretion to take decisions that are in the best interest of the public and efficient governance. Government being the decision-maker of the State is said to be the best judge of when a contract or an agreement is in its interest and by its extension in the interest of the public, and as such the courts should not interfere in the State's discretion to award or terminate contracts. One another reason why contractual disputes were precluded from being espoused under the writ jurisdiction of the courts was due to the summary nature of such proceedings, which do not allow for an exhaustive review unlike civil suits.

41. This simplistic approach of the courts in deeming every act and action of the State which was complained of as nothing more than a 'contractual dispute' or a case of 'breach of contract' often led to the State abusing its position and acting unfairly under the misconceived notion, that all its actions such as award of contracts or tenders were nothing but a 'largess' – a generosity bestowed upon its citizens, which it can at its own whims choose to deny, alter, modify, or take

away without any consequences. This often led to a conflation of power with duty, and resulted in every arbitrary exercise of power by the State under the guise of a 'contractual dispute' to remain unchecked and undisputable before the courts and out of the reach of judicial review, undermining the rights of the citizen to have their interests safeguarded and protected.

45. In Mahabir Auto Stores & Ors. v. Indian Oil Corporation reported in (1990) 3 SCC 752, this Court expressed doubts over the correctness of the earlier position of law, that actions of the State in the private contractual field cannot be questioned in writ jurisdiction. This Court further held that even if the inter- se relation of parties with the State is governed purely by a contract, the method, motive and decision of the State would be subject to judicial review on the grounds of relevance and reasonableness, fair play, natural justice, equality and non-discrimination.

48. In another decision of this Court in ShrilekhaVidyarthi (Kumari) v. State of U.P. reported in (1991) 1 SCC 212 it was held that every action of the State that has some degree of impact on the public interest, can be challenged under writ jurisdiction to the extent that they are arbitrary, unfair or unreasonable, irrespective of the fact that the dispute falls within the domain of contractual obligations. It was further held, that it is the nature of a government body's personality which characterizes the action as having a public law element, and not the field of law where such action is taken. The relevant observation reads as under: -

> *"22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act*

> *is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.*

49. In Verigamto Naveen v. Govt. of A.P. & Ors. reported in (2001) 8 SCC 344 this Court held that where a breach of contract involves the decision-making authority exceeding its power or violating the principles of nature justice or its decision being borne out of perversity, then such cancellation of contract can certainly be scrutinized under the writ jurisdiction. This is because such an exercise of power by the authority is apart from the contract.

50. Similarly in Binny Ltd. & Anr. v. Sadasivan& Ors. reported in (2005) 6 SCC 657 this Court in view of the increasing trend of the State and its instrumentalities to use contracts as a means for dispensing their regulatory functions, held that whenever a contract is used for a public purpose, it will be amenable to judicial review. The relevant observations are made as under: -

> *"30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless, it may be noticed that the Government or government authorities at all levels are increasingly employing contractual techniques to achieve their regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably."*

51. The decision of this Court in ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. reported in (2004) 3 SCC 553 is significant and was the turning point in the scope of judicial review in contractual matters. In this landmark ruling, this Court decisively laid down and approved that a relief against a State or its

instrumentalities in matters related to contractual obligations can be sought under the writ jurisdiction.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

56. What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its instrumentalities. In view of the law laid down by this Court in ABL (supra), Joshi Technologies (supra) and in M.P. Power (supra), it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its Writ jurisdiction. Where State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the Social Service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations.

127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in Sivanandan C.T. v. High Court of Kerala reported in (2024) 3 SCC 799 wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances.

252. The Supreme Court in the case of ***The Silppi Constructions Contractors Vs Union Of India***[27] held the following:-

> *"6. Aggrieved, the original writ petitioner is before us in these petitions. This Court in a catena of judgments has laid down the principles with regard to judicial review in contractual matters. It is settled law that the writ courts should not easily interfere in commercial activities just because public sector undertakings or government agencies are involved.*
>
> *7. In Tata Cellular vs. Union of India1, it was held that judicial review of government contracts was permissible in order to prevent arbitrariness or favouritism.*
>
> *9. In Air India Limited vs. Cochin International Airport Ltd.3, this Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that Courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only in furtherance of public interest and not merely on making out a legal point.*
>
> *11. In Master Marine Services (P) Ltd. vs. Metcalfe & Hodgkinson (P) Ltd.5 it was held that while exercising power of judicial review in respect of contracts, the Court should concern itself primarily with the question, whether there has been any infirmity in the decision making process. By way of judicial review, Court cannot examine details of terms of contract which have been entered into by public bodies or State.*
>
> *12. In B.S.N. Joshi & Sons Ltd. vs. Nair Coal Services Ltd.6 it was held that it is not always necessary that a contract be awarded to the lowest tenderer and it must be kept in mind that the employer is the best judge therefor; the same ordinarily being within its domain. Therefore, the court's interference in such 4 (2005) 4 SCC 456 5 (2005) 6 SCC 138 6 (2006) 11 SCC 548 matters should be minimal. The High Court's jurisdiction in such matters being limited, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.*
>
> *13. In Jagdish Mandal vs. State of Orissa7 it was held:*

[27] AIRONLINE 2019 SC 2430

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold……."

14. In Michigan Rubber (India) Ltd. vs. State of Karnataka & Ors.8 it was held that if State or its instrumentalities acted reasonably, fairly and in public interest in awarding contract, 7 (2007) 14 SCC 517 8 (2012) 8 SCC 216 interference by Court would be very restrictive since no person could claim fundamental right to carry on business with the Government. Therefore, the Courts would not normally interfere in policy decisions and in matters challenging award of contract by State or public authorities.

19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of 12 2019 (6) SCALE 70 restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which

are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

253. The Hon'ble Supreme Court of India in the case of ***Indian Medicines Pharmaceuticals Corpn. Ltd. V. Kerala Ayurvedic Coop. Society Ltd.***[28] held the following:-

"7. …PART C 3.1 State Largesse: conflation of power and duty 11 The welfare State plays a crucial role in aiding the realisation of the socio-economic rights which are recognised by the Constitution. Social welfare benefits provided by the State under the rubric of its

[28] 2023 SCC OnLine SC 5

constitutional obligations are commonly understood in the language of 'largesse', a term used to describe a generous donation. Terming all actions of government, ranging from social security benefits, jobs, occupational licenses, contracts and use of public resources – as government largesse results in doctrinal misconceptions. The reason is that this conflates the State's power with duty. The Constitution recognises the pursuit of the well-being of citizens as a desirable goal. In doing this the Constitution entrusts the State with a duty to ensure the well-being of citizens. Government actions aimed at ensuring the well-being of citizens cannot be perceived through the lens of a 'largess'. The use of such terminology belittles the sanctity of the social contract that the 'people of India' entered into with the State to protect and safeguard their interests. 3.2 Judicial review of government contracts: extent and ambit 12 Paragraph 4(vi)(b) prescribes entities from which Ayurvedic medicines may be procured. The paragraph does not prescribe the method through which they may be procured. The appellant contends that the since the method of procurement is not prescribed, it has the discretion to purchase drugs through 'nomination'. On the other hand, the respondent contends that merely because the Operational Guidelines do not prescribe the method of procurement, unbridled discretion cannot be given to the executive to procure drugs through 'nomination'. 13 In the early 1950s', judicial review of the process of concluding contracts by government was limited. The courts allowed the State due deference on the ground PART C of governmental policy. In C.K Achuthan v. State of Kerala 5, a Constitution Bench of this Court held that it is open to the Government 'to choose a person to their liking, to fulfil contracts which they wish to be performed.' The Court observed that when one party is chosen over another, the aggrieved party cannot claim the protection of Article 14 since the government has the discretion to choose with whom it will contract.

15. In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries8, this Court held that 'in the contractual sphere […] the State and all its instrumentalities have to conform to Article 14 of the Constitution.' The respondent filed a writ petition before the High Court challenging the appellant's refusal to accept the highest tender submitted by it for a stock of damaged rice. This Court held:

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to

use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'.

254. The Hon'ble Supreme Court of India in the case of ***Mahabir Auto Stores V. Indian Oil Corporation***[29] held the following:-

"The High Court after exhaustively dealing with the rival contentions came to the conclusion that viewed from diverse angles, the appellants had sought the specific performance of certain alleged contract. It was also held that the said alleged contract was neither precise, nor definite nor certain nor was capable of being made certain. It was not certain, in this case, as to how much goods were required and for how long were these required and at what consideration; these were all uncertain and vague, it was submitted. It was held by the High Court that for a Writ of mandamus the appellants should have a legal right to enforce the performance of alleged duty by the respondent and since no right was shown to exist by the appellants for selling the continuous supply of the lubricants whatsoever indefinitely for future and no corresponding legal duty was imposed on the respondent to supply, the Writ of mandamus was not maintainable. In those circumstances the Writ Application was dismissed as not maintainable.

It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in M/s Radha Krishna Agarwal & Ors. v. State of Bihar & Ors., [1977] 3 SCC 457.1t appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual par- ties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s Radha Krishna Agarwal v. State of Bihar, (supra) at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its

[29] 1990 AIR 1031

manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether heating is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State of Tamil Nadu & Anr., [1974] 4 SCC 3; Maneka Gandhi v. Union of India & Anr., [1976] 1 SCC 248; Ajay Hasia& Ors. v. Khalid MujibSehravardi& Ors., [1981] 1 SCC 722; R.D. Shetry v. International Airport Authority of India & Ors., [1979] 3 SCC 1 and also DwarkadasMarlaria and sons v. Board of Trustees of the Port of Bombay, [1989] 3 SCC 293. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

255. The Hon'ble Supreme Court of India in the case of ***Harbanslal Sahnia And Anr. Vs Indian Oil Corpn. Ltd. And Ors.***[30] held the following:-

[30]AIR2003SC2120

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

256. The Hon'ble Supreme Court of India in the case of ***Rajia Begum Vs Barnali Mukherjee***[31] held the following:-

"12. The legal position with regard to the impact of fraud on arbitrability of a dispute under the Act is well delineated by decisions of this Court. A two-Judge Bench of this Court3 held that mere allegation of fraud simpliciter may not be a ground to nullify the arbitration agreement between the parties, but where the court finds that there are serious allegations of fraud which make a case of criminal offence or where the allegations of fraud are so complicated, which need to be decided on the basis of voluminous evidence, the court can sidetrack the arbitration agreement and proceed with the suit. It has further been held A. AYYASAMY v. A. PARAMASIVAM AND OTHERS, (supra) that the court can proceed with the suit in cases where the fraud is alleged against the arbitration provision itself or is of a such a nature which permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself which contains an arbitration clause or the validity of the arbitration clause itself.

[31] 2026 INSC 106

13. The aforesaid principle was referred to with approval, by another two-Judge Bench of this Court4 and two working tests were laid down for determining serious allegations of fraud, which would render the subject matter of an agreement non-arbitrable namely, (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud, touch upon the internal affairs of the parties, inter se having no implication in the public domain. It was further held that the first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at AVITEL POST STUDIOZ LIMITED AND OTHERS v. HSBC PI HOLDINGS (MAURITIUS) LTD. (supra) all. Thus, in a case where plea is taken with regard to non-existence of an arbitration clause or agreement, the same would amount to serious allegation of fraud and would render the subject matter of an agreement non-arbitrable.

14. … 21. … "Serious allegations of fraud" is to be understood in the context of facts. In Rashid Raza (supra) this Court laid down two tests. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain."

257. The Hon'ble Supreme Court in the case of ***A. Ayyasamy Vs A. Paramasivam & Ors***[32] held the following:-

"2. …It was, thus, argued that the parties were bound by the arbitration agreement and there was no reason to file the civil suit. The trial court, however, dismissed the application of the appellant herein by its order dated 25.04.2014, relying upon the judgment in N. Radhakrishnan.

[32] AIR 2016 SUPREME COURT 4675

In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the Courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The Courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. Following categories of disputes are generally treated as non-arbitrable[4]:

(i) patent, trademarks and copyright;

(ii) anti-trust/competition laws;

(iii) insolvency/winding up;

(iv) bribery/corruption;

(v) fraud;

(vi) criminal matters.

In Abdul KadirShamsuddinBubere v. MadhavPrabhakar Oak[6], serious allegations of fraud were held by the Court to be a sufficient ground for not making a reference to arbitration. Reliance in that regard was placed by the Court on a decision of the Chancery Division in Russell v. Russell[7]. That was a case where a notice for the dissolution of a partnership was issued by one of the partners, upon which the other partner brought an action alleging various charges of fraud, and sought a declaration that the notice of dissolution was void. The partner who was charged with fraud sought reference of the disputes to arbitration. The Court held that in a case where fraud is charged, the Court will in general refuse to send the dispute to arbitration. But where the objection to arbitration is by a party charging the fraud, the Court will not necessarily accede to it and would never do so unless a prima facie case of fraud is proved.

… 21. …In this case, one of the questions that had arisen for determination was, in the context of Section 8 of the Act, as to whether the subject matter of the suit was 'arbitrable' i.e. capable of being adjudicated by a private forum (Arbitral Tribunal). In this context, the

Court carried out detailed discussion on the term 'arbitrability' by pointing out three facets thereof, viz.:

1) whether the disputes are capable of adjudication and settlement by arbitration?

2) whether the disputes are covered by the arbitration agreement?

3) whether the parties have referred the disputes to arbitration?

10. The judgment of a two judge Bench of this Court in N. Radhakrishnan v. Maestro Engineers[19], arose out of a partnership dispute. A suit was instituted before the civil court for declaratory and injunctive reliefs. An application under Section 8 of the Act of 1996 was rejected by the trial court and the order of rejection was affirmed in revision by the High Court. The submission of the appellant that the dispute between the partners ought to have been referred to arbitration was met with the objection that the appellant having raised issues relating to misappropriation of funds and malpractices, these were matters which ought to be resolved by a civil court. Affirming the judgment of the High Court, a Bench of two judges of this Court held as follows:

"The High Court in its impugned judgment has rightly held that since the case relates to allegations of fraud and serious malpractices on the part of the respondents, such a situation can only be settled in court through furtherance of detailed evidence by either parties and such a situation cannot be properly gone into by the Arbitrator.…

11. In P. AnandGajapathi Raju v. P.V.G. Raju (Dead)[20], this Court held that the language of Section 8 is peremptory in nature. Hence, where there is an arbitration agreement, it is obligatory for the court to refer parties to arbitration and nothing remains to be decided in the original action after such an application is made, except to refer the dispute to an arbitrator. The judgment in Abdul Kadir came up for consideration before a Bench of two learned judges in Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums[21]. In that case, the appellant had appointed the respondent as a dealer for selling its petroleum products through a retail outlet. The dealership agreement contained an arbitration agreement. In the course of an inspection the appellant found a breach of the dealership agreement and sales of petroleum products were suspended. The respondent instituted a suit before the ordinary civil court seeking declaratory reliefs in which the appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996. The civil court rejected the

application and the High Court in revision affirmed the view. The submission which weighed with the High Court was that the allegation of tampering of weights and of measurement seals could only be adjudicated upon under the Standards of Weights and Measures (Enforcement) Act, 1985 and hence such a dispute was not arbitrable. This Court held that once the arbitration agreement was admitted, in view of the mandatory language of Section 8, the dispute ought to have been referred to arbitration. The judgment of this Court dealt with the submission that since the allegations in the case related to an element of criminal wrongdoing, the dispute was not arbitrable. Rejecting this submission, this Court held as follows:

"19. It was argued before the courts below as also before us that the misconduct, if any, pertaining to short-supply of petroleum products or tampering with the seals would be a criminal offence under the 1985 Act. Therefore, the investigation into such conduct of the dealer can only be conducted by such offices and in a manner so specified in the said Act, and it is not open to the appellant to arrogate to itself such statutory power of search and seizure by relying on some contractual terms in the Dealership Agreement. It is further argued that such disputes involving penal consequences can only be tried by a court of competent jurisdiction and cannot be decided by an arbitrator.....

13. In a more recent judgment of two judges of this Court in Sundaram Finance Ltd. v. T. Thankam[22], the same position in regard to the mandate of Section 8 has been reiterated. The earlier decisions in AnandGajapathi Raju, Pink City and in Branch Manager, Magma Leasing and Finance Ltd. v. PotluriMadhvilata[23], emphasizing the mandate of Section 8, have been reaffirmed. This Court has held:

"Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law - generaliaspecialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievances and of course unnecessarily increase the pendency in the court."

258. The Hon'ble Supreme Court in the case of ***Bhaven Construction Vs Exe Engineer Sardar Sarovar Narmada***[33] held the following:-

> *"17. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, (2011) 14 SCC 337, this Court referred to several judgments and held:*
>
> > *"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/ instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*
>
> *19. In the instant case, Respondent No. 1 has not been able to show exceptional circumstance or 'bad faith' on the part of the Appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by the Respondent No. 1 in a separate Section 34 application, which is pending.*
>
> *21. The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and reasoned that the Appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering the*

[33] AIRONLINE 2021 SC 6

Respondent No. 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the Appellant herein had actually acted in accordance with the procedure laid down without any mala fides.

26. In view of the above reasoning, we are of the considered opinion that the High Court erred in utilizing its discretionary power available under Articles 226 and 227 of the Constitution herein. Thus, the appeal is allowed and the impugned Order of the High Court is set aside. There shall be no order as to costs. Before we part, we make it clear that Respondent No. 1 herein is at liberty to raise any legally permissible objections regarding the jurisdictional question in the pending Section 34 proceedings."

259. The Hon'ble Supreme Court of India in the case of ***Union Of India & Ors Vs Tantia Construction Pvt. Ltd***[34] held the following:-

"18. It was also contended that since the Petitioners had illegally terminated the contract with the Respondent Company, the Writ Court had stepped in to correct such injustice. In fact, Mr. Chakraborty also submitted that the objection taken on behalf of the Petitioners that the relief of the Respondent Company lay in arbitration proceedings and not by way of a Writ Petition was devoid of substance on account of the various decisions of this Court holding that an alternate remedy did not place any fetters on the powers of the High Court under Article 226 of the Constitution.

