

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.29722 of 2017

ORDER :

Heard Sri Ashwini Kumar, Senior Counsel appearing for Sri K. Siddarth Rao, counsel for petitioner and Sri A. Sanjeev Kumar, Special Government Pleader for respondents.

2. The petitioner no.1 is a public listed company incorporated under the Indian Companies Act, 1956 and is engaged in the business of real-estate development. The petitioner no.2 is Executive Chairman of petitioner No.1 Company and is also a shareholder. The petitioner no.3 is a subsidiary of petitioner no.1.

3. The respondent no.1 is the Telangana State Industrial Infrastructure Corporation (for short, the T.S.I.I.C.) which is the successor, post bifurcation of the composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh, of the Andhra Pradesh State Industrial Infrastructure Corporation (for short, 'A.P.I.I.C.'). The respondent no.2 is the State of Telangana created under the A.P.Re-organization Act, 2014.

4. In September, 2007 the A.P.I.I.C. invited bids to develop, design and construct Integrated Township Project / Multi-Services Aerospace Park in approximately Acs.350.00 of land in Saroornagar Mandal, Ranga Reddy District in the then composite State of Andhra Pradesh. The bid itself disclosed that the offer of land is subject to the final outcome of the

appeal suit pending with the High Court of Andhra Pradesh with regard to the land where the project was to be executed, and in case of disposal of the case against the A.P.I.I.C., the amount received including E.M.D. shall be refunded without interest.

5. Pursuant to the said notice, petitioner nos.1 and 2 applied for tender and accordingly bid document was released by A.P.I.I.C. after deposit of Rs.20 crores towards E.M.D.

6. The petitioner no.1 was declared as successful bidder and a letter of Award dt.28.11.2007 was issued to the petitioners. Para no.7 thereof mentioned that the allotment of land is subject to the outcome of A.S.No.274 / 2007, W.P.Nos.19670 / 2007, 20667 of 2007 and 22043 / 2007, pending before the High Court.

7. The petitioners accepted the letter of Award on 03.12.2007 and paid between September, 2007 and 28.01.2008, Rs.165 crores to the A.P.I.I.C. as per the terms and conditions of the bid documents in the following manner.

8. On 04.12.2007, petitioners paid first installment of Rs.35 crores towards purchase price of land to A.P.I.I.C. and on 21.12.2007, they requested it to handover project site at the earliest so that they could undertake survey and planning work. On 27.12.2007, they deposited Rs.5 crores on account of Project Development expenses and on 02.01.2008 paid second installment of Rs.35 crores towards purchase of land and again requested to handover possession of the site. On

14.01.2008 and 16.01.2008, the petitioners paid third installment of Rs.35 crores towards purchase of land and later on 28.01.2018 paid the last installment of Rs.35 crores also.

9. On 13.06.2008, petitioners requested A.P.I.I.C. to convey its confirmation for signing the Development Agreement jointly and by another letter on 13.02.2008 requested to permit them to incorporate a Special Purpose Vehicle in Delhi to avoid operational problems. On 25.04.2008, petitioners sent a letter with resolutions of its Board in favour of petitioner no.3 to enable execution of Development Agreement as per Letter of Award. On 19.07.2008, A.P.I.I.C. directed the then Zonal Manager, Shamshabad Zone to send a site plan to petitioners.

10. A Development Agreement dt.19.08.2008 was executed between petitioner nos.1 and 3 and the A.P.I.I.C. Thus, petitioner no.3 became the executing agency on behalf of petitioner no.1 in relation to the said project.

11. On 29.04.2011, the A.P.I.I.C. issued a show-cause notice to petitioners to commence works on the subject land even before it had got title to the land established through Courts and even before possession of the subject land was handed over to petitioners. On 11.05.2011, petitioners requested A.P.I.I.C. to return within 7 days E.M.D. of Rs.20 crores as per Article 11.3 of the Development Agreement as a final installment towards purchase price was paid by petitioners on 28.01.2008. They also requested A.P.I.I.C. by a separate letter

dt.11.05.2011 to inform in 7 days what steps were being taken to hand over the land as per Article 13.3(b) of the Development Agreement. The petitioner no.3 also addressed another letter requesting the A.P.I.I.C. on 11.05.2011 to execute sale deed and hand over the site as payment of final installment was made towards purchase price on 28.01.2008.

