THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>WRIT PETITION No. 5438 of 2007</u>

<u>ORDER</u>:

This writ petition is filed seeking the following relief:

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus directing the respondent to either allot Plot No.20 at IDA Mankhal, Ranga Reddy District by receiving the balance sale consideration, to the petitioner or in the alternative to allot equal extent of land (Plot) at the same place or in the same area, and pass such other order or orders as this Hon'ble Court may deem fit and proper."

Briefly stated, the facts leading to the present case, are that the Government of Andhra Pradesh identified Mahankal IDA Maheswaram, Ranga Reddy District as backward area and allotted the same to the A.P. Industrial Infrastructure Corporation Limited, the respondent herein, with a view to develop and allot the same to genuine entrepreneurs. The petitioner submitted application on 23/25.10.2003 for allotment of Plot No.20 at IDA Mahankal, Ranga Reddy District and thereby, deposited Rs.3,19,000/- as Earnest Money Deposit (EMD) and also Rs.50,000/- on 25.03.2004. Through letter, dated 31.05.2004, the respondent communicated to the petitioner that the said plot was allotted in its favour. Thereafter, on 29.07.2004, the respondent demanded a sum of Rs.207/- per square meter instead of Rs.100/- per square meter, which was initially agreed. Aggrieved by the same, the petitioner filed

W.P.No.19838 of 2004 and the said writ petition was dismissed on 09.03.2005. Accordingly, the petitioner offered to pay the balance sale consideration. As there was no response from the respondent, the petitioner issued a legal notice, dated 07.01.2007, to the respondent calling upon it to confirm the allotment of plot made to the petitioner by receiving the sale consideration. However, without issuing any notice and without making refund of the amount to the petitioner, the respondent cancelled the allotment made in its favour and re-allotted the same to the third parties. Aggrieved by the same, the petitioner filed the present writ petition.

The respondent filed a detailed counter-affidavit stating that as the petitioner did not fulfill the required conditions, the respondent called for the petitioner to obtain 'No Objection Certificate' from the Andhra Pradesh Pollution Control Board (APPCB) as it is a mandatory requirement for setting up of edible oil refinery unit in IDA Mahankal. Thereafter, the petitioner vide letter dated 04.06.2003, informed the respondent that it could not get the 'No Objection Certificate' and accordingly, requested to refund the EMD amount deposited by it. Again, vide letter, dated 29.07.2003, the petitioner informed the respondent that APPCB has agreed to give 'No Objection Certificate'. The petitioner, in fact, submitted 'No Objection Certificate' issued by APPCB to the respondent and requested for allotment of the plot. The respondent further stated that as the petitioner failed to comply with the conditions stipulated in the allotment order, allotment of plot in its favour was cancelled and the same was allotted to the third parties. The respondent also stated that as per the Rules in vogue, the EMD amount paid by the petitioner would be refunded to the petitioner.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

It appears that with regard to allotment of plot, the petitioner deposited Rs.3,69,000/- towards EMD. The petitioner along with the writ petition, filed a letter, dated 11.11.2003, addressed to it by the respondent stating that since it was not interested in taking the plot, the respondent decided to refund the amount to it as per the rules. However, no refund as such was made pursuant to the same. Even in paragraph 9 of the counter-affidavit, the respondent categorically stated that as per the rules in vogue, the aforesaid amount deposited towards EMD would be refunded to the petitioner.

It is not in dispute that initially, the petitioner was offered industrial plot at Rs.100/- per square meter and thereafter, at the increased rate of Rs.207/- per square meter. As of today, it is not necessary for this Court to enter into the controversy whether the petitioner would be entitled to be allotted the plot at the rate of Rs.100/- per square meter or at the rate of Rs.207/- per square meter in view of the orders passed by this Court in W.P.No.19838 of 2004. On account of such abnormal increase in the cost of the plot offered, the petitioner could not take the industrial plot for establishment of an industry. Viewed from any angle, the petitioner could not be found fault with.

This Court especially finds that having agreed to refund the EMD as far back as on 11.11.2003, the respondent did not choose to refund the same to the petitioner and retained it for a long period of 13 years. In such circumstance, it can be presumed that the respondent utilized the money for its benefit. In this context, this Court queried the respondent's counsel that why the petitioner should not be compensated with some interest on account of the fact that the respondent, a State Organ, retained the petitioner's money deposited by it towards EMD.

Learned Standing Counsel for the respondent relies on APIIC Allotment Regulation, 2012, particularly Regulation 24(1), which reads thus:

> "If any applicant makes a request for refund of EMD paid by him withdrawing his application before provisional allotment letter is issued, full EMD shall be refunded. The process fees is not refundable."

From the above, this Court is of the view that the aforesaid Regulation does not prohibit for granting interest on the EMD while making refund of the same.

Learned Standing Counsel also relies on allotment letter, dated 31.01.2004, particularly clause (7) thereof, which reads as under:

> "If payment as stipulated in condition (2) is not made within 90 days of receipt of these orders, this allotment will be treated as cancelled and EMD paid will be forfeited."

As the respondent agreed to refund the EMD amount to the petitioner *vide* letter, dated 11.11.2003, it can be said that the aforesaid Clause pales into insignificance.

In this background, this Court relies on the judgment reported in **Kerala State Electricity Board v. M.R.F. Limited[1],** in paragraph 24 of which, the Hon'ble Supreme Court referred the principle of restitution enunciated by the Privy Council in Rodger Vs. Comptoir D'Escompte de Paris {(1871) 3 PC 465}. Paragraph 24 reads as under:

> "There is no manner of doubt it is an imperative duty of the Court to ensure that the party to the lis does not suffer any unmerited hardship on account of an order passed by the Court. The principle of restitution as enunciated by the Privy Council in Rodger Case has been followed by the Privy Council in later discussions and such principle being in conformity to justice and fair play be followed. It should, however, be noted that in an action by way of restitution, no inflexible rule can be laid down. It will be the endeavour of the Court to ensure that a party who had suffered on account of decision of the court, since finally reversed, should be put back to the position, as far as practicable, in which he would have been if the decision of the Court adversely affecting him had not been passed. In giving full and complete relief in an action for restitution, the Court has not only power but also a duty to order for mesne profits, damages, costs, interest etc., as may deem expedient and fair conforming to justice to be done in the facts of the case. But in giving such relief, the Court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken. In deciding appropriate action by way of restitution, the Court should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practicable and does not bring about unmerited hardship to either of the parties."

The aforesaid principle laid down in Rodger's case commends acceptance by this Court.

In the above circumstances, considering the fact that from 2003 to 2016, interest rates have been coming down and taking an

[1] **(1996) 1 Supreme Court Cases 597**

average view, this Court deems it appropriate to direct the respondent-Corporation that while refunding the amount of Rs.3,69,000/- deposited by the petitioner towards EMD., it shall pay interest at the rate of 6% thereon from 11.11.2003 i.e. the date of the respondent-Corporation agreeing to refund the money, till payment is made.

Subject to the above, the writ petition is disposed of.

Consequently, the miscellaneous petitions, if any shall also stand disposed of.

CHALLA KODANDA RAM, J

Dt:20.09.2016

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