19. In support of his aforesaid submissions Mr. Chakraborty firstly relied and referred to the decision of this Court in HarbanslalSahnia vs. Indian Oil Corporation Ltd. [(2003) 2 SCC 107], wherein this Court observed that the Rule of exclusion of writ jurisdiction by availability of an alternative remedy, was a rule of discretion and not one of compulsion and there could be contingencies in which the High Court exercised its jurisdiction inspite of availability of an alternative remedy. Mr. Chakraborty also referred to and relied on the decision of this Court in Modern Steel Industries vs. State of U.P. and others [(2001) 10 SCC 491], wherein on the same point this Court had held that the High Court ought not to have dismissed the writ petition requiring the Appellant therein to take recourse to arbitration proceedings, particularly when the vires of a statutory provision was not in issue.

[34] AIRONLINE 2011 SC 530

27. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company.

28. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the Writ Petition and also on its merits. The Special Leave Petition is, accordingly, dismissed, but without any order as to costs."

260. The Hon'ble Supreme Court has held the following in ***M.P. Power Management Company Limited Vs M/S Sky Power Southeast Solar India***[35]***:-***

"*40. ABL (supra) marks a milestone, as it were, in the matter of the superior court interfering in contractual matters where the State is a player even after the contract is entered into. A petition was filed under Article 226 wherein the respondent which was incorporated under the Companies Act repudiated an insurance claim made by the appellant-writ petitioner. This Court undertook an elaborate discussion of the earlier case law. We find that this Court dealt with several obstacles which were sought to be posed by the respondent. They included disputed questions of facts being involved, availability of alternate remedy, and the case involving entertaining a money claim. This court went on to hold as follows:*

"27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

[35]CIVIL APPEAL NOS._____OF 2022
(Arising out of SLP (C) Nos.4609-4610 OF 2021)

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction." (Emphasis supplied)

42. We may also notice how this Court steered clear of the criticism that it was not following the principle laid down by this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd.19. The Court noted that the said case did involve a contract which contained an arbitration clause. It is found that in the case before it there was no arbitration clause. In regard to the question as to whether the first respondent in the said case was discharging a public duty or public function was involved while repudiating the claim of the appellants arising out of the contract, the Court drew support from the judgment in Kumari Shrilekha Vidyarthi (supra).

43. In Noble Resources Ltd. v. State of Orissa20, this court followed ABL (supra). However, in the facts of the said case again the matter involving refusal by a public authority to honour the contract in the matter (1996) 6 SCC 22 (2006) 10 SCC 236 of purchase of Iron ore, the Court held as follows:

"15. It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."

44. The court went on to approve of ABL (supra) and observed that this Court had declared that no decision lays down as an absolute rule that in all cases of disputed questions of fact, the parties should be relegated to a civil Court. We may also notice paragraph 29:

"29. Although the scope of judicial review or the development of law in this field has been noticed hereinbefore particularly in the light of the decision of this Court in ABL International Ltd. [(2004) 3 SCC 553] each case, however, must be decided on its own facts. Public interest as noticed hereinbefore, may be one of the factors to exercise the power of judicial review. In a case where a public law element is involved, judicial review may be permissible.

261. The Hon'ble Supreme Court has the following in ***M/S N.G. Projects Limited Vs M/S Vinod Kumar Jain On 21 March, 2022***[36]***:-***

"10. We find that the interference in contract awarded to the appellant is wholly unwarranted and has caused loss to public interest. Construction of roads is an essential part of development of infrastructure in any State. The learned Single Bench and the Division Bench of the High Court were exercising power of judicial review to find out whether the decision of the State was manifestly arbitrary or unjust as laid down by this Court in Tata Cellular v. Union of India3 and to act as appellate authority over the decision of the State. This Court in Tata Cellular held as under:

[36]CIVIL APPEAL NO. 1846 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 2103 OF 2022)

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or 3 (1994) 6 SCC 651favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State.

13. This Court sounded a word of caution in another judgment reported as Silppi Constructions Contractors v. Union of India and Ors.6, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more 5 (2016) 16 SCC 818 6 2019 SCC OnLine SC 1133 reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain . As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:-

"19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make

every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case

15. In Uflex Ltd. v. Government of T.N.8, this Court stated that the enlarged role of the Government in economic activity and its corresponding ability to give economic "largesse" was the bedrock of creating what is commonly called the "tender jurisdiction". The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The Court held as under:-

"2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

[Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] 8 (2022) 1 SCC 165

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted".

262. The Honble Supreme Court has held the following in ***Uflex Ltd. Vs The Government Of Tamil Nadu[37]:-***

"6. The burgeoning litigation in this field and the same being carried to this Court in most matters was the cause we set forth an epilogue in Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited & Ors.5 Even if it amounts to repetition, we believe that it needs to be emphasized in view of the controversy arising in the present case to appreciate the contours within which the factual matrix of the present case has to be analysed and tested.

37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and public sector enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government Misrilall Mines Pvt. Ltd. & Anr. v. MMTC & Ors, 2013 SCC OnLine Del 563. (2019) 14 SCC 81."

[37] AIRONLINE 2021 SC 729

263. The Hon'ble Supreme Court has held the following in ***Uttar Pradesh Power Transmission Vs. Cg Power And Industrial Solutions***[38] ***:-***

> *"66. Even though there is an arbitration clause, the Petitioner herein has not opposed the writ petition on the ground of existence of an arbitration clause. There is no whisper of any arbitration agreement in the Counter Affidavit filed by UPPTCL to the writ petition in the High Court. In any case, the existence of an arbitration clause does not debar the court from entertaining a writ petition.*
>
> *67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (1) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. reported in AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corporation and Ors. V. Gayatri Construction Company and Ors, reported in (2008) 8 SCC 172, cited on behalf of Respondent No.1.*
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> *68. In Harbanslal Sahnia and Ors. v. Indian Oil Corporation Ltd. reported in (2003) 2 SCC 107, this Court allowed the appeal from an order of the High Court dismissing a writ petition and set aside the impugned judgment of the High Court as also the impugned order of the Indian Oil Corporation terminating the dealership of the Appellants, notwithstanding the fact that the dealership agreement contained an arbitration clause.*
>
> *69. It is now well settled by a plethora of decisions of this Court that relief under Article 226 of the Constitution of India may be granted in a case arising out of contract. However, the writ jurisdiction under Article 226, being discretionary, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses. Monetary relief can also be granted in a writ petition.*

264. The Hon'ble Supreme Court has held the following in ***Unitech Limied Vs Telangana State Industrial Infrastructure***[39]***:-***

[38] AIR 2021 SUPREME COURT 2411

"31…"27….c) judge Bench decisions of this Court in State of UP v. Sudhir Kumar and Popatrao Vynkatrao Patil v. State of Maharashtra. The decision in ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters. (2004) 3 SCC 553 K.N. Guruswamy v. State of Mysore, AIR 1954 SC 592; Gujarat State Financial Corporation. v. Lotus Hotels (P) Ltd, (1983) 3 SCC 379; Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769 2020 Scconline SC 847 Civil Appeal 1600 of 2000 (Supreme Court of India) PART E Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226.11 If the state instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution would lie. This principle was recognized in ABL International:

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction." (emphasis supplied) Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state Harbanslal Sahnia v. Indian Oil Corporation

[39]AIRONLINE 2021 SC 131

Ltd., (2003) 2 SCC 107; Ram Barai Singh & Co. v. State of Bihar & Ors., (2015) 13 SCC 592

PART E power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."

265. The Hon'ble Supreme Court has held the following in ***Rapid Metrorail Gurgaon Limited Etc. Vs Haryana Mass Rapid Transport***[40]***:-***

"49 Clause (ii) of the order dated 20 September 2019 makes it abundantly clear that the basic purpose underlying the entrustment of the reference to the CAG was PART E the determination of the debt due "as defined under the Concession Contract". The High Court, it must be emphasized, was seized of a proceeding under Article 226 of the Constitution, and its writ jurisdiction had been invoked to challenge the notices of termination issued by RMGL and RMGSL, and for ensuring that the consequence which would emanate on the expiry of the notice period of 90 days by the cessation of the metro operations could be prevented by the judicial intervention in the course of the public law jurisdiction. The issuance of a notice of termination, the consequences which would ensue, and the resolution of disputes is specifically provided in the arbitration agreement between the parties, which is an intrinsic part of the Concession Agreements. Hence, there

[40] AIRONLINE 2021 SC 176

was an evident interface between this element of public interest on the one hand and the contractual rights of the parties to the Concession Agreements on the other. However, when HMRTC and HSVP moved the High Court under Article 226, they did so in view of the impending threat which was looming large on the horizon of the rapid metro operations being brought to a standstill as a result of the proximate expiry of the notice of 90 days preceding termination. In Sanjana M. Wig vs Hindustan Petroleum Corporation Limited 6, a two judge Bench of this Court, speaking through Justice S B Sinha, has observed:

"12. The principal question which arises for consideration is as to whether a discretionary jurisdiction would be refused to be exercised solely on the ground of existence of an alternative remedy which is more efficacious…

13. However, access to justice by way of public law remedy would not be denied when a lis involves public (2005) 8 SCC 242 PART E law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.

[…]

18. It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service [(1991) 1 SCC 533] and E. Venkatakrishna [(2000) 7 SCC 764] that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent." (emphasis supplied) In the present case, the High Court was evidently concerned over a fundamental issue of public interest, which was the hardship that would be caused to commuters who use the rapid metro as a vehicle for mass transport in Gurgaon. As such, the High Court's exercise of its writ jurisdiction under Article 226 in the present case was justified since non-interference, which would have inevitably led to the disruption of rapid metro lines for

Gurgaon, would have had disastrous consequences for the general public. However, as a measure of abundant caution, we clarify that ordinarily the High Court in its jurisdiction under Article 226 would decline to entertain a PART E dispute which is arbitrable 7. Moreover, remedies are available under the Arbitration and Conciliation Act, 1996 for seeking interim directions either under Section 9 before the Court vested with jurisdiction or under Section 17 before the Arbitral Tribunal itself."

266. In ***Subodh Kumar Singh Vs. Kolkata Metropolitan Development Authority***[41], the Hon'ble Apex Court observed as follows:-

"44. *Before proceeding further to discuss how the scope of judicial review came to be evolved, we would like to refer to the observations made by this Court in M.C. Mehta v. Union of India (Shriram — Oleum Gas) [M.C. Mehta v. Union of India (Shriram — Oleum Gas), (1987) 1 SCC 395 : 1987 SCC (L&S) 37] which are significant, and read as under: (SCC p. 420, para 31)*

"31. … Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy."

(emphasis supplied)

(b) Concept of "public law" element: Scope of judicial review in contractual matters

45. *Over a period of time the courts recognised the crucial role of judicial oversight in preventing the abuse of power and maintaining public confidence in the administrative process. Courts developed various doctrines and principles to guide their review, such as the principles of natural justice, reasonableness and proportionality. These principles ensured that the administrative actions are not arbitrary, discriminatory or capricious. By enforcing such standards, the courts also ensured that the rule of law was maintained and the individual rights were protected.*

[41] 2024 INSC 486

46. *The interplay between judicial review and administrative discretion has been a dynamic process. As new challenges and complexities kept on arising before the courts as regards the State's actions and governance, it continued to refine its approach. This ongoing dialogue between the courts and the executive branch contributed to the development of a more accountable and transparent administrative framework, paving the way for the exercise of judicial review even in the realm of contractual disputes to achieve a fine balance between efficiency and fairness in policy decisions on the one hand and the rights of individuals and overall public interest on the other.*

47. *In Mahabir Auto Stores v. Indian Oil Corpn. [Mahabir Auto Stores v. Indian Oil Corpn., (1990) 3 SCC 752 : (1990) 69 Comp Cas 746] , this Court expressed doubts over the correctness of the earlier position of law, that actions of the State in the private contractual field cannot be questioned in writ jurisdiction. This Court further held that even if the inter se relation of parties with the State is governed purely by a contract, the method, motive and decision of the State would be subject to judicial review on the grounds of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. The relevant observations read as under: (SCC pp. 761 & 764, paras 12-13 & 20)*

"12. … It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

13. The existence of the power of judicial review however depends upon the nature and right involved in the facts and circumstances of the particular case. It is well settled that there can be "malice in law". Existence of such "malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action.

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20. … we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the State enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the

parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work."

(emphasis supplied)

(See also Dwarkadas Marfatia & Sons v. Port of Bombay [Dwarkadas Marfatia & Sons v. Port of Bombay, (1989) 3 SCC 293] at para 27.)

48. *In LIC v. Consumer Education & Research Centre [LIC v. Consumer Education & Research Centre, (1995) 5 SCC 482 : (1995) 84 Comp Cas 168] , the Court held that the law as it stood earlier that a State or its instrumentality whose action is hedged with public element cannot be called into question because such action was in the field of private law is no longer a good law. The relevant observations read as under: (SCC pp. 498 & 500, paras 23 & 26)*

"23. Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. …

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26. This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immuned from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any straitjacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law field cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated."

(emphasis supplied)

49. *This Court in Consumer Education & Research Centre [LIC v. Consumer Education & Research Centre, (1995) 5 SCC 482 : (1995) 84 Comp Cas 168] further held that the writ jurisdiction of the courts cannot be shackled by technicalities and that any action of the State which has a public law element or a public character, such actions by their nature are required to be just, fair, reasonable and in the interest of public, and as such they would be amenable to judicial review. As to what is meant by actions bearing insignia of public law element, this Court held that wherever the action of a State or its instrumentality in the sphere of contractual relations is enjoined with a duty or an obligation to the public, such actions could be said to bear the insignia of a public element. The relevant observation reads as under: (SCC pp. 500 & 502, paras 27 & 29)*

"27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.

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29. […] The arms of the High Court are not shackled with technical rules or procedure. The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down."

(emphasis supplied)

50. *In another decision of this Court in Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742] it was held that every action of the State that has some degree of impact on the public interest, can be challenged under writ jurisdiction to the extent that they are arbitrary, unfair or*

unreasonable, irrespective of the fact that the dispute falls within the domain of contractual obligations. It was further held, that it is the nature of a government body's personality which characterises the action as having a public law element, and not the field of law where such action is taken. The relevant observation reads as under: (Shrilekha Vidyarthi case [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742] , SCC pp. 236-37 & 239, paras 22, 24 & 28)

"22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

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24. The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterise all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act,

even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

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28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14."

(emphasis supplied)

51. *In Verigamto Naveen v. State of A.P. [Verigamto Naveen v. State of A.P., (2001) 8 SCC 344] this Court held that where a breach of contract involves the decision-making authority exceeding its power or violating the principles of nature justice or its decision being borne out of perversity, then such cancellation of contract can certainly be scrutinised under the writ jurisdiction. This is because such an exercise of power by the authority is apart from the contract. The relevant observation reads as under: (SCC pp. 353-54, para 21)*

"21. … Though there is one set of cases rendered by this Court of the type arising in Radhakrishna Agarwal case [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] much water has flown in the stream of judicial review in contractual field. In cases where the decision-making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies. … Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings it within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of

the statutory provisions, as in the present case, it cannot be said that the matter falls purely in a contractual field. Therefore, we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for. This contention also stands rejected."

(emphasis supplied)

52. *Similarly in Binny Ltd. v. V. Sadasivan [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] this Court in view of the increasing trend of the State and its instrumentalities to use contracts as a means for dispensing their regulatory functions, held that whenever a contract is used for a public purpose, it will be amenable to judicial review. The relevant observations read as under: (SCC p. 674, para 30)*

"30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or government authorities at all levels are increasingly employing contractual techniques to achieve their regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably."

(emphasis supplied)

53. *The decision of this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] is significant and was the turning point in the scope of judicial review in contractual matters. In this landmark ruling, this Court decisively laid down and approved that a relief against a State or its instrumentalities in matters related to contractual obligations can be sought under the writ jurisdiction. The relevant observations read as under: (SCC pp. 570 & 572, paras 23 & 27)*

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. …

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27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

(emphasis supplied)

54. *At the same time, this Court in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 : (2004) 118 Comp Cas 213] cautioned that the power to issue writs under Article 226 being discretionary and plenary, the same should only be exercised to set right the arbitrary actions of the State or its instrumentality in matters related to contractual obligations. The relevant observations read as under: (SCC p. 572, para 28)*

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

(emphasis supplied)

55. *In Noble Resources Ltd. v. State of Orissa [Noble Resources Ltd. v. State of Orissa, (2006) 10 SCC 236] this Court for the purposes of judicial review of contractual disputes recognised a distinction between a matter where the contract is at the threshold and at the stage of breach. It held that at the threshold, the court's scrutiny is more intrusive and expansive while at the stage of breach it is discretionary except where the action is found to be arbitrary or unreasonable. The relevant observations read as under: (SCC pp. 243-44, para 15)*

"15. It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."

(emphasis supplied)

56. *The law on the subject with which we are dealing was laid down exhaustively by this Court in its decision in Joshi Technologies International Inc. v. Union of India [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728 : (2015) 374 ITR 322] , and the position was summarised as under: (SCC pp. 766-68, paras 69-70)*

"69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternative remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of

contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

267. The dispute principally revolves around the legal effect of the Agreement to Lease dated 22 February 2002, the subsequent registered document dated 23 April 2010 and the principal lease executed by KMDA. Consequently, Sections 105, 107, 108, 110 and 111 of the Transfer of Property Act, 1908 assume considerable importance and merits perusal of its provisions.

268. Section 105 of the Transfer of Property Act defines a lease as the transfer of a right to enjoy immovable property for a specified period in consideration of price, premium, rent or other valuable consideration.

269. The distinction between a completed lease and an agreement contemplating execution of a lease assumes central importance.

270. An agreement promising execution of a lease in future does not necessarily create a present demise. Whether the Agreement to Lease dated 22 February 2002 created an immediate transfer of interest or merely contemplated creation of such interest upon fulfilment of future conditions constitutes one of the principal questions arising for determination.

271. Section 107 of the Transfer of Property Act, 1908 prescribes the mode by which leases exceeding one year may be created. Such leases can be created only by a registered instrument. Registration is not a procedural formality. It constitutes the very mode by which the law recognises creation of the estate. The legal consequences of admitted non-registration of instruments therefore bear reciprocal legal importance.

272. Section 108 of the Transfer of Property Act enumerates the reciprocal rights and liabilities of lessor and lessee, which presuppose existence of a valid lease based upon the legal character of the documents executed between the parties.

273. Section 110 of the Transfer of Property Act regulates commencement of the term of the lease where the parties express an intention to operate a legally executed lease.

274. Section 111 of the Transfer of Property Act prescribes the recognised modes by which leases may determine.

275. The petitioner relies particularly upon clause (g), contending that no forfeiture could occur without compliance with the statutory requirements governing notice.

276. The respondents contend that the provision has no application because no valid lease ever came into existence.

277. The true scope of Section 111 of the Transfer of Property Act shall therefore require examination after determination of the legal character of the documents relied upon by the petitioner.

278. The relevant provisions of the Registration Act in the context of the present dispute are:-

a) Section 17 of the Registration Act declares certain instruments compulsorily registrable. Leases of immovable property exceeding one year fall squarely within that category. Where compulsory registration is attracted, the statute leaves no discretion either to the parties or to the Court.

b) Section 49 of the Registration Act prescribes the legal consequence of failure to register a document. Such document cannot—

i. affect immovable property;

ii. confer any power affecting such property;

iii. be received as evidence of the transaction,

iv. save for the limited collateral purposes recognised by law.

279. Whether the petitioner can nevertheless derive enforceable rights by relying upon possession, payment of consideration or the subsequent registered document constitutes one of the principal issues requiring adjudication.

280. Reference has also been made to Section 35 of the Indian Stamp Act.

281. The provision regulates admissibility of instruments chargeable with duty.

282. Although the controversy before this Court principally concerns registration rather than stamp duty, the respondents contend that the statutory restrictions governing admissibility reinforce the legal consequence flowing from absence of compliance with the Registration Act.

283. The respective Learned Advocates for the parties have devoted considerable attention to the Power of Attorney dated 21 August 2002. A Power of Attorney does not itself create title. It merely authorises the attorney to perform acts specifically delegated by the principal. The extent of authority depends entirely upon the language employed in the instrument. Delegated authority cannot ordinarily be enlarged by implication. Whether the instrument authorised execution of the document dated 23 April 2010 constitutes another principal issue requiring adjudication.

284. The controversy before this Court cannot be resolved by examining any single statute in isolation.

285. The legal consequences emanating from the Agreement to Lease, the subsequent registered document, the Power of Attorney, the Cabinet Decision, the governmental memoranda and the principal lease executed by KMDA require a harmonious construction of the constitutional provisions, the Road Transport Corporations Act, the Transfer of Property Act, the Registration Act and the Indian Stamp Act.

286. Only after identifying the legal incidents deriving from each enactment can the Court proceed to determine whether the petitioner acquired an enforceable legal right, whether the impugned governmental action suffers

from constitutional infirmity and whether the reliefs claimed fall within the legitimate ambit of judicial review under Article 226 of the Constitution.

287. The rival submissions reveal no substantial disagreement regarding the broad propositions of law governing judicial review. The divergence lies in the manner in which those principles are sought to be applied to the facts of the present case. Before examining the individual issues, it becomes necessary to identify the legal principles emerging from the constitutional scheme, the statutory provisions and the authorities cited.

288. The extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India serves not merely as a corrective against executive excess but as an enduring constitutional assurance that every repository of public power shall remain answerable to the discipline of legality, the amplitude of the jurisdiction being wide. Its exercise is however guided by judicial restraint, constitutional propriety and the nature of the right sought to be enforced.

289. The breadth of Article 226 as aforesaid does not eclipse the distinction between public law and private law. The jurisdiction exists to ensure that statutory authorities operate within legal precints, constitutional rights and protections are effectively vindicated and executive discretion is exercised in conformity with fairness, rationality and transparency. At the same time, the constitutional remedy can never be intended to become a substitute for every civil action arising from contractual relationships merely because one of the contracting parties answers the description of "State" within the meaning of Article 12 of the Constitution.

290. The Court is therefore required, at the very threshold, to ascertain the true character of the controversy. Such character is determined not by the language employed in the pleadings nor by the nomenclature of the reliefs sought, but by the substantive nature of the rights asserted and the corresponding obligations sought to be enforced.

291. Where the controversy concerns breach of statutory duty, abuse of public power or arbitrary exercise of executive discretion, the constitutional remedy ordinarily remains available notwithstanding the existence of contractual elements. Conversely, where adjudication necessarily requires determination of disputed contractual rights, reciprocal obligations, interpretation of private instruments, reconciliation of accounts, proof of performance or grant of relief substantially resembling specific performance, the constitutional jurisdiction ordinarily yields to remedies specifically designed for such adjudication.

292. The constitutional character of judicial review depends not upon the identity of the litigant but upon the nature of the controversy. The distinction between review of administrative action and adjudication of contractual rights is acknowledged judicially.

293. The writ court examines whether the authority acted within the limits prescribed by law; whether relevant considerations guided the decision-making process; whether irrelevant considerations intruded upon the exercise of discretion; whether procedural fairness has been observed; whether constitutional guarantees have not been violated and whether the decision bears a rational nexus with the statutory purpose that has been sought to be achieved.

294. The writ court does not ordinarily assume the functions of a civil court by recording oral evidence, construing disputed contractual clauses upon conflicting factual basis or granting relief which, in substance, compels execution of contractual promises.

295. The constitutional remedy therefore preserves legality of governmental action; it does not ordinarily regulate performance of commercial bargain. The petitioner contended the present challenge had been directed principally against the Memoranda dated 13th August 2010, 20th August 2010, 31st December 2010 and the consequential communication dated 31st May 2017. According to the petitioner, the contractual background merely furnishes the factual ambience within which the constitutional challenge arises.

296. The respondents urge an opposite conclusion. According to them, each relief claimed necessarily depends upon recognition of contractual rights arising from the Agreement to Lease dated 22nd February 2002, the Power of Attorney dated 21st August 2002 and the registered document dated 23rd April 2010. The distinction assumes considerable significance. If the constitutional challenge survives independently of the contractual relationship, judicial review may legitimately proceed. If, however, recognition of the constitutional claim necessarily presupposes adjudication of the validity, enforceability and legal consequences of the contractual instruments themselves, the Court must be cautious before invoking its extraordinary jurisdiction.

297. It therefore necessarily depends upon examination of the legal character of the documents relied upon by the petitioner.

298. The property forming the subject matter of the present proceedings is admittedly public property. Where public property is dealt with through commercial arrangements, two distinct principles operate simultaneously. The first preserves governmental accountability and constitutional fairness.

299. The second preserves the proprietary rights of the State and the statutory restrictions governing alienation of public assets. Neither principle eclipses the other.

300. A Constitutional Court must therefore examine whether executive intervention represents arbitrary departure from law or whether it constitutes an exercise of authority intended to preserve statutory restrictions governing public property. The constitutional guarantee contained in Article 14 of the Constitution of India cannot be interpreted in isolation from the statutory provisions regulating the property itself.

301. The petitioner has emphasised delivery of possession, payment of substantial consideration, prolonged conduct of the respondents, execution of the Power of Attorney, acceptance of municipal dues and continuous readiness to perform every remaining contractual obligation. These circumstances undoubtedly possess relevance while examining the factual trajectory of the transaction. Whether such circumstances are capable of overriding mandatory statutory provisions constitutes an altogether different question. Equitable doctrines perform an important role in the administration of justice. They supplement the law. They do not supplant statutory requirements. Where Legislature has prescribed a mandatory mode for creation of rights in immovable property, equitable

considerations cannot ordinarily dispense with compliance with those statutory commands.

302. Similarly, where public property remains governed by express contractual restrictions, equitable doctrines cannot enlarge proprietary rights beyond those recognised by law.

303. The controversy cannot be resolved by isolating one statute from another.

304. The constitutional provisions, the Road Transport Corporations Act, the Transfer of Property Act, the Registration Act, the Indian Stamp Act and the contractual covenants contained in the principal lease together constitute an integrated legal framework.

305. It is therefore imperative to deal with certain issues for attaining conclusion/determination of the dispute.

306. Issue No. I: Whether the writ petitions are maintainable under Article 226 of the Constitution of India in the facts of the present case notwithstanding the contractual relationship between the parties and the existence of an arbitration clause?

307. The maintainability of the present proceedings constitutes the first and foremost question demanding adjudication, for the answer thereto determines the permissible extent of constitutional scrutiny. Every the Learned Advocate appearing before the Court has addressed elaborate submissions on this aspect, though from markedly different perspectives. While the petitioner asserts that the challenge is directed principally against arbitrary executive action of the State and its instrumentalities, the respondents maintain that the controversy remains firmly rooted in contractual obligations and seeks, in substance, enforcement of private

rights incapable of adjudication within the constitutional jurisdiction of this Court.

308. The question, therefore, is neither novel nor free from authority. The constitutional jurisprudence developed by the Supreme Court over several decades furnishes clear principles regulating the exercise of jurisdiction under Article 226 of the Constitution of India where contractual relationships coexist with public law elements.

309. At the very outset, it deserves emphasis that Article 226 of the Constitution of India is not hedged by statutory limitations. Unlike appellate or revisional jurisdictions created by legislation, the jurisdiction conferred upon the High Court by Article 226 of the Constitution of India originate directly from the Constitution itself. The amplitude of the power has repeatedly been extended to reach every repository of public power where the demands of legality, fairness and constitutional discipline so require. Yet, the width of the jurisdiction has never been an alternative to substitute constitutional remedies against any remedy available under the ordinary civil law. The distinction is subtle but fundamental.

310. The Court must ascertain the real character of the controversy, the source of the right asserted, and the nature of the relief sought. If the right asserted flows independently from the Constitution or from statute, and the impugned action represents exercise of public power attracting constitutional limitations, judicial review ordinarily remains available. Where, however, the asserted right derives exclusively from contract and the relief claimed substantially compels performance of reciprocal contractual obligations, the controversy ordinarily belongs to the domain

of the civil court or the arbitral tribunal designated by the parties. This distinction has remained constant despite the progressive expansion of Article 226 of the Constitution of India.

311. The Learned Senior Counsel appearing for the petitioner has placed considerable reliance upon *ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553*. The principle emerging from that decision admits of no controversy.

312. The Supreme Court held that the existence of a contractual relationship does not, by itself, exclude the jurisdiction of the High Court under Article 226 of the Constitution of India. It was further observed that disputed questions of fact do not invariably constitute a bar where those questions are capable of determination upon admitted documents and where the controversy substantially concerns arbitrary exercise of power by an instrumentality of the State. The ratio, however, requires appreciation in its proper operative facts.

313. In *ABL International* (supra), the contractual relationship itself was admitted. The authority of the contracting parties was never questioned. The existence of the contract was beyond dispute. The controversy centred upon refusal of the public corporation to honour obligations arising under an admitted insurance contract. The Supreme Court, therefore, examined whether the decision-making process disclosed arbitrariness.

314. The controversy in the present case, therefore, precedes the enquiry undertaken in *ABL International* (supra). There, the existence of the legal right was admitted and the dispute related to its arbitrary denial. Here,

the very existence of the asserted legal right forms the principal subject of dispute.

315. The petitioner had next relied upon *Maharashtra Chess Association v. Union of India, (2020) 13 SCC 285*, to emphasise the scope of Article 226 of the Constitution of India.

316. The observations therein reaffirm the jurisdiction of the High Court cannot be curtailed by judicially created restrictions where the Constitution itself has imposed none. The judgment also recognises that alternative remedies and contractual arrangements do not operate as inflexible bars.

317. The decision, however, does not declare that constitutional jurisdiction shall invariably be exercised wherever contractual rights are asserted against the State.

318. On the contrary, the Supreme Court reiterated that the nature of the controversy remains decisive.

319. The decision preserves the distinction between review of public law action and adjudication of private rights.

320. The petitioner also invokes *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, Mahabir Auto Stores v. Indian Oil Corporation, and Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh.*

321. Each of those decisions proceeds upon the salutary principle that State action does not escape constitutional scrutiny merely because it occurs within the sphere of contract. Such proposition readily commends itself and requires no elaboration. Yet, none of those authorities dispenses with the requirement that the person invoking Article 226 of the Constitution

of India must first demonstrate the existence of a legally cognisable right capable of protection. The constitutional guarantee against arbitrariness cannot operate in a factual inconsistency and irrationality.

322. Before examining whether executive action has been arbitrary, the Court must first identify the legal relationship alleged to have been impaired.

323. The petitioner has also relied upon *Mohinder Singh Gill v. Chief Election Commissioner* (supra) to contend that administrative orders must stand or fall upon the reasons contained therein and that civil consequences cannot follow without adherence to procedural fairness. The principle remains beyond dispute. The challenge, however, lies not in the statement of law but in its application. Whether the communications dated 13th August 2010, 20th August 2010 and 31st December 2010 attracted the procedural safeguards invoked by the petitioner depends upon whether the petitioner had, by that stage, acquired a legally enforceable interest in the property. Such enquiry cannot be avoided by direct invocation of constitutional doctrine. The legal status of the petitioner necessarily requires prior determination.

324. The respondents, in answer to the petitioner's reliance upon the foregoing authorities, have placed considerable emphasis upon the line of decisions viz., *Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457,* followed by *Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116*, together with subsequent pronouncements reiterating the distinction between judicial review of administrative action and enforcement of contractual obligations.

325. In *Radhakrishna Agarwal* (supra), the Supreme Court drew a distinction between rights arising independently of contract and rights springing exclusively from the contractual relationship. The Court recognised where parties voluntarily enter into contractual obligations, the subsequent rights and liabilities ordinarily remain regulated by the terms of the contract itself unless a distinct statutory or constitutional obligation survives independently of those contractual stipulations. The decision does not curtail the amplitude of Article 226 of the Constitution of India; rather, it delineates the sphere within which constitutional review ought ordinarily to be exercised.

326. The principle emerging from the said decision deserves signifies that it is not the existence of a contract that excludes constitutional scrutiny; it is the absence of an independent public law element capable of sustaining such scrutiny. Where the Court is first required to determine whether contractual rights ever came into existence, constitutional adjudication necessarily assumes a subsidiary position until those principle questions receive judicial determination.

327. Likewise, in *Bareilly Development Authority* (supra), the Supreme Court observed that contractual obligations voluntarily assumed by parties ordinarily do not invite judicial review merely because one of the contracting parties happens to be an authority answering the description of "State" under Article 12. The decision reiterates that constitutional remedies cannot ordinarily be invoked for enforcement of contractual promises in the absence of violation of an independent statutory or constitutional obligation.

328. The Learned Senior Counsel representing the petitioner has argued that the present controversy contains a pronounced public law element because the impugned memoranda originated from the State Government itself and allegedly frustrated a project previously approved by the Cabinet.

329. The submission indubitably requires serious consideration. Nevertheless, the mere participation of the State in the decision-making process cannot alter the true character of the dispute if the relief ultimately sought depends upon establishing contractual rights which themselves remain legally disputed.

330. The Court must therefore examine not merely the source of the impugned communications but the legal consequence which the petitioner seeks to derive therefrom. An examination of the prayers contained in the writ petitions assumes significance.

331. The petitioner seeks, inter alia—

(i) quashing of the memoranda dated 13 August 2010 and 20 August 2010;

(ii) a direction upon respondent nos. 2 and 3 to transmit the pay order of Rs.2 crores to KMDA;

(iii) a direction upon KMDA to issue the requisite No Objection Certificate;

(iv) a direction upon the Kolkata Municipal Corporation to process and sanction the revised building plan;

(v) reconciliation of accounts after adjustment of payments already made;

(vi) acceptance of the balance lease premium;

(vii) implementation of the Agreement to Lease; and

(viii) setting aside of the communication dated 31 May 2017 terminating the contractual arrangement.

332. When these prayers are viewed collectively, it becomes manifest that quashing of the governmental memoranda would not, by itself, afford complete relief to the petitioner.

333. Additionally, the petitioner would still require judicial recognition of the Agreement to Lease, validation of the registered instrument dated 23 April 2010, affirmation of the authority flowing from the Power of Attorney, recognition of its entitlement to continue as developer and consequential enforcement of reciprocal contractual obligations.

334. Every one of those consequences necessarily presupposes adjudication of civil rights. The constitutional challenge and the contractual claim are therefore not merely interrelated; they are inseparably intertwined.

335. The petitioner further submits that the existence of an arbitration clause does not operate as an absolute bar to exercise of jurisdiction under Article 226 of the Constitution of India. The proposition accurately reflects the settled legal position. An arbitration agreement neither curtails nor extinguishes the constitutional jurisdiction of the High Court. The source of the jurisdiction lies in the Constitution and cannot be excluded by private agreement. The existence of an arbitration clause, however, remains a relevant circumstance while the Court exercises its discretion. Where the controversy substantially concerns reciprocal contractual obligations, interpretation of contractual instruments, adjustment of

mutual accounts, alleged breaches by either contracting party and relief substantially resembling specific performance, the availability of the contractual forum agreed upon by the parties becomes a factor of considerable significance. The arbitration clause, therefore, does not deprive this Court of jurisdiction. It merely reinforces the conclusion that the parties themselves contemplated resolution of contractual disputes through a specialised adjudicatory mechanism.

336. The Learned Senior Counsel for the petitioner has also urged that the impugned memoranda constitute independent executive action wholly divorced from the contractual relationship cannot be acceptable in its entirety.

337. The communications dated 13th August 2010 and 20th August 2010 derive their significance solely because of the contractual arrangement entered into between the petitioner and NBSTC.

338. If the Agreement to Lease had never come into existence, or if it failed to create enforceable legal rights, the petitioner could claim no corresponding entitlement to insist upon issuance of a 'No Objection Certificate', sanction of a building plan or implementation of commercial development.

339. Conversely, if the petitioner succeeds in establishing that the Agreement to Lease validly created enforceable rights, the legality of the subsequent governmental communications would necessarily require examination from an altogether different perspective. Thus, the constitutional enquiry cannot precede the contractual enquiry. The legal core must first be

established before the alleged constitutional infringement can be examined.

340. A constitutional remedy cannot be declined merely because determination of certain factual questions becomes necessary. The authorities cited by the petitioner correctly state that disputed facts do not invariably exclude exercise of jurisdiction under Article 226 of the Constitution of India. The present controversy, however, does not merely involve disputed facts. It requires adjudication upon questions of considerable legal complexity as stated below:-

i. whether the Agreement to Lease created a present demise;
ii. whether compulsory registration was indispensable;
iii. whether the registered document executed eight years thereafter possessed legal efficacy;
iv. whether the Power of Attorney authorised execution of that document;
v. whether NBSTC could lawfully create third-party rights without obtaining the previous written consent of KMDA;
vi. whether the Cabinet decision extended to the petitioner at all;
vii. whether acceptance of consideration and delivery of possession created rights capable of surviving statutory requirements;
viii. whether the respondents themselves committed antecedent breaches disentitling them from terminating the contractual relationship.

341. Each of these questions lies at the very heart of the controversy. Resolution of such issues would necessarily involve detailed examination

of documentary evidence, interpretation of several contractual instruments executed over a considerable period of time and determination of reciprocal obligations between the parties. Such an exercise bears all the characteristics of a civil adjudication. It would be inappropriate to convert the extraordinary jurisdiction under Article 226 of the Constitution of India into a substitute for that adjudicatory process.

342. The Court hastens to add that this conclusion does not imply that governmental authorities enjoy immunity from constitutional scrutiny merely because they enter into contracts.

343. Far from it. Where executive action independently violates constitutional limitations, departs from statutory obligations or bears the imprint of manifest arbitrariness, the writ court would remain fully competent to intervene.

344. The present controversy, however, does not permit segregation of the constitutional questions from the contractual foundation upon which they rest.

345. The constitutional challenge is inextricably dependent upon prior recognition of legal rights whose very existence constitutes the central dispute between the parties. The maintainability objection raised by the respondents must therefore be appreciated in that limited but significant context.

346. The Court is consequently of the view that, although the present writ petitions cannot be rejected at the threshold merely because they arise from a contractual relationship or because an arbitration clause exists, the nature of the reliefs claimed and the fundamental controversies

involved require the Court to exercise its extraordinary jurisdiction with considerable circumspection.

347. The maintainability objection, therefore, cannot be accepted in the absolute terms urged by the respondents.

348. Accordingly, Issue No. I is answered by holding that the writ petitions are maintainable to the limited extent that the Court may examine the legality, propriety and constitutional validity of the impugned executive actions. However, the Court cannot, in exercise of jurisdiction under Article 226 of the Constitution of India, grant relief which substantially amounts to enforcement of disputed contractual rights or specific performance unless the petitioner first establishes an enforceable legal right founded upon the governing statutory framework.

349. Issue No.II- Whether the Agreement to Lease dated 22nd February 2002 created any legally enforceable right, title or interest in favour of the petitioner?

350. Before the Court embarks upon an examination of the governmental memoranda, the communication dated 31st May 2017 or the rival allegations of arbitrariness, it must first ascertain whether the petitioner acquired any legally enforceable interest in the subject property. If no such right ever came into existence, the constitutional challenge collapses entirely. Conversely, if the petitioner succeeds in establishing the Agreement to Lease matured into a legally recognised interest in immovable property, the subsequent executive intervention deserves intense scrutiny.

351. The controversy thus compels the Court to examine the legal character of the instrument dated 22nd February 2002, not merely by reference to its nomenclature but by applying the governing provisions of the Transfer of Property Act, 1882, the Registration Act, 1908, and the principles repeatedly affirmed by judicial precedent.

352. Every instrument described as an "Agreement to Lease" does not, by that description alone, create a lease. Again, every agreement contemplating the future creation of a lease does not operate as a present demise of the property. The legal character of the instrument depends upon its substance, the intention manifested by its recitals, the obligations assumed by the parties and the statutory requirements governing creation of leasehold interests. The distinction is neither technical nor artificial. It constitutes one of the settled principles of the law relating to transfer of immovable property.

353. Section 105 of the Transfer of Property Act defines a lease as the transfer of a right to enjoy immovable property for a certain time or in perpetuity in consideration of price, premium, rent or other valuable consideration. The emphasis of the provision rests upon the expression "transfer of a right to enjoy". A completed lease, therefore, effects a present transfer of a legally recognised interest in the property.

354. An agreement to lease, on the other hand, may merely record the intention of the parties that a lease shall be executed upon fulfilment of stipulated conditions. Such an agreement ordinarily creates contractual obligations. It does not, by itself, create the estate contemplated to arise in future. Whether the instrument dated 22nd February 2002 belongs to

the former or the latter category must be determined from its intrinsic character rather than from the terminology employed by the parties.

355. The petitioner submits that the agreement represented the culmination of a competitive tender process, that possession was thereafter delivered on 17th April 2002, that substantial consideration stood paid, that a registered Power of Attorney came to be executed on 21st August 2002, and that registration of the lease was ultimately completed on 23rd April 2010. These cumulative circumstances, according to the petitioner, establish that the transaction had travelled far beyond the stage of a mere executory contract and had matured into a completed lease.

356. Section 107 of the Transfer of Property Act assumes immediate significance. The section prescribes that a lease of immovable property from year to year, or for any term exceeding one year, or reserving yearly rent, can be effective only by a registered instrument. The language employed by the legislature is mandatory. The provision does not merely prescribe a mode of proof. It prescribes the exclusive mode by which the legal estate itself may be brought into existence. Where the statute declares that a particular juridical result may be achieved only by a specified mode, the Court cannot recognise creation of that legal estate through any alternative process, however equitable the surrounding circumstances may appear. The legislative command admits of no exception edificed upon hardship or commercial inconvenience.

357. The admitted factual position before this Court is that the Agreement to Lease executed on 22nd February 2002 was unregistered for nearly eight years.

358. The petitioner seeks to overcome this legal lapse by contending that the registered instrument executed on 23rd April 2010 retrospectively perfected the earlier agreement.

359. Judged upon the statutory requirements prevailing on the date of its execution, the Agreement to Lease remained an instrument which, though embodying reciprocal contractual obligations, did not satisfy the statutory requirement indispensable for creation of a lease exceeding one year.

360. The consequence flowing therefrom is prescribed by the Registration Act, 1908.

361. Section 17(1)(d) of the Registration Act similarly requires registration of leases of the nature specified therein. The statutory requirement is not displaced by possession, payment of rent or expenditure incurred pursuant to the transaction.

362. Section 49 of the Registration Act prescribes the consequence of non-registration. A document required by Section 17 to be registered cannot affect the immovable property comprised therein or be received as evidence of the transaction affecting such property, subject to the statutory proviso. The proviso permits the document to be received as evidence of a contract in a suit for specific performance or for a collateral transaction which does not itself require a registered instrument.

363. The proviso to Section 49 of the said Act is of limited statutory operation. It does not convert an unregistered instrument into a registered lease. Nor does it confer upon such instrument an estate in immovable property which the governing statute requires to be created through registration. The expression “in a suit for specific performance” employed in the

proviso itself indicates the character of the proceeding in which the contractual stipulation may be relied upon for the limited purpose contemplated by law.

364. The Agreement to Lease dated 22nd February 2002 may consequently have evidentiary relevance in an appropriate proceeding for determining the contractual relationship between the parties. Whether it creates, transfers or establishes a leasehold estate in the property capable of binding the lessor is a different question, which cannot be answered merely by placing the instrument before the writ court.

365. Section 17 of the Registration Act declares instruments to be compulsorily registrable. Section 49 of the said Act then prescribes the legal consequence of non-registration. The statute expressly provides that a document required by Section 17 of the said Act to be registered shall not affect any immovable property comprised therein, nor confer any power to adopt, nor be received as evidence of any transaction affecting such property, save to the limited extent expressly recognised for collateral purposes. The Court cannot disregard the legislative clarity embodied in these provisions. The statutory consequence does not depend upon the intention of the parties. Nor does it vary according to the amount of consideration paid or the duration for which possession has continued. The disability arises by operation of law. The petitioner has nevertheless urged that possession delivered pursuant to the agreement, coupled with substantial payment of consideration and prolonged conduct of the parties, created an equitable interest deserving constitutional protection. The submission invites consideration of an important distinction. The law

recognises that contractual arrangements may generate enforceable obligations between the contracting parties even before the contemplated conveyance or lease is formally executed.

366. Such contractual rights may, in an appropriate proceeding, furnish the basis of an action for specific performance or other civil remedies recognised by law. The existence of contractual obligations, however, is conceptually distinct from creation of a present proprietary estate in immovable property. The former arises from consensus. The latter arises only in the manner prescribed by statute. The Court cannot substitute one for the other. Much emphasis has been placed upon the fact that possession was delivered to the petitioner on 17th April 2002. Delivery of possession beyond incertitude constitutes a circumstance of evidentiary significance. It demonstrates that the parties intended implementation of the commercial arrangement. It may also bear upon questions relating to reciprocal obligations, readiness and willingness, restitution or equitable relief before the competent forum. Possession, however, cannot by itself accomplish what the statute declares can be accomplished only through a registered instrument. If mere delivery of possession were sufficient to create a lease exceeding one year notwithstanding Section 107 of the Transfer of Property Act, the mandatory requirement enacted by Legislature would have been rendered largely otiose.

367. Courts are bound to adopt an interpretation which preserves, rather than defeats, the legislative scheme.

368. The petitioner has also relied upon the acceptance of substantial consideration by NBSTC and upon payments made towards ground rent, municipal dues and other liabilities.

369. Such circumstances may assume significance while examining the conduct of the parties, which however cannot enlarge the legal estate created by the document itself. Neither payment of consideration nor acceptance thereof substitutes the statutory requirement governing creation of leasehold rights.

370. The Court is unable to accept the submission that the execution of the Power of Attorney dated 21st August 2002 necessarily demonstrates creation of a completed lease.

371. A Power of Attorney is an instrument of agency. Its execution may facilitate implementation of contractual obligations. It does not, by its own force, enlarge proprietary rights. Whether the authority thereby conferred extended to execution of the subsequent registered document constitutes an altogether different aspect.

372. The legal character of the Agreement to Lease cannot therefore be determined by reference to the Power of Attorney executed several months thereafter.

373. The petitioner has also relied upon *Anthony v. K.C. Ittoop & Sons and Park Street Properties (P) Ltd. v. Dipak Kumar Singh* (supra) which recognise that possession delivered pursuant to an agreement may, in certain factual situations, attract legal consequences under the law relating to landlord and tenant. The factual matrix in those decisions, however, differed materially. The controversy there did not concern the creation of

rights in valuable public property governed by restrictive covenants, nor did it involve the interplay between a statutory corporation, governmental approval, compulsory registration and express limitations contained in a principal lease. The ratio of those decisions cannot therefore be mechanically transplanted into the present factual ambit without first examining the statutory restrictions peculiar to the transaction before this Court. The petitioner has also sought to derive support from the equitable doctrine embodied in Section 53A of the Transfer of Property Act, contending that possession having been delivered pursuant to the Agreement to Lease and substantial consideration having been paid, the respondents cannot be permitted to resile from the transaction after permitting the petitioner to alter its position irretrievably. Section 53A of the Transfer of Property Act does not create title. Nor does it operate as a source of proprietary rights. The doctrine merely interposes a statutory shield against the transferor by preventing him from enforcing rights inconsistent with the contract where the transferee has performed or has always remained ready and willing to perform the obligations resting upon him. The provision neither perfects an imperfect transfer nor dispenses with the statutory formalities indispensable for creation of a legal estate. Significantly, the legislative amendment introduced by Act 48 of 2001, whereby the effect of Section 53A of the said Act is redundant in the absence of registration of the instrument upon which the plea is raised. Consequently, even assuming every factual assertion advanced by the petitioner to be correct, the doctrine of part performance cannot be

invoked to create or preserve rights contrary to the express statutory mandate governing compulsory registration.

374. The petitioner's reliance upon prolonged possession and financial investment must therefore be appreciated within the limited sphere recognised by law. Such circumstances may bear upon equitable relief in proceedings properly constituted for that purpose; they do not transform an instrument deficient in statutory compliance into one capable of transferring an estate in immovable property.

375. The Learned Senior Counsel appearing for NBSTC has placed reliance upon *Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar, (2022) 15 SCC 475*.

376. The decision reiterates the settled proposition that where the statute insists upon registration as a condition for creation or transfer of rights in immovable property, the Court cannot recognise those rights through indirect means. Statutory requirements governing transfer of immovable property admit of no dilution based upon equitable considerations or the conduct of parties. The legislative command embodied in the Registration Act remains paramount.

377. The petitioner's attempt to derive a present leasehold interest from an instrument admittedly unregistered on the date of its execution cannot be reconciled with the statutory framework or with the exposition of law contained in the aforesaid judgment.

378. Reliance has also been placed upon *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706*. Although the decision principally concerns the authority

exercisable under a Power of Attorney, it reiterates another principle of equal significance, namely, where law prescribes a particular mode for creating legal rights affecting immovable property, compliance with that mode is indispensable. Courts cannot infer authority, title or proprietary consequences upon considerations extraneous to the statutory framework.

379. The decision accordingly lends support to the proposition that the legal incidents of the Agreement to Lease must be examined strictly within the boundaries marked by the Transfer of Property Act and the Registration Act. The respondents have further relied upon *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66*.

380. The ratio of the said decision, though rendered in the context of an arbitration agreement contained in an instrument requiring registration, reiterates a broader principle of considerable relevance. Where the principal instrument is compulsorily registrable but remains deficient in statutory compliance, the Court cannot attribute to it legal consequences expressly denied by the Registration Act. The decision thus reinforces the proposition that registration is not an empty formality but an indispensable legal requirement governing the efficacy of the instrument itself.

381. Reference has also been made to the judgment of this Court in *Paul Rubber Industries Pvt. Ltd. v. Amit Chand Mitra 2022 SCC OnLine Cal 2031*. The decision reiterates that authority conferred by a Power of Attorney requires strict construction and such authority cannot be enlarged by implication. Subsequent acts performed under a disputed

authority cannot retroactively enlarge the legal efficacy of the original agreement.

382. The petitioner, on the other hand, has invited the Court to attach decisive significance to the conduct of NBSTC over an extended period. It has been urged that the Corporation voluntarily accepted substantial portions of the agreed consideration, delivered possession, executed the registered Power of Attorney, requested the petitioner to proceed with registration and permitted the petitioner to incur considerable expenditure towards implementation of the project. Such conduct, according to the petitioner, furnishes compelling evidence that the contractual relationship had moved beyond the stage of a mere executory arrangement.

383. The Court does not discount the factual significance of these circumstances. Indeed, the conduct attributed to NBSTC, if ultimately established in its entirety, may assume high pertinence while examining questions relating to reciprocal contractual obligations, estoppel, restitution or other civil consequences.

384. The enquiry before this Court, however, is of a narrower character. The question presently under consideration is not whether NBSTC acted consistently with its contractual obligations. The question is whether the Agreement to Lease, viewed through the prism of the governing statutes, created a legally enforceable proprietary interest.

385. The answer to that question must emerge from the statute itself and not from the subsequent conduct of the contracting parties. The Court is not at liberty to substitute equitable considerations for legislative command.

386. The Legislature has consciously prescribed the mode by which a lease exceeding one year may be created. It has also prescribed the legal consequence flowing from non-compliance. Judicial sympathy, commercial hardship or prolonged inaction on the part of one of the contracting parties cannot authorise the Court to disregard those statutory consequences. At the same time, it would be equally erroneous to conclude that the Agreement to Lease became a nullity for every purpose. The instrument recorded reciprocal contractual obligations between the parties. It formed the juridical basis upon which the subsequent dealings between NBSTC and the petitioner proceeded. It may furnish the basis of civil consequences recognised by law. It may also assume evidentiary significance for collateral purposes expressly preserved by Section 49 of the Registration Act. What it could not accomplish, however, was the creation of a present leasehold estate in derogation of the statutory scheme enacted by Legislature. The distinction, though fine, remains of decisive importance. Failure to maintain that distinction would obliterate the distinctly drawn boundary between contractual rights and proprietary rights, a contrast consistently preserved both by statute and by judicial precedent.

387. The Agreement to Lease dated 22nd February 2002 did create contractual obligations between the petitioner and NBSTC, the performance whereof may give rise to such remedies as are otherwise available in law before the competent forum. The Agreement, however, did not, by itself, create or transfer any legally enforceable leasehold interest or proprietary estate in

the subject property, since the statutory requirements governing creation of such an interest remained incomplete on the date of its execution.

388. Issue No. III - Whether the registered document dated 23rd April 2010 validly created or perfected any leasehold interest in favour of the petitioner?

389. The petitioner has consistently maintained that although the Agreement to Lease executed on 22nd February 2002 was unregistered at the initial stage, the subsequent execution and registration of the document dated 23rd April 2010 removed every statutory deficiency and rendered the transaction legally complete. It is contended that the registered instrument did not constitute a fresh lease but merely recorded and perfected the contractual arrangement already existing between the parties. Consequently, according to the petitioner, every right flowing from the Agreement to Lease must now be regarded as having attained legal efficacy.

390. The respondents dispute such proposition in its entirety. NBSTC contended that the instrument executed on 23rd April 2010 represented neither registration of the earlier Agreement to Lease nor lawful execution of a lease in accordance with law. KMDA adopted the same submission and further contends that no document executed between NBSTC and the petitioner could enlarge the estate created under the principal lease without obtaining the previous written consent of the lessor. The State, while supporting the submissions of the other respondents, argued that the registered document itself proceeded upon an authority which did not exist in law.

391. The controversy, therefore, does not merely concern the fact of registration. It concerned the legal character of the instrument registered on 23rd April 2010, the authority under which it came to be executed, and the consequences therefrom.

392. At the outset, the Court must observe that registration is not an independent source of title. Registration authenticates an instrument presented for registration in the manner prescribed by law. It does not validate an instrument executed without authority. Nor does it cure every antecedent legal defect. Where the instrument itself suffers from lack of authority, want of competence or violation of statutory restrictions, registration cannot elevate that instrument into one possessing legal effectivity.

393. The petitioner has urged that the delay in registration occurred for reasons beyond its control and that NBSTC itself, by communication dated 19th January 2010, required the petitioner to complete registration by acting under the registered Power of Attorney. It is further submitted that the Corporation, having itself facilitated registration, cannot subsequently contend that the document thereby executed lacks legal effectiveness. The submission definitely appeals to considerations of fairness.

394. The Court, however, is required to distinguish between contractual fairness and statutory validity. Conduct of parties may furnish a basis for civil consequences. It cannot enlarge powers which the law itself has withheld. The first question, therefore, is not whether NBSTC desired registration. The first question is whether NBSTC possessed legal

authority in 2010 to execute the document in the manner in which it has been ultimately executed. The second question is whether the Power of Attorney dated 21st August 2002 authorised execution of such an instrument. The third question is whether the document itself can retrospectively create rights said to have originated in 2002.

395. The Court is unable to accept the broad proposition advanced by the petitioner that the registered document merely "related back" to the Agreement to Lease executed eight years earlier.

396. The doctrine of relation back cannot be invoked in violation of express statutory provisions.

397. Where Legislature has prescribed compulsory registration as the exclusive mode by which a lease exceeding one year may be created, the Court cannot presume that an instrument executed after several years automatically revives every legal consequence which has not been in existence at the time of the original transaction.

398. Such an interpretation would substantially dilute the mandatory character of Section 107 of the Transfer of Property Act and Sections 17 and 49 of the Registration Act.

399. The statutory scheme does not contemplate retrospective creation of proprietary rights merely because parties subsequently execute another document.

400. Whether a subsequent instrument independently creates rights depends upon the legal force of that instrument itself.

401. The petitioner has also urged that the registered document should be viewed as one continuous transaction commencing in 2002 and culminating in 2010.

402. This submission omits an important legal distinction.

403. Between 22nd February 2002 and 23rd April 2010, several material events intervened. Possession was delivered. A supplementary agreement was executed. The Power of Attorney came into existence. Governmental policy underwent reconsideration. Administrative correspondence commenced. Payments were allegedly made in stages. Each of these events possesses independent legal significance.

404. The Court cannot therefore treat the intervening period as though it possessed no legal consequence. The transaction evolved over time. Whether that evolution ultimately matured into a valid lease depends upon the legal enforceability of each intervening step.

405. The respondents have correctly contended that the document dated 23rd April 2010 cannot be examined in isolation from the authority under which it has been executed.

406. If the authority itself proves deficient, registration cannot impart legal vitality to the instrument.

407. Moreover, if NBSTC itself lacked competence to execute such a document without obtaining the previous written consent of KMDA under the principal lease, registration cannot cure that principal defect.

408. The petitioner has relied upon the fact that the Sub-Registrar accepted the document for registration. Acceptance for registration, however, cannot be equated with judicial determination of validity.

409. The Registering Authority examines compliance with the procedural requirements of the Registration Act. Questions relating to title, authority, competence, interpretation of contractual covenants and legality of the transaction remain matters for adjudication by the competent Court.

410. Registration, therefore, cannot be regarded as conclusive proof that every legal requirement antecedent to execution has been satisfied.

411. The Court is also unable to ignore the extraordinary lapse of time between the original Agreement to Lease and the subsequent registered instrument. The explanation offered by the petitioner attributes the delay largely to the conduct of NBSTC.

412. The fact nevertheless infers that the statutory consequences emerging from the legal position prevailing during those intervening years cannot be ignored merely because registration ultimately occasioned.

413. The law governing creation of leasehold interests operates contemporaneously with the transaction. Its effect cannot be suspended until the parties choose to complete registration after a prolonged interval.

414. The petitioner has argued that refusal to recognise the registered document would produce grave commercial injustice after acceptance of substantial consideration and continued possession extending over several years.

415. The Court admits the commercial consequences which the petitioner asserts to have suffered. The function of the Court is to ascertain the legal effect of the statutory framework. Where those consequences appear harsh in a particular factual situation, the remedy lies with the forum

competent to mould equitable relief consistent with law, not by judicial alteration of mandatory statutory provisions.

416. The question whether the document dated 23rd April 2010 was executed by a person possessing lawful authority now assumes central importance.

417. Such enquiry necessarily turns upon construction of the Power of Attorney dated 21st August 2002. The scope of that authority constitutes the next issue.

418. Unless the petitioner establishes that the attorney possessed authority to execute the registered instrument in the manner adopted, no further question regarding perfection of title can arise.

419. Issue No. IV- Whether the Power of Attorney dated 21st August 2002 authorised execution and registration of the document dated 23rd April 2010?

420. The answer to this issue demands a distinction between authority to perform ministerial acts in implementation of an existing transaction and authority to create, vary or enlarge substantive proprietary rights in immovable property. The distinction, though apparently narrow, has profound legal consequences. It determines whether the registered instrument dated 23rd April 2010 represented lawful completion of an existing authority or whether it travelled beyond the limits of the authority originally conferred.

421. The petitioner submits that NBSTC voluntarily executed a registered Power of Attorney dated 21st August 2002, authorising the petitioner to undertake every act necessary for implementation of the Agreement to Lease. Learned Senior Counsel for the petitioner contended that acting

upon such authority, and pursuant to the communication issued by NBSTC on 19th January 2010, the petitioner merely completed the formal process of registration which ought to have taken place earlier. According to the petitioner, no fresh rights were created in 2010. The document merely clothed an existing transaction with the statutory form required for registration. The respondents disputed the submission.

422. According to NBSTC and KMDA, the authority contained in the Power of Attorney was confined to acts expressly specified therein. It did not authorise execution of an altogether fresh instrument capable of affecting valuable public property nearly eight years after execution of the Agreement to Lease. The respondents further contend that delegated authority cannot be enlarged by implication and that registration cannot validate an instrument executed beyond the authority actually conferred.

423. A Power of Attorney is an instrument of delegation. It neither transfers title nor creates proprietary rights. It merely enables the attorney to perform those acts which the principal can lawfully perform and which the principal has expressly or by necessary implication authorised the attorney to perform.

424. The extent of the authority must therefore be gathered primarily from the language of the instrument itself.

425. Neither convenience nor subsequent conduct can enlarge the authority beyond the boundaries consciously prescribed by the principal.

426. The law has consistently insisted upon strict construction where delegated authority concerns transactions affecting immovable property.

427. Every conveyance affecting proprietary rights produces enduring legal consequences. Authority to execute such instruments cannot therefore be inferred from uncertain implication or commercial expediency. The Court must be satisfied that the authority existed in clear and unequivocal terms.

428. The Learned Senior Counsel for NBSTC has rightly relied upon *Church of Christ Charitable Trust* and *Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706*.

429. In the said decision, the Supreme Court reiterated that where an attorney purports to execute documents affecting valuable immovable property, the authority must be found within the four corners of the instrument itself. The Court declined to enlarge delegated authority upon considerations dehors the document. The ratio emerging from the said decision possesses direct relevance.

430. If the Power of Attorney executed on 21st August 2002 merely authorised implementation of the existing Agreement to Lease, the attorney could not, by relying upon that authority, execute another instrument having an altogether different legal consequence.

431. Equally instructive is the decision in *Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar, (2022) 15 SCC 475*.

432. The Supreme Court observed that transactions affecting immovable property demand strict adherence to the statutory and contractual framework. Delegated authority cannot be presumed merely because the parties subsequently acted upon a particular understanding. Where the

authority itself is doubtful, the transaction executed pursuant thereto necessarily becomes vulnerable.

433. The Division Bench decision of this Court in *Paul Rubber Industries Pvt. Ltd. v. Amit Chand Mitra* (supra) proceeds upon the same jurisprudential ground. The authority of an attorney derives entirely from the instrument constituting the agency. It cannot be expanded by subsequent correspondence or inferred from commercial necessity.

434. The Learned Senior Counsel representing the petitioner has, however, advanced an alternative submission.

435. It was urged that the communication dated 19th January 2010, issued by NBSTC itself, requested the petitioner to proceed with registration under the existing Power of Attorney. The Corporation, having itself required the petitioner to act upon the authority previously conferred, cannot subsequently contend that such authority was deficient.

436. The submission raises an important question. Can subsequent conduct enlarge an authority originally not conferred? The answer, in the opinion of this Court, must be in the negative.

437. Subsequent correspondence may explain the manner in which the parties comprehended the existing authority. It cannot create an authority which the original instrument did not confer.

438. If the principal document itself lacked competence to enlarge the authority except by executing another instrument in accordance with law, informal correspondence cannot accomplish what the law requires to be done through a formal juridical act.

439. The petitioner has repeatedly emphasised that the registered instrument dated 23rd April 2010 merely completed an existing transaction. The Court is unable, at this stage, to accept the submission as a self-evident proposition.

440. The answer depends upon the legal character of the registered document itself. If the instrument merely presented the original Agreement to Lease for delayed registration, one set of legal consequences may follow.

441. If, however, the document embodied fresh operative clauses, altered legal obligations or purported to create rights not previously brought into existence, the exercise travelled beyond mere implementation. The distinction is one of substance rather than form.

442. The Court is therefore required to examine not only the language of the Power of Attorney but also the recitals and operative clauses of the registered document dated 23rd April 2010.

443. Another aspect deserves attention. The property involved in the present proceedings is not privately owned property. It forms part of public property held under the principal lease granted by KMDA. Where delegated authority concerns public property subject to express contractual restrictions, the doctrine of strict construction assumes even greater significance.

444. Neither a statutory corporation nor its attorney can enlarge the estate created under the principal lease by resorting to implication.

445. The authority must exist both under the Power of Attorney and under the principal lease. Absence of either renders the transaction legally vulnerable.

446. Having examined the statutory framework and the authorities cited, this Court is of the opinion that the Power of Attorney dated 21st August 2002 must receive strict construction. The petitioner cannot derive from that instrument any authority beyond what has been expressly conferred or what necessarily flows from its language. Neither the subsequent communication dated 19th January 2010, nor the prolonged conduct of the parties, nor the commercial inconvenience occasioned by delay can enlarge the authority originally granted.

447. Whether the registered document dated 23rd April 2010 ultimately falls within the authority actually conferred depends upon a meticulous comparison of the operative clauses of the Power of Attorney with the recitals and operative provisions of the registered instrument. If the latter merely implemented acts expressly authorised, a different consequence may follow. If, however, it purported to create or enlarge proprietary rights beyond the delegated authority, the document cannot derive legal efficacy merely because it was registered.

448. Accordingly, Issue No. IV is answered by holding that the Power of Attorney dated 21st August 2002 did not confer unrestricted authority to create, vary or enlarge proprietary rights in the subject property. The authority contained therein must be construed strictly, and the validity of the document dated 23rd April 2010 depends upon whether it remained within the precise limits of that delegated authority. Registration alone cannot cure an act performed beyond the authority conferred by the principal.

449. Before the Court proceeds to examine whether the North Bengal State Transport Corporation possessed authority under the principal lease to induct the petitioner as developer, it becomes necessary to examine the interrelationship between the several instruments executed over the course of the transaction. Considered individually, each document possesses an independent legal character. Considered collectively, they constitute successive stages of a commercial arrangement extending over nearly a decade. The legal efficacy of each instrument, however, remains inseparably dependent upon the validity of the instrument preceding it.

450. The controversy cannot, therefore, be resolved by isolating one document from another. The Indenture of Lease dated 22nd November 1995 forms the juridical source of every subsequent transaction. It represents the origin of the leasehold estate in favour of NBSTC. Every right thereafter claimed by the Corporation necessarily derives from that instrument. Equally, every limitation incorporated therein accompanies the estate throughout its duration. The lessee could neither enlarge its own estate nor confer upon another rights superior to those which it itself possessed. The principle '*nemo dat quod non habet*' – no person can transfer a better title than he himself possesses—though ordinarily associated with the law relating to transfer of property, applies with equal force to the creation of derivative interests under a lease.

451. The Agreement to Lease dated 22nd February 2002 constitutes the second stage of the transaction. As already noticed while answering Issue No. II, the instrument embodied reciprocal contractual obligations between NBSTC and the petitioner. It reflected the commercial understanding

reached after the tender process and recorded the obligations expected to be discharged by each contracting party. The agreement created contractual rights inter se the parties. It did not, however, by itself create a present leasehold estate capable of displacing the statutory requirements prescribed under the Transfer of Property Act and the Registration Act.

452. The Power of Attorney dated 21st August 2002 represents the third stage. It did not create any proprietary interest in favour of the petitioner. Nor did it enlarge the estate already vested in NBSTC under the principal lease. The instrument merely delegated authority to perform specified acts on behalf of the Corporation. The authority thereby conferred necessarily remained co-extensive with the authority possessed by the principal. An attorney cannot derive powers greater than those vested in the principal himself. Equally, delegated authority cannot be interpreted so as to defeat restrictions expressly governing the principal's own estate.

453. The registered document dated 23rd April 2010 constitutes the fourth stage. Whether that document merely completed the earlier transaction or purported to create an independent legal estate remains one of the principal controversies in the present proceedings. The answer to that controversy depends not merely upon the fact of registration but upon three anterior considerations, namely: first, whether the Agreement to Lease was capable of being perfected in the manner suggested by the petitioner; secondly, whether the Power of Attorney authorised execution of such an instrument; and thirdly, whether NBSTC itself possessed authority under the principal lease to execute a document of that nature.

454. The Court is, therefore, unable to accept the petitioner's submission that the registered document may be examined in isolation from the earlier instruments. The legal efficacy of the document executed in 2010 necessarily depends upon the authority flowing from the documents executed in 1995 and 2002. A defect affecting the foundational instrument cannot ordinarily be ignored merely because a subsequent document has been registered.

455. Conversely, the respondents are equally not justified in treating each document as though it has been entirely detached from the commercial relationship that gradually evolved between the parties. The subsequent conduct of NBSTC, including delivery of possession, execution of the Power of Attorney, acceptance of substantial consideration and prolonged acquiescence, cannot be dismissed as legally irrelevant. Such circumstances form part of the factual matrix within which the Court must determine the nature of the rights, if any, ultimately accrued to the petitioner. They may not enlarge the proprietary estate created by statute, but they remain relevant while examining the conduct of the parties and the consequences flowing from the contractual relationship.

456. A further feature deserves emphasis. The present litigation concerns public property. The principal lease was not executed between private individuals dealing with their own estates. The owner of the property is a statutory authority entrusted with management of public assets. The lessee is itself a statutory corporation constituted under parliamentary enactment. Every subsequent transaction must therefore satisfy not only the ordinary requirements governing private contracts but also the public

law obligations attached to dealings with State property. The Court cannot lose sight of this larger constitutional framework while examining the authority of NBSTC or the legal efficacy of the subsequent instruments.

457. The petitioner has repeatedly urged that substantial consideration having been accepted, possession having been delivered and the transaction having remained operative for several years, the respondents should not be permitted to retreat from their earlier position. The submission invokes principles of fairness and commercial morality, which deserve consideration. Yet fairness in public law cannot be divorced from legality. The constitutional obligation to act fairly does not authorise a statutory corporation to disregard restrictions imposed by the principal lease or to create rights contrary to mandatory statutory provisions. Equity follows the law; it does not supplant it.

458. The Court is thus brought to the inevitable conclusion that the four documents constitute successive links of one continuous transaction, each deriving its legal force from the validity of the preceding link. The principal lease forms the fundamental premise, upon which the Agreement to Lease rests. The Power of Attorney derives its authority from the Agreement and the principal lease. The registered document can derive legal enforceability only if the authority originating from each preceding instrument remains legally sustainable.

459. It is in that perspective that the next issue assumes decisive importance. The question is no longer confined to the legal effect of the Agreement to Lease or the scope of the Power of Attorney. The enquiry now turns to the

source of NBSTC's own authority. If the Corporation itself lacked competence under the principal lease to induct the petitioner without obtaining the previous written consent of the lessor, every subsequent document executed pursuant thereto necessarily falls to be examined in the light of that restriction.

460. The Court shall, therefore, proceed to examine the covenants contained in the Indenture of Lease dated 22nd November 1995, particularly Clauses 3, 7 and IV(1), together with the provisions of the Road Transport Corporations Act, 1950, in order to determine whether NBSTC possessed legal authority to enter into the transaction presently relied upon by the petitioner.

461. Issue No. V - Whether NBSTC possessed authority under the Indenture of Lease dated 22nd November 1995 to induct the petitioner as developer and execute the Agreement to Lease dated 22nd February 2002 without obtaining the previous written consent of KMDA?

462. The determination of this issue requires the Court to examine the source, nature and extent of the estate vested in the North Bengal State Transport Corporation under the principal lease. If the Corporation itself lacked authority to induct a third party in the manner adopted, the subsequent instruments cannot acquire a legal effectiveness greater than the authority from which they originated.

463. An indenture of lease is not merely an instrument creating a possessory interest. It is also the repository of the conditions upon which the estate is granted. The rights of the lessee and the corresponding powers retained by the lessor must be gathered from the language employed in the

instrument read as a whole. Individual clauses cannot be construed in isolation; each covenant derives its meaning from the scheme of the lease and the commercial object sought to be achieved.

464. The Indenture of Lease dated 22nd November 1995 was executed by the erstwhile Calcutta Improvement Trust, presently represented by KMDA, in favour of NBSTC for a period of ninety-nine years commencing from 12th October 1990.

465. The recital clauses disclose the object for which the grant was made. The lease was granted for establishment and extension of a bus terminus. The purpose clause is not an ornamental recital. It defines the character of the grant itself. The estate created in favour of NBSTC remained burdened with the obligation of utilising the property consistently with that public purpose.

466. The significance of that obligation becomes apparent upon examination of Clause 3. Clause 3 obliges the lessee to utilise the demised premises solely for the purpose contemplated under the lease.

467. The covenant is not merely directory. It constitutes one of the essential conditions upon which the lease itself rests. The Learned Senior Counsel for the petitioner had argued that commercial development was intended only as a means of generating resources for construction of the bus terminus and therefore remained consistent with the object of the lease. Generation of financial resources for advancement of the primary object may, in an appropriate factual backdrop, remain ancillary to the principal purpose.

468. The question, however, is not whether commercial utilisation was commercially desirable. The question is whether NBSTC possessed contractual authority under the lease to alter the manner in which the estate itself can be utilised.

469. Clause 7 of the principal lease of 1995 assumes vital importance. The covenant restrains the lessee from assigning, transferring, subletting, mortgaging, parting with possession or otherwise creating third-party interests in the demised premises without obtaining the previous written consent of the lessor.

470. The language employed is comprehensive. It is designed to preserve the proprietary control of the lessor over valuable public property. The covenant recognises that although possession has been transferred to the lessee, the owner retains a continuing interest in regulating the manner in which derivative rights may thereafter be created.

471. The requirement of previous written consent is neither incidental nor procedural. It constitutes a condition precedent. Its object is to enable the lessor to examine whether the proposed transaction remains consistent with the purpose of the original grant and with the public interest underlying the lease.

472. The Learned Senior Counsel for the petitioner has contended that the Cabinet Decision dated 28th February 2001 substantially satisfied this requirement.

473. The Court is unable, at this stage, to accept that proposition. The Cabinet Decision emanated from the State Government acting in its executive

capacity. The principal lease, however, required previous written consent of the lessor. The lessor under the lease was KMDA, not the Cabinet.

474. Unless it is demonstrated that the lessor itself granted the consent contemplated by Clause 7, the Cabinet Decision cannot automatically be equated with the contractual consent required under the lease.

475. The distinction is of considerable legal significance.

476. Executive approval and contractual consent, though they may occasionally coexist, are not juridically identical.

477. One flows from governmental policy. The other flows from the contractual relationship between lessor and lessee.

478. The petitioner has further argued that KMDA accepted payments towards ground rent from the petitioner and thereby recognised its participation in the project.

479. Acceptance of payment constitutes a relevant factual circumstance.

480. The Court is unable, however, to attribute to that conduct a legal consequence greater than the act itself warrants.

481. Acceptance of money due under the principal lease cannot, without more, be construed as written consent creating derivative proprietary rights. Consent contemplated by Clause 7 is an express contractual act. It cannot ordinarily be inferred from conduct which admits of several possible explanations.

482. Another circumstance pressed into service by the petitioner relates to the communication contemplating issuance of a 'No Objection Certificate' upon payment of Rs.2 crores.

483. According to the petitioner, that communication demonstrates that KMDA itself accepted the proposal for commercial development.

484. The respondents contended the communication remained conditional and never matured into an operative consent because the stipulated conditions were not fulfilled.

485. The Court finds considerable substance in the respondents' submission. The communication relied upon by the petitioner does not, on its plain terms, disclose an unconditional waiver of the requirements contained in Clause 7 of the principal lease.

486. At the highest, it indicates a willingness to consider the proposal subject to fulfilment of specified conditions.

487. Conditional willingness cannot be equated with completed consent. The distinction between the two cannot be ignored. The petitioner has also placed considerable emphasis upon the provisions of Section 19(2)(b) of the Road Transport Corporations Act, 1950, contending that NBSTC possesses statutory authority to acquire, hold and dispose of property.

488. The submission correctly reflects the width of the statutory power. The Court is, however, unable to accept the further submission that the statutory provision overrides restrictions voluntarily accepted by the Corporation under the principal lease.

489. Section 19 of the said Act enables the Corporation to deal with property in accordance with law. The provision does not authorise the Corporation to disregard contractual limitations binding upon the estate which it itself accepted.

490. A statutory power to hold and deal with property cannot enlarge the estate acquired under a lease. The Corporation could exercise only such rights as the lease permitted. The statute and the lease operate harmoniously. Neither displaces the other. Reliance has also been placed upon Section 34 of the Road Transport Corporations Act.

491. The Learned Senior Counsel for the petitioner argued that once the Government approved commercial development, the statutory requirement was satisfied. The respondents submit that Section 34 of the said Act preserves continuing governmental supervision and therefore authorised issuance of the memoranda dated 13th August 2010 and 20th August 2010.

492. The Court is of the opinion that neither construction may be accepted in absolute terms. Section 34 of the said Act enables the Government to issue policy directions. The provision, however, neither dispenses with contractual restrictions accepted under the principal lease nor authorises the Government to enlarge proprietary rights vested in the Corporation. Equally, governmental supervision cannot itself create contractual authority where the lease requires consent of the lessor. The statutory provision and the lease operate within distinct juridical fields. One regulates governmental control over the Corporation. The other regulates the proprietary relationship between lessor and lessee. The petitioner has urged that such an interpretation would defeat the very Cabinet policy intended to revitalise the financial position of NBSTC. The Court does not share that apprehension. Recognition of the contractual restrictions contained in the principal lease does not negate the Cabinet policy. It

merely requires that implementation of governmental policy proceed consistently with the contractual obligations already binding upon the Corporation. The rule of law admits of no distinction between public policy and contractual discipline.

493. The former must be implemented through the latter where the parties have voluntarily entered into binding contractual arrangements.

494. The Court is therefore persuaded that the estate acquired by NBSTC under the principal lease remained expressly qualified by the restrictions contained in Clauses 3, 7 and IV(1) constituted integral conditions of the grant itself.

495. NBSTC could not, by unilateral act or by private agreement, enlarge the estate so as to create derivative rights in favour of a third party without obtaining the previous written consent of the lessor in the manner contemplated by the lease.

496. On the pleadings and materials presently available, however, the Court is unable to hold that the Cabinet Decision dated 28th February 2001, the subsequent administrative correspondence or the acceptance of certain payments by KMDA constituted the previous written consent required under Clause 7 of the principal lease.

497. Accordingly, Issue No. V is answered by holding that NBSTC possessed only such authority as flowed from the Indenture of Lease dated 22nd November 1995, which remained circumscribed by the restrictive covenants contained in Clauses 3, 7 and IV(1). In absence of the previous written consent of the lessor in the manner contemplated by the lease, the

Corporation could not enlarge its own estate by creating derivative rights in favour of the petitioner capable of binding KMDA.

498. Issue No. VI- Whether the Cabinet Memorandum dated 16th February 2001 and the Cabinet Decision dated 28th February 2001 created any legally enforceable right in favour of the petitioner or dispensed with the contractual restrictions contained in the principal lease?

499. The petitioner has built a substantial part of its case upon the governmental policy embodied in the Cabinet Memorandum dated 16th February 2001 and the decision of the Council of Ministers dated 28th February 2001. The Learned Senior Counsel has repeatedly contended that once the highest executive authority of the State consciously approved commercial exploitation of the leasehold property, every subsequent authority became bound to facilitate implementation of that decision. According to the petitioner, the departmental memoranda issued during August, 2010 represent an abrupt departure from the very governmental policy upon which the transaction originated.

500. The respondents, while not disputing the existence of the Cabinet decision, disputed its legal consequences.

501. It is submitted that the Cabinet merely approved the proposal then placed before it relating to M/s Samcon Developers (P) Ltd. The decision, according to the respondents, neither authorised substitution of another developer nor created enforceable rights in favour of the petitioner. It is further argued that the Cabinet decision did not dispense with compliance with the covenants contained in the principal lease or with the

statutory requirements governing transfer of interests in immovable property.

502. The controversy, therefore, requires examination of the constitutional character of a Cabinet decision.

503. The Council of Ministers occupies a position of profound constitutional importance. It formulates governmental policy. It determines executive priorities. It exercises collective responsibility in matters of administration. Yet the constitutional importance of a Cabinet decision must not be confused with its juridical consequences.

504. Every executive decision does not, merely because it emanates from the Cabinet, mature into a legally enforceable right.

505. A distinction of enduring importance exists between formulation of governmental policy and creation of enforceable legal rights. Policy furnishes the direction of executive action. Legal rights arise only when the policy is translated into legally recognised acts performed in accordance with the governing statutory framework. The Constitution itself recognises this distinction. Executive power extends to formulation of policy.

506. Exercise of that power, however, remains subject to the Constitution, to parliamentary legislation and to obligations voluntarily assumed through legally binding instruments.

507. The executive cannot, by policy alone, enlarge proprietary rights created under a registered lease or dispense with statutory requirements prescribed by the Legislature.

508. The petitioner has argued that the Cabinet decision constituted governmental approval under Section 34 of the Road Transport Corporations Act.

509. Even if that submission is accepted for the purpose of argument, the legal consequence suggested by the petitioner does not inevitably follow. Section 34 of the said Act empowers the Government to issue policy directions to the Corporation. The provision does not authorise the Government to alter proprietary rights vested in another statutory authority. Nor does it enable the executive to rewrite contractual covenants accepted under a registered lease.

510. Governmental policy and contractual obligations operate in different juridical spheres. The former cannot silently extinguish the latter. Another aspect assumes significance. The Cabinet Memorandum placed before the Council of Ministers proceeded upon a specific fact. The proposal then under consideration related to Samcon Developers.

511. The petitioner admittedly was not the developer whose proposal formed the subject of governmental consideration.

512. The arrangement with Samcon Developers admittedly came to an end. The petitioner thereafter entered the field through a fresh tender process conducted by NBSTC.

513. The Court is therefore unable to accept the proposition that the Cabinet decision automatically transmitted from one developer to another without any contemporaneous governmental consideration of the altered factual circumstances. The identity of the developer was not an incidental matter.

It constituted one of the factual premises upon which governmental approval was originally sought.

514. **The substitution of one developer by another altered the factual substratum of the proposal.**

515. **Whether fresh governmental approval became necessary thereafter is not the immediate question before this Court.**

516. **The Court is presently concerned with a narrower enquiry.**

517. **Did the Cabinet decision itself create enforceable rights in favour of the petitioner?**

518. **The answer, in the opinion of this Court, must be in the negative.**

519. **The Learned Senior Counsel for the petitioner has also relied upon the doctrine of legitimate expectation.**

520. It is submitted that governmental approval, followed by acceptance of consideration, delivery of possession, execution of the Power of Attorney and prolonged acquiescence legitimately induced the petitioner to believe that implementation of the project would proceed to its logical conclusion.

521. The doctrine significantly occupies an important place within administrative law. Its object is to secure fairness in governmental dealings. It does not, however, operate independently of law.

522. A legitimate expectation cannot compel a public authority to act contrary to statute. Nor can it enlarge rights which the law itself has declined to recognise. The doctrine protects procedural fairness. It does not create substantive proprietary rights where none otherwise exist. The petitioner has further invoked promissory estoppel. The Court finds considerable difficulty in applying that doctrine in the present factual matrix.

523. Promissory estoppel rests upon the premise that the authority making the representation possessed legal competence to fulfil it. The doctrine cannot validate a promise made beyond statutory authority. Nor can it compel performance contrary to express contractual restrictions governing public property. Where Legislature has prescribed the manner in which rights in immovable property may be created, equitable doctrines must necessarily yield to statutory command.

524. **The Court cannot permit equity to displace legislation.**

525. **The petitioner has sought support from the observations of the Supreme Court in *Shrilekha Vidyarthi, Mahabir Auto Stores and Dwarkadas Marfatia.***

526. Those authorities unquestionably reaffirm that governmental action must conform to constitutional standards of fairness.

527. None of those decisions, however, holds that an executive policy, by itself, creates proprietary rights in immovable property or extinguishes contractual restrictions binding upon the State.

528. The ratio of those decisions, therefore, cannot be extended to the present controversy in the manner suggested by the petitioner.

529. The respondents have rightly relied upon *Greater Mohali Area Development Authority v. Manju Jain, (2010) 9 SCC 157*.

530. The Supreme Court emphasised that an internal governmental decision does not by itself mature into an enforceable legal right unless translated into legally operative action in accordance with law.

531. The principle emerging from the said decision applies with considerable force to the present controversy.

532. The Cabinet decision undoubtedly explains the genesis of the project.

533. It cannot, however, be regarded as the juridical source of the petitioner's proprietary rights.

534. Those rights, if any, must arise from legally effective instruments executed consistently with the statutory framework.

535. The Court therefore arrives at the following conclusions. The Cabinet Memorandum dated 16th February 2001 and the Cabinet Decision dated 28th February 2001 constituted the administrative foundation upon which the proposal for commercial utilisation of the property originated. They reflected governmental policy prevailing at the relevant point of time. They did not, however—

(i) create proprietary rights in favour of the petitioner;

(ii) dispense with compliance with the Transfer of Property Act or the Registration Act;

(iii) override the restrictive covenants contained in the principal lease dated 22 November 1995;

(iv) substitute the written consent of KMDA required under Clause 7 of the principal lease; or

(v) confer authority upon NBSTC to enlarge its leasehold estate beyond the limits created by the original grant.

536. Accordingly, Issue No. VI is answered by holding that the Cabinet Decision dated 28th February 2001 constituted an executive policy decision facilitating consideration of commercial utilisation of the property. It did not, by itself, create enforceable legal rights in favour of

the petitioner nor dispense with compliance with the statutory provisions and contractual covenants governing the subject property.

537. Issue No. VII - Whether the State Government possessed lawful authority to issue the Memoranda dated 13th August 2010 and 20th August 2010, and whether those memoranda withstand constitutional and statutory scrutiny?

538. The challenge directed against the Memoranda dated 13th August 2010 and 20th August 2010 raises questions extending beyond the confines of the contractual relationship between the petitioner and the North Bengal State Transport Corporation. The controversy invites examination of the constitutional limits of executive authority, the statutory relationship between the State Government and a statutory corporation constituted under the Road Transport Corporations Act, 1950, and the extent to which executive directions may regulate dealings with public property already governed by contractual covenants.

539. The Learned Senior Counsel representing the petitioner contended the impugned memoranda constitute executive interference unsupported by any statutory source of power. It was argued that the communications disclose no reasons, refer to no statutory provision and were issued after the Government had already approved commercial utilisation of the property through the Cabinet Decision dated 28th February 2001. According to the petitioner, the Special Secretary, Transport Department, assumed a jurisdiction not vested in that authority by law and thereby frustrated a transaction that had advanced through execution of the Agreement to Lease, delivery of possession, acceptance of substantial

consideration and registration of the subsequent instrument. The respondents adopt a fundamentally different position.

540. The Learned Advocate for the State submitted the impugned communications represent legitimate governmental supervision exercised under the constitutional executive power of the State and the authority preserved by Section 34 of the Road Transport Corporations Act, 1950. NBSTC supports that submission by contending that the Corporation, being wholly owned by the State, remains amenable to governmental policy directions concerning management of public assets. KMDA further submits that the communications merely sought to preserve the proprietary rights of the lessor pending examination of the legal validity of the proposed transaction.

541. Executive power under Article 162 of the Constitution of India declares the executive power of the State extends to matters with respect to which the Legislature of the State possesses competence to enact laws. The provision is couched in broad language, recognising that administration of governmental affairs necessarily requires executive action in areas not occupied by legislation. Yet the extant of executive power does not render it absolute.

542. Executive authority is always subject to three controlling limitations. First, it cannot transgress constitutional guarantees. Secondly, it cannot override or supplant a statute enacted by the competent Legislature. Thirdly, where statutory rights and obligations have crystallised, executive instructions cannot displace those rights except in the manner authorised by law.

543. The executive may supplement the law where legislation is silent. It cannot substitute the law which the Legislature has expressed and such principle has acquired enduring recognition in constitutional jurisprudence and preserves the supremacy of law over administrative discretion.

544. The petitioner has argued that the impugned memoranda neither disclose the statutory source of authority nor record reasons justifying the restraint imposed upon the petitioner.

545. Article 166 of the Constitution of India prescribes the constitutional form in which executive action of the Government is expressed and authenticated. The provision ensures institutional regularity and authenticity. It does not, by itself, confer substantive power.

546. Consequently, even where executive action satisfies the formal requirements of Article 166 of the Constitution of India, its substantive legality must still be tested with reference to the Constitution, the governing statute and the nature of the right sought to be affected.

547. Conversely, mere omission to recite the statutory source of power in the communication does not invariably render the action void if such authority demonstrably exists elsewhere in law.

548. The Court must therefore look beyond the language of the memoranda and ascertain whether the authority claimed by the State can legitimately be traced to the constitutional or statutory framework.

549. Section 34 of the Road Transport Corporations Act authorises the State Government to issue directions upon questions of policy to the

Corporation, and the Corporation is ordinarily obliged to give effect to such directions.

550. The provision reflects the legislative recognition that although a statutory corporation enjoys a distinct juristic personality, its functioning in matters of governmental policy remains subject to executive supervision. The provision, however, requires careful construction. The authority preserved by Section 34 is supervisory. It is not proprietary. The section authorises the Government to guide policy. It does not transfer to the Government the proprietary rights vested in another statutory authority, nor does it authorise the Government to alter contractual obligations voluntarily assumed under a registered lease. The distinction is of decisive significance.

551. If the impugned memoranda merely directed NBSTC to suspend implementation of a proposal pending examination of legal issues concerning public property, the communications may legitimately fall within the sphere of governmental supervision.

552. If, however, they purported to extinguish vested contractual or proprietary rights without statutory authority, a different constitutional enquiry would arise.

553. The petitioner has repeatedly emphasised the memoranda do not disclose reasons. The absence of elaborate reasons, though a relevant consideration, cannot by itself determine the legality of executive action.

554. The requirement to record reasons depends upon the nature of the decision, the statutory framework and the civil consequences flowing therefrom.

555. Where executive directions merely regulate the internal functioning of governmental agencies, the obligation to furnish detailed reasons may not arise in the same manner as in quasi-judicial proceedings.

556. Where, however, executive action directly impairs accrued civil rights or legitimate interests, fairness ordinarily requires disclosure of the basis upon which the decision rests.

557. Whether the communications dated 13th August 2010 and 20th August 2010 produced such civil consequences depends upon the anterior question already examined by this Court namely, whether the petitioner had, by that stage, acquired a legally enforceable proprietary interest.

558. The Court has already held while answering Issues II to VI that the petitioner had not established acquisition of a legally enforceable leasehold estate merely by reason of the Agreement to Lease, the subsequent registration or the Cabinet decision. Such finding materially influences the present enquiry. The memoranda has affected the petitioner's commercial expectations. Whether they impaired vested proprietary rights is another aspect. The petitioner has also contended that the impugned communications were issued without notice or opportunity of hearing. The principles of natural justice constitute an integral facet of fair administration. They are not rigid formulae applicable in identical measure to every administrative action.

559. The content of procedural fairness varies with the statutory backdrop, the nature of the power exercised and the character of the interest affected.

560. Whether the petitioner was entitled to a prior hearing therefore depends upon the legal status of the rights asserted rather than upon the mere fact that commercial interests were affected.

561. The constitutional validity of the impugned memoranda cannot be determined merely by observing that they were issued by the Special Secretary or that they omitted to recite elaborate reasons. Their legality depends upon a cumulative assessment of the extent of executive power preserved by Articles 162 and 166 of the Constitution; the supervisory authority conferred by Section 34 of the Road Transport Corporations Act; the contractual restrictions contained in the principal lease; the legal status of the petitioner's asserted rights; and the procedural fairness required in the circumstances of the case.

562. Only after evaluating those factors together can the Court determine whether the impugned memoranda represent a lawful exercise of executive supervision or an impermissible interference with legally protected rights.

563. The Learned Senior Counsel for the petitioner has placed considerable reliance upon *Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405*, contending that the validity of an administrative decision must be judged exclusively upon the reasons contained in the order itself and cannot subsequently be supplemented through affidavits or explanations tendered before the Court.

564. The proposition represents one of the settled principles governing judicial review.

565. An administrative order producing civil consequences must ordinarily disclose the basis upon which the authority has proceeded, thereby enabling the person affected to understand the decision and permitting the Court to examine its legality. The ratio of Mohinder Singh Gill, however, cannot be isolated from the factual background in which it was rendered.

566. The decision concerned exercise of statutory authority by the Election Commission in relation to an electoral process. The order impugned before the Supreme Court constituted the operative statutory decision itself. The controversy did not arise out of an evolving contractual relationship extending over several years, nor did it involve antecedent questions concerning the existence of proprietary rights, validity of contractual instruments or restrictions governing public property.

567. The present case stands upon a materially different substratum. The communications dated 13th August 2010 and 20th August 2010 did not itselves determine proprietary rights. It constituted departmental directions addressed to public authorities requiring that further steps concerning commercial development of the property should not proceed pending governmental examination. Its legal effect cannot be appreciated independently of the statutory and contractual framework already examined by this Court.

568. Equally important is the circumstance that the petitioner has yet to establish acquisition of a legally enforceable proprietary estate capable of attracting the full amplitude of the doctrine relied upon in Mohinder

Singh Gill. The decision, therefore, states the governing principle correctly. Its factual premise remains materially distinguishable.

569. The petitioner has next relied upon *Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh, (1991) 1 SCC 212*. The judgment constitutes an important milestone in the development of constitutional jurisprudence by affirming that State action remains amenable to judicial review even where the relationship between the parties possesses contractual features. This Court endorses that principle. The State cannot divest itself of constitutional obligations merely because it enters into commercial dealings.

570. The ratio of *Shrilekha Vidyarthi* (supra), however, does not extend to the proposition that contractual restrictions voluntarily accepted by a statutory corporation become legally irrelevant once governmental policy is invoked.

571. In the present case, the principal controversy concerns the legal validity of the Agreement to Lease, the registered instrument dated 23rd April 2010, the Power of Attorney dated 21st August 2002, and the restrictive covenants contained in the principal lease. Those issues precede the enquiry into arbitrariness.

572. Unlike *Shrilekha Vidyarthi* (supra), where the existence of the legal relationship was admitted, the present proceedings require determination of whether the petitioner acquired enforceable legal rights at all.

573. The petitioner has further relied upon *Mahabir Auto Stores v. Indian Oil Corporation, (1990) 3 SCC 752*. That decision emphasises fairness in governmental decision-making and recognises that arbitrary departure

from consistent executive conduct may invite constitutional correction. The principle commands acceptance. Fairness constitutes the essence of public administration. The difficulty lies in applying the principle to the facts presently before the Court.

574. The petitioner proceeded upon the assumption that the respondents were under an existing legal obligation to facilitate completion of the transaction.

575. The respondents disputed the very existence of such obligation, submitting where the existence of the legal relationship itself remains disputed, the doctrine of fairness cannot, by itself, create rights otherwise absent in law.

576. The petitioner has also invoked *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293*. The Supreme Court held that every public authority, even while exercising contractual powers, remains subject to constitutional limitations. This Court concedes to that proposition.

577. Yet, the decision also proceeds upon the premise that the authority whose action is questioned possesses the legal competence to act in the sphere concerned.

578. The present controversy raises an anterior question—whether NBSTC itself possessed authority under the principal lease to induct the petitioner without the previous written consent of KMDA.

579. Until that question is answered affirmatively, the ratio of Dwarkadas Marfatia cannot automatically compel the conclusion urged by the petitioner.

580. Reliance has also been placed upon ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553.

581. The petitioner has correctly submitted that the existence of a contract does not by itself exclude jurisdiction under Article 226.

582. The decision, however, proceeded upon an admitted contractual framework where the legal relationship between the parties was never in dispute.

583. The controversy centred upon the arbitrary refusal of the respondent corporation to discharge obligations admittedly arising under the contract.

584. In the present case, the Court is required to determine whether the legal relationship asserted by the petitioner ever matured into an enforceable proprietary interest.

585. The distinction is fundamental. The petitioner cannot derive from ABL International a proposition that disputed questions relating to creation of proprietary rights, authority under a registered lease and validity of derivative instruments may all be conclusively determined within writ jurisdiction merely because the State happens to be one of the parties.

586. The petitioner has lastly relied upon *Maharashtra Chess Association v. Union of India, (2020) 13 SCC 285*, to contend that Article 226 should not be constricted by technical limitations, which is agreeable to this Court.

587. The jurisdiction under Article 226 of the Constitution of India is constitutional and cannot be curtailed by judicially created barriers.

588. The decision, however, simultaneously recognises that exercise of jurisdiction remains governed by sound judicial discretion.

589. The judgment does not authorise constitutional courts to disregard statutory provisions regulating creation of proprietary rights or to substitute judicial review for ordinary civil remedies wherever complex contractual questions arise.

590. The respondents, on the other hand, have relied upon *Radhakrishna Agarwal, Bareilly Development Authority, Greater Mohali Area Development Authority, Korukonda Chalapathi Rao, Church of Christ,* and *SMS Tea Estates*.

591. Those authorities collectively emphasise three propositions of enduring significance.

592. First, contractual rights ordinarily require adjudication before the forum recognised by law.

593. Secondly, statutory requirements governing creation and transfer of rights in immovable property cannot be diluted by equitable considerations.

594. Thirdly, delegated authority and contractual competence require strict construction where public property is concerned.

595. These principles, in the opinion of this Court, harmonise more closely with the factual matrix presently under consideration.

596. The impugned memoranda cannot be examined as though they existed in a legal vacuum.

597. By the time those communications came to be issued, serious questions had already arisen concerning the authority of NBSTC, the restrictions contained in the principal lease, the absence of the lessor's written consent, the efficacy of the Agreement to Lease and the legal consequences of delayed registration.

598. Administrative fairness would have been better served had the authorities communicated the basis of their decision with greater clarity and afforded the petitioner an opportunity to present its position before directing that no further steps be taken. Such procedural refinement promotes transparency and reduces avoidable litigation.

599. Accordingly, Issue No. VII is answered by holding that the Memoranda dated 13th August 2010 and 20th August 2010 cannot be characterised as lacking jurisdiction or as suffering from such constitutional infirmity as would warrant their annulment in exercise of the writ jurisdiction of this Court. They represent an exercise of executive supervision referable to the constitutional and statutory powers of the State in relation to a statutory corporation dealing with public property. While the decision-making process could have reflected greater procedural fairness, the deficiencies relied upon by the petitioner do not, in the facts of the present case, furnish sufficient ground for quashing the impugned communications.

600. Issue No. VIII- Whether the communication dated 31st May 2017 rescinding the Agreement to Lease and allied arrangements is legally sustainable?

601. The communication dated 31st May 2017 represents the final administrative act by which NBSTC declared that the contractual arrangement entered into with the petitioner would no longer be acted upon. The petitioner assails the communication as arbitrary, contrary to the contractual obligations undertaken by the Corporation, inconsistent with the Cabinet policy that initiated the project and violative of Articles 14, 19 and 300A of the Constitution.

602. The respondents contend that the communication merely recognised the legal consequences already flowing from the inability of the parties to bring into existence a legally enforceable lease in conformity with the governing statutory provisions. According to the respondents, the communication did not extinguish vested proprietary rights because no such rights had crystallised in favour of the petitioner.

603. The controversy requires examination of the communication not merely as an administrative order but also as a juridical consequence of the contractual relationship existing between the parties. It is necessary to distinguish termination of a lease from rescission of an executory contract.

604. A valid lease creates an interest in immovable property. Its determination is regulated principally by Section 111 of the Transfer of Property Act, 1882.

605. An agreement contemplating execution of a lease, however, remains governed by the ordinary principles of the Indian Contract Act, 1872, unless and until the contemplated demise is lawfully brought into existence.

606. The relationship between the parties instigated primarily upon contractual obligations. The Learned Senior Counsel for the petitioner submitted Section 111(g) of the Transfer of Property Act required service of a notice of forfeiture before the arrangement could be extinguished.

607. The petitioner has further relied upon the absence of prior notice before issuance of the communication dated 31st May 2017.

608. The record reveals that the relationship between the parties had remained in a state of prolonged uncertainty for several years.

609. The departmental memoranda issued in August, 2010, the communication dated 31st December 2010, the correspondence exchanged thereafter and the earlier writ proceedings demonstrated the petitioner was fully aware that implementation of the project had encountered serious legal impediments.

610. The communication dated 31st May 2017 did not emerge abruptly or without antecedent events.

611. It represented the culmination of a series of developments extending over several years. The Learned Senior Counsel for the petitioner has nevertheless argued that the respondents themselves rendered performance impossible by directing KMDA not to issue the No Objection Certificate and by requesting the Kolkata Municipal Corporation not to process the revised building plan.

612. It was further asserted that no party can rely upon its own conduct in preventing performance and thereafter invoke such prevention as a ground for rescinding the contract.

613. The submission embodies an important principle recognised by the law of contracts. A contracting party who prevents performance by the other cannot ordinarily take advantage of the consequences of such prevention as has been enunciated in Section 53 of the Indian Contract Act, which provides where reciprocal promises are to be performed and one party prevents the other from performing its promise, the contract becomes voidable at the option of the party so prevented, who may also claim

compensation for the loss sustained in consequence of the non-performance of the contract.

614. It was further contended the respondents fall squarely within the mischief of that provision.

615. The application of Section 53 of the Indian Contract Act, however, presupposes that the performance prevented was one which the parties were legally competent to perform.

616. Where implementation of the contractual arrangement itself became subject to statutory impediments arising from the principal lease, compulsory registration and absence of the lessor's written consent, the doctrine embodied in Section 53 as aforesaid cannot be applied in abstraction from those legal limitations.

617. The respondents' conduct must therefore be evaluated not merely from the standpoint of contractual obligations but also in the context of their statutory responsibilities concerning public property.

618. The petitioner has further invoked Section 54 of the Indian Contract Act concerning reciprocal promises and Section 55 of the Indian Contract Act dealing with failure to perform within the stipulated time which are triable issues relating to specific performance of a contract exceeding the purview of writ jurisdiction.

619. The respondents have argued that the communication dated 31st May 2017 merely recognised a contractual arrangement that had become incapable of implementation in its existing form. By the time the impugned communication came to be issued, several circumstances had fundamentally altered the legal landscape. The principal objections raised

by the lessor had not been resolved. The governmental memoranda remained operative. The legality of the Agreement to Lease continued to remain disputed. The authority flowing from the Power of Attorney had become the subject of controversy. Implementation of the proposed commercial development had remained suspended for several years.

620. The petitioner has argued that the communication dated 31st May 2017 contains no independent reasons and merely reiterates earlier departmental decisions. The criticism is not entirely without substance.

621. Administrative orders affecting valuable commercial interests ought, as a matter of good governance, to disclose the considerations which weighed with the authority.

622. Reasoned decisions strengthen public confidence in administration and facilitate effective judicial review.

623. The communication dated 31st May 2017 cannot be invalidated in exercise of jurisdiction under Article 226 of the Constitution. The communication did not determine any legally established leasehold estate in favour of the petitioner. It represented the Corporation's decision to rescind an executory contractual arrangement whose implementation had become legally untenable. Such civil consequences as may arise from the contractual relationship remain open to be pursued before the forum recognised by law, but they do not warrant issuance of a constitutional writ directing specific performance or restoration of the arrangement.

624. The Court has considered each submission advanced by the learned Advocates, examined the statutory provisions governing the controversy, analysed the authorities cited at the Bar and appreciated the

documentary materials forming part of the record. The reliefs sought cannot, therefore, be examined in isolation from the findings already recorded.

625. The petitioner seeks, in substance, the following principal reliefs:-

i. In WPA 15313 (W) of 2011:

"(a) An appropriate order be passed directing the respondents to act strictly in accordance with law.

(b) A writ in the nature of mandamus be issued quashing the impugned Memos dated 13.08.2010, 20.08.2010 and 31.12.2010 issued by the State respondents and the then Chairman of the respondent no.2 respectively being annexures P/12, P/13 and P/14 hereof.

(c) A writ in the nature of mandamus be issued commanding the respondent no.2 and 3 to obtain and in turn to transmit the 'No Objection Certificate' of the respondent no.4 to the petitioner upon payment of the sum of Rs.2 Crores now held by the respondent no.2 to enable the petitioner to commercially utilize the leasehold land in terms of the deed of lease so registered on 23.04.2010 being annexure P/21 hereof.

(d) A writ in the nature of mandamus be issued commanding the respondent no.2 and 3 to accept the balance lease premium upon making a true accounts after deduction/adjustment taking into consideration the sum so paid to respondent no.4 and 5 for and on behalf of the respondent nos.2 by the petitioner and to grant and/or to issue necessary 'No Claim Certificate' in favour of the petitioner, forthwith.

(e) A writ in the nature of mandamus commanding the respondent nos.5 and 6 to accord sanction of the Building Plan so submitted by the petitioner on 6th November, 2010 in accordance with relevant Building Rules, forthwith.

(f) A writ in the nature of Certiorari be issued directing the respondents and each of them to certify and transmit all the records pertaining to this case so that upon perusal thereof, conscionable justice may be administered.

…

(h) An appropriate order be passed directing the State respondents not to give any effect or further effect of the impugned Memos dated 13.08.2010, 20.08.2010 and 31.12.2010 being annexures P/12, P/13 and P/14 hereof and/or to take any step or steps in terms thereof.

(i) An order directing the respondent no.2 and 3 to obtain and handover the 'No objection Certificate' of Kolkata Improvement Trust, being the respondent no.4 herein, to the petitioner to enable the petitioner to commercially exploit the said land in terms of the deed of lease so registered on 23.04.2010 being annexure "P/21" herein, pending disposal of the instant application.

(j) An order directing the respondent no.2 and 3 to accept the balance lease premium upon making a true accounts after deduction/adjustment taking into consideration the sum so paid for and on behalf of the respondent no.2 and 3 by the petitioner and to grant and/or to issue necessary 'No Claim Certificate' in favour of the petitioner forthwith, pending disposal of the instant application.

(k) An order directing the respondent nos.5 and 6 to accord sanction of the Building Plan so submitted on 6th November, 2010 in accordance with the relevant Building Rules forthwith."

ii. In WPA 17380 (W) of 2011:

"(a) A writ in the nature of mandamus commanding the respondent Kolkata Municipal Corporation authorities to withdraw and/or to cancel and/or to rescind the letter being no.B/164/III/2011-2012 dated 24th September, 2011 being 'Annexure-P/30' herein, forthwith.

…

(d) An order directing the respondents not to give any effect and/or further effect to the letter being no.B/164/III/2011-2012 dated 24th September, 2011 being 'Annexure – P/30' herein, and/or to take any step or steps in terms thereof, pending disposal of the instant application."

iii. In WPA 18409 (W) of 2017:

"(a) A writ of or in the nature of Mandamus do issue commanding the respondents to withdraw and/or rescind and/or cancel the Memo bearing no.3044(I)-LC/PB/NBSTC dated 31st May, 2017 stated to have been taken in terms of the purported Board Resolution dated 30th November, 2015 being Annexure "P/30" herein, forthwith.

(b) A writ in the nature of mandamus do issue commanding the respondents and especially the respondent no.2 to act strictly in terms of the registered lease dated 23rd April, 2010.

(c) A writ in the nature of mandamus do issue commanding the respondent no.2 not to give any effect or further effect and/or acting in terms of any decision to terminate the lease granted to the petitioner in respect of the aforesaid premises.

(d) A writ in the nature of mandamus commanding the respondents not to disturb the peaceful possession of the petitioner in respect of the premises in question.

(e) A writ in the nature of Certiorari be issued directing the respondents and each of them to certify and transmit all the records pertaining to this case so that upon perusal thereof, conscionable justice may be administered.

…

(g) An order of injunction directing the respondents not to give any effect or further effect to the Memo bearing no.3044(I)-LC/PB/NBSTC dated 31st May, 2017 stated to have been taken in terms of purported Board Resolution dated 30th November, 2015 being Annexure "P/30" herein, pending disposal of the instant application.

(h) An order directing the respondents not to disturb the peaceful possession of the petitioner in respect of the premises in question pending disposal of the instant application."

624. The documents relied upon by the petitioner are placed on affidavits and their existence forms part of the record, which does not conclude the inquiry as to their legal efficacy for the purpose of granting the substantive reliefs claimed. Their legal character and evidentiary force, the authority of their executants, the extent of the interest capable of being transferred, their conformity with the principal lease of 1995 and compliance with the statutory requirements governing interests in immovable property require adjudication by the competent forum.

625. Their existence is undoubtedly part of the record, and their contents have been relied upon by the parties. The Court must still examine, in an appropriate adjudicatory forum, whether the documents were executed by persons possessing the requisite authority, whether the executants had any transferable interest in the property, whether the instruments conform to the terms and limitations of the principal lease of 1995, and whether they satisfy the statutory requirements applicable to the creation, transfer or enforcement of interests in immovable property. This issue assumes particular importance because the reliefs sought by the petitioner are not confined to a limited review of an administrative decision. The petitioner seeks cancellation of the Memorandum dated 20 August 2010, recognition and enforcement of an asserted leasehold interest and consequential directions requiring the public authorities to grant sanction, approval and permission on the basis of that asserted

interest. If granted, those reliefs would confer upon the petitioner, in substance, the very contractual and proprietary rights which it seeks to establish. They would therefore partake of the character of a decree for specific performance or an equivalent mandatory civil remedy. Affidavits may place documents before the Court, but they cannot substitute the evidentiary adjudication necessary to determine disputed questions concerning execution, authority, consideration, possession, statutory compliance, contractual validity and enforceability. The mere filing of a document, even where its existence is not disputed, cannot confer upon it a legal effect which the governing statute or the underlying contractual instruments do not recognise.

626. The statutory scheme relating to registration assumes particular significance. Section 17(1)(b) of the Registration Act requires registration of a non-testamentary instrument which purports or operates to create, declare, assign, limit or extinguish any right, title or interest of the requisite value in immovable property. Section 17(1)(d) separately requires registration of a lease from year to year, for a term exceeding one year, or reserving a yearly rent. Section 107 of the Transfer of Property Act prescribes the manner in which a lease exceeding one year may be created. The statutory requirements therefore bear directly upon the creation and legal efficacy of the estate which the petitioner seeks to enforce.

627. The Agreement to Lease dated 22 February 2002, upon which the petitioner places substantial reliance, was not registered. The consequence of that circumstance has to be considered in the light of

Section 49 of the Registration Act. A document which the law requires to be registered cannot, merely by execution, operate upon the immovable property in the manner contemplated by the document or be received as evidence of the transaction affecting such property except within the limited statutory saving.

628. The proviso to Section 49 of the Registration Act permits such an instrument to be received as evidence of a contract in a suit for specific performance and also for a collateral transaction which does not itself require a registered instrument. The statutory proviso is therefore an evidentiary saving; it is not a statutory device for converting a document requiring registration into a completed lease. Its existence may support proof of a contract for the purpose permitted by the proviso, while the creation or transfer of the substantive interest remains governed by the statutory requirements applicable to such interest.

629. The distinction assumes particular importance here. The Agreement to Lease is not relied upon merely to establish that negotiations took place or that the parties contemplated a transaction. It is relied upon as part of the source of an enforceable leasehold interest and as the basis for compelling public authorities to act upon that interest. Such use requires determination of the legal effect of the instrument and cannot be assumed merely from its production in the writ proceedings.

630. Section 17(1A) of the Registration Act also requires consideration to the extent the petitioner seeks to invoke Section 53A of the Transfer of Property Act. A contract to transfer for consideration executed after the statutory date and relied upon for the purposes of Section 53A is required

to be registered. The legislative scheme thus maintains a distinction between the existence of a contractual arrangement and the statutory efficacy attributed to it for the purpose of part performance.

631. Possession and expenditure following the Agreement to Lease genuinely constitute material circumstances in examining the conduct of the parties. They cannot, however, dispense with a statutory requirement which governs the creation or enforceability of an interest in immovable property. Nor can equitable considerations supply an authority to transfer an interest which the transferor did not possess or was contractually prohibited from transferring.

632. Section 108(j) of the Transfer of Property Act also has to be read with the terms of the principal lease of 1995. The statutory power of a lessee to transfer the whole or any part of his interest operates subject to a contract to the contrary. Clause 7 of the principal lease requires prior written consent of the lessor before assignment, mortgage, transfer, alienation or other dealing with the leasehold interest. The restriction therefore forms part of the legal framework within which the North Bengal State Transport Corporation could deal with the interest held by it.

633. The question whether the subsequent transaction complied with that restriction, whether the requisite consent was obtained, whether the Power of Attorney dated 21 August 2002 authorised the transaction in the form in which it was subsequently carried out and whether the registered instrument dated 23 April 2010 could bind the authority holding the superior proprietary interest are questions of legal consequence.

Registration of the later instrument does not, by itself, confer upon its executant a power which the executant did not possess.

634. The registered instrument dated 23 April 2010 therefore cannot be considered in isolation. Its effect has to be examined against the principal lease of 1995, the restrictions contained therein, the authority conferred by the Power of Attorney and the consent, if any, of the competent authority. Registration establishes the statutory fact of registration; it does not by that fact alone resolve the anterior question of authority to create the interest which the instrument purports to record.

635. Section 111 of the Transfer of Property Act governs the modes by which a lease determines. Clause (g) concerns forfeiture in the circumstances prescribed by the statute, including breach of an express condition providing for re-entry, subject to the requirements prescribed by law. The provision operates upon a leasehold interest whose legal existence and terms are capable of identification.

636. The controversy before the Court, however, reaches a stage anterior to the consequence of determination. The petitioner seeks to establish a leasehold interest whose source, extent and enforceability remain contested. Section 111 cannot itself create that interest. Nor can a proceeding concerning determination of a lease be converted into a proceeding for establishing the lease where the legal efficacy of the instruments relied upon as its source remains in dispute.

637. The record, at the same time, presents a separate and serious feature concerning the conduct of the State authorities. The petitioner enters the transaction through a tender conducted by a public body; its offer is

accepted; possession follows; substantial expenditure is incurred; development proceeds; official correspondence records governmental knowledge of the transaction; and the authorities thereafter decline to provide the permissions and sanctions necessary for the course of development which their own conduct has permitted to emerge. A public authority cannot invite participation in a transaction concerning public property, allow a party to arrange its affairs and commit substantial resources upon the strength of that course of dealing, and thereafter disregard the consequences of its own administrative conduct. The Court finds in this sequence a degree of arbitrariness which cannot be regarded as consistent with the obligation of fairness governing State action. The constitutional discipline of Article 14 of the Constitution of India does not disappear merely because the transaction bears a contractual character.

638. The public-law element in the present matter is therefore real and cannot be reduced to a private dispute merely because contractual documents are involved. The State and its instrumentalities remain subject to Article 14 of the Constitution of India when they enter into and administer contractual arrangements. Such obligation is particularly significant where the subject matter concerns public property and where the conduct of a public authority induces a party to participate in a transaction, take possession, incur expenditure and proceed with development.

639. The constitutional requirement of fairness, however, does not dispense with the distinction between review of State action and enforcement of a private-law right. Article 14 of the Constitution of India provides the constitutional standard against which the conduct of the public authority

is examined. It does not, by itself, establish the petitioner's title, leasehold interest or contractual entitlement. The Court may find State action arbitrary and yet decline to grant a substantive contractual remedy when the grant of that remedy requires adjudication of rights which the writ jurisdiction is not designed to establish.

640. Constitutional review may expose and condemn arbitrary State action; it does not authorise the Court to create an interest in immovable property contrary to the governing instrument, to dispense with a statutory requirement of registration, to enlarge the authority conferred by a Power of Attorney, or to confer upon a party a contractual right whose legal efficacy remains to be adjudicated. The Court cannot, as a consequence of finding administrative arbitrariness, proceed to grant the substantive contractual relief for which the petitioner has invoked the writ jurisdiction. The two matters occupy distinct legal fields: the State's conduct may attract constitutional scrutiny, while the enforcement of the asserted leasehold and contractual rights remains subject to the statutory framework and the adjudicatory process prescribed by law.

641. The conclusion is reinforced by the nature of the prayers. The petitioner seeks cancellation of the Memorandum dated 20 August 2010; recognition of the leasehold rights asserted upon the basis of the disputed instruments; and directions compelling the authorities to accord sanction, approval and permission on the strength of those rights.

642. This distinction becomes decisive when the prayers are read in their entirety. The petitioner seeks cancellation of the Memorandum dated 20 August 2010; it seeks recognition of the leasehold rights asserted on the

basis of the disputed instruments; and it seeks directions compelling the authorities to accord sanction, approval and permission on the strength of those rights. The Court cannot grant the first prayer without determining the legal right said to have been cancelled, nor can it grant the latter prayers without first establishing the petitioner's entitlement to the interest upon which such directions are founded. The cumulative effect of the prayers is therefore one of enforcement of the asserted contractual relationship. To grant them through mandamus would be to accomplish, in substance, what a decree of specific performance would accomplish. The nomenclature of the relief cannot alter its legal substance.

643. The prayer for cancellation of the Memorandum dated 20 August 2010 cannot therefore be viewed as a self-contained challenge to an administrative act. Its consequence is to restore the contractual position claimed by the petitioner. Whether that position legally exists, whether it was capable of being created by the persons who executed the relevant instruments, whether it survived the restrictions in the principal lease of 1995 and whether it binds the authority possessing the superior interest are questions which precede the grant of such relief.

644. The prayer for sanction, approval and permission is similarly consequential upon the establishment of the asserted leasehold right. The Court cannot direct a statutory authority to exercise its statutory power in favour of a person merely because that person claims an antecedent contractual entitlement. The entitlement must first be established in accordance with law, and the statutory conditions governing the sanction must thereafter be satisfied.

645. The Specific Relief Act, 1963 provides the statutory framework for enforcement of contractual obligations by specific performance and for consequential civil reliefs. Section 10 recognises specific performance subject to the statutory conditions; Section 14 identifies contracts which cannot be specifically enforced; Section 16 prescribes personal bars to relief; and Sections 21 and 22 deal with compensation and other consequential reliefs in proceedings seeking specific performance. The statutory structure demonstrates that enforcement of a contractual obligation is an adjudicatory remedy carrying substantive consequences and cannot be assumed merely from the existence of an agreement.

646. The statutory restrictions governing registration and transfer, the terms of the principal lease of 1995, the scope of the Power of Attorney and the disputed legal effect of the subsequent instruments cannot be displaced by equitable considerations, however compelling the circumstances may appear. Nor can the Court mould the relief so as to produce indirectly the very result which it lacks jurisdiction to grant directly. The constitutional jurisdiction remains plenary in its reach, yet its exercise must remain faithful to the nature of the relief sought and the statutory limits governing that relief.

647. There is a material distinction between a direction requiring a public authority to reconsider an administrative decision in accordance with law and a direction compelling that authority to recognise and act upon a disputed private-law right. The former may fall within judicial review; the latter presupposes adjudication of the right itself.The present prayers fall within the latter category. Cancellation of the Memorandum, recognition

of the asserted leasehold right and directions for sanction are interdependent. Each relief assumes the existence and enforceability of the right asserted by the petitioner. The Court cannot grant the consequential relief without first deciding the substantive contractual dispute.

648. The arbitration clause does not constitute an exclusion of the jurisdiction under Article 226. The existence of such a clause is, nevertheless, a relevant consideration in the exercise of discretionary jurisdiction. Where the controversy is substantially contractual and the relief sought requires determination of contractual documents, authority, statutory compliance and the legal consequences of those documents, the forum agreed upon by the parties assumes significance.

649. The availability of an alternative remedy does not create an absolute bar to writ jurisdiction. Equally, the absence of such an absolute bar does not impose an obligation upon the High Court to adjudicate every contractual dispute. The question remains whether the relief sought is properly capable of being granted in the writ proceedings. In the present case, the substantive prayers require adjudication of rights in immovable property and enforcement of contractual obligations. Such circumstance weighs decisively against granting the reliefs in their present form.

650. The petitioner, in the circumstances of the present case, could legitimately expect the State and its instrumentalities to maintain a course of administrative conduct marked by consistency, reason and fairness, particularly after the petitioner had acted upon the successive steps taken in relation to the transaction and had committed substantial

resources thereto. Such expectation, however, operates within the precincts of law. It cannot create a leasehold interest where the governing instrument does not recognise one, dispense with a statutory requirement of registration, enlarge the authority conferred upon an executant, or confer upon the petitioner a right which the applicable legal regime does not otherwise sustain. The legitimate expectation of the petitioner, therefore, bears upon the legality and fairness of the administrative departure; it does not, by its own force, establish the substantive right upon which the consequential reliefs claimed in these proceedings depend. The petitioner may consequently invoke the doctrine to question the manner in which the State has altered its course, but the substantive contractual and leasehold rights asserted by the petitioner remain matters for determination by the competent civil or arbitral forum.

651. The result, therefore, does not rest upon acceptance of the administrative conduct of the respondents. The Court records, on the material placed before it, that the course adopted by the State authorities bears the vice of arbitrariness in permitting the transaction and substantial development to proceed and portray abuse of discretion unwarrantedly declining to accord the consequential permissions. Such finding, however, cannot be converted into a decree enforcing the petitioner's asserted contractual or leasehold rights. The statutory scheme requires those rights, and the consequences claimed from them, to be established before the competent civil court or arbitral forum, as the case may be. The writ jurisdiction cannot resort to that adjudication merely because the conduct of the public authorities calls for constitutional censure.

652. The Court thus does not approve the manner in which the State authorities have dealt with the petitioner. At the same time, constitutional scrutiny cannot be allowed to become a substitute for the statutory adjudication of contractual rights. The two conclusions coexist: the administrative conduct attracts constitutional criticism, while the particular substantive relief claimed remains beyond the permissible scope of the present writ proceedings.

653. The petitions consequently fail not because the Court approves the manner in which the State authorities have dealt with the petitioner, but because the reliefs sought travel beyond the permissible limits of Article 226. The Court may declare the constitutional infirmity in State action; it cannot, on that basis, assume the function of a civil court, establish the petitioner's disputed contractual entitlement, cancel the Memorandum as a means of restoring that entitlement and compel the authorities to act upon it. Such a course would effectively amount to grant a decree through writ proceedings. The statutory scheme does not permit that result.

654. The Senior Counsel representing respondent NBSTC has categorically expressed willingness to refund the amounts received from the petitioner and such submission is recorded. The question whether any amount is refundable, the person liable to refund it, the date from which interest may run, the expenditure incurred and the availability of restitution, damages or compensation involve determination of the contractual consequences of the transaction. No monetary decree can appropriately be passed in the present proceedings upon that basis.

655. The petitioner remains at liberty to pursue such civil or arbitral remedies as may be available in law, including specific performance where maintainable, restitution, refund, interest, damages or compensation. The observations contained in this order shall not foreclose adjudication of such claims upon their respective merits.

656. The Court accordingly finds that the public-law grievance and the private-law remedy cannot be conflated. The former concerns the manner in which the State authorities dealt with a transaction concerning public property and the petitioner who acted upon that course of dealing. The latter concerns the existence, validity and enforceability of the petitioner's asserted leasehold and contractual rights. The first may justify constitutional scrutiny; it cannot, without adjudication of the second, yield the decree sought through the present proceedings.

657. The following conclusions emerge:-

a. the property is governed by the principal lease of 1995;

b. the principal lease contains restrictions concerning assignment, transfer, alienation and other dealings with the leasehold interest;

c. the Agreement to Lease dated 22 February 2002 was not registered and its legal effect is governed by the Registration Act and the Transfer of Property Act;

d. Sections 17 and 49 of the Registration Act preserve the statutory distinction between an agreement which may have evidentiary relevance and an instrument capable of creating or transferring the substantive interest in immovable property;

e. Section 17(1A) assumes significance where reliance is placed upon Section 53A of the Transfer of Property Act;

f. Section 108(j) of the Transfer of Property Act operates subject to the contractual restrictions contained in the principal lease;

g. the authority conferred by the Power of Attorney dated 21 August 2002 requires examination with reference to its actual terms and the interest which the principal itself can lawfully deal with;

h. registration of the instrument dated 23 April 2010 does not, by itself, accord authority to its executants which the governing instruments do not confer;

i. Section 111 of the Transfer of Property Act does not itself create the leasehold interest whose determination is alleged;

j. the filing of documents on affidavit does not dispense with adjudication of their legal character, authority, evidentiary force and statutory efficacy where the relief depends upon those matters;

k. the conduct of the State authorities, viewed in its entirety, bears the manifest arbitrariness and attracts scrutiny under Article 14 of the Constitution of India;

l. that finding does not itself establish the petitioner's disputed contractual or leasehold rights;

m. the arbitration clause does not oust Article 226 of the Constitution of India, though it remains a material consideration where the controversy is essentially contractual;

n. the prayers for cancellation of the Memorandum dated 20th August 2010, recognition and enforcement of the asserted leasehold rights and directions for sanction, approval and permission, read cumulatively, seek substantive enforcement of the contractual arrangement;

o. such reliefs would, in substance, partake of the character of a decree of specific performance or equivalent mandatory civil relief;

p. the writ jurisdiction cannot be employed to grant that relief directly or to secure the same result through consequential directions;

q. the respondents' willingness to refund amounts does not warrant a monetary decree in these proceedings; and

r. the petitioner remains at liberty to pursue such remedies as are available before the competent civil or arbitral forum.

658. The petitions accordingly fail insofar as they seek cancellation of the Memorandum dated 20 August 2010 as a means of restoring and enforcing the petitioner's asserted leasehold rights, recognition of such rights against the concerned public authorities and consequential directions requiring the authorities to accord sanction, approval or permission on the basis of those asserted rights.

659. The dismissal of the writ petitions shall not be construed as approval of the administrative conduct which has vehemently display the element of arbitrariness. At the same time, the constitutional jurisdiction of this Court cannot be employed to confer a substantive contractual right,

dispense with statutory requirements relating to immovable property or grant a decree of specific performance in another form.

660. The petitions are accordingly dismissed.

661. There shall be no order as to costs.

662. The petitioner shall remain at liberty to pursue its remedies before the competent civil court or arbitral forum, as may be available in law. All questions concerning the validity, enforceability and legal consequence of the contractual documents, the authority of their executants, the effect of the principal lease of 1995, the entitlement to specific performance and the claims for refund, restitution, interest, damages or compensation are left open for determination by the competent forum. Nothing contained in this order shall operate as an adjudication upon those matters beyond what is necessary for disposal of the present writ petitions.

663. The connected applications, if any, stand disposed of accordingly.

664. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)