12. A show-cause notice was issued on 29.04.2011 by A.P.I.I.C. to the petitioners, which was replied by the petitioner on 14.05.2011 stating that the State Government must first establish title to the land and remove encumbrances before petitioners could commence work. The petitioner no.3 also addressed a letter on 18.05.2011 requesting joint meeting with the officials of the A.P.I.I.C. citing inability of its employees to access the project site due to failure on the part of A.P.I.I.C. to get encumbrances and title to the project land cleared. On 21.05.2011, petitioners put A.P.I.I.C. on notice that a political *force majeure* element occurred and it reserves its right to take such action as may be permitted by the Development Agreement.

13. This Court in A.S.No.274 of 2007 decided on 19.12.2011 held that the State Government had no title to the subject land where the project was to be executed. On coming to know of it, on 30.01.2012, 27.03.2012 and 12.07.2012 petitioners requested A.P.I.I.C. to clarify the situation. On 08.04.2013 also, petitioners sent a reminder to the A.P.I.I.C. to fulfill the conditions and obligations under the Development Agreement.

14. While matters stood thus, on 02.06.2014, the composite State of Andhra Pradesh was bifurcated into the new State of Telangana and the residuary State of Andhra Pradesh pursuant to a notification issued under the A.P. Re-organization Act, 2014.

15. The petitioners contend that thereafter A.P.I.I.C. consequently became the respondent no.1 along with all its assets, rights and liabilities within the territorial jurisdiction of the State of Telangana.

16. The petitioners then addressed a letter on 12.03.2015 to 1st respondent seeking its intervention in the matter and clarifying the actual status of the extent of land awarded to them and on 02.04.2015 also requested respondents to release the E.M.D. of Rs.20 crores which was long overdue.

17. On 09.10.2015, litigation in respect of the project land culminated into a final judgment, when the Supreme Court, in a decision reported as **Government of Andhra Pradesh through Principal Secretary v. Pratap Karan**¹, dismissed the State Government's appeal against the judgment dt.19.12.2011 of this Court. It is important to note that the then Advocate-General of the State of Telangana appeared and defended the State Government along with the Attorney-General in that case.

18. The petitioners contend that once it was declared that there was no title in favour of the 1st respondent, there would be an automatic discharge in favour of petitioners of Rs.165 crores with interest at SBI

¹ (2016) 2 SCC 82

Prime Lending Rate from the date of deposit till the date of payment as per the terms and conditions of the Development Agreement and the petitioners are entitled to have the said amount returned to them. Petitioners contend that they made several requests up to 13.06.2016 to the respondents (letters dt.14.10.2015, 24.12.2015, 31.05.2016, 07.06.2016 and 13.06.2016) and that the conduct of the respondents is violative of the right of the petitioners under Article 300-A of the Constitution of India.

19. Petitioners contend that vexed with this attitude of the respondents in failing to return the monies rightfully due to the petitioners, they filed W.P.(Civil). No.302 of 2017 in the Supreme Court praying for a direction to the respondents to forthwith return Rs.165 crores along with interest at S.B.I. Prime Lending Rate from the date of deposit till the date of payment.

20. The said Writ Petition was disposed of on 01.05.2017 opining that it was not inclined to entertain the Writ Petition under Article 32 of the Constitution and the petitioners, if so advised, may approach the High Court under Article 226 of the Constitution of India. It also did not express any opinion on the merits of the case.

21. The petitioners contend that apart from the sum of Rs.165 crores along with interest at S.B.I. Prime Lending Rate, they are also entitled to further sums in the nature of damages and expenses for which petitioners reserve their right to approach other Forums.

22. The petitioners contend that they require at least Rs.2800 crores for completion of ongoing residential projects mostly in the National Capital Region, that these projects have got delayed because of which customers who booked apartments approached National Consumer Disputes Redressal Commission and the Supreme Court for refund of monies, and certain orders adverse to the petitioners were passed by the Supreme Court directing deposit of certain monies also.

23. They contend that from the respondents more than Rs.500 crores is due to petitioners and this has caused hardship to petitioners to complete ongoing projects which also require huge funds and that the respondents cannot delay and defer the release of monies any longer, thereby violating Article 300-A of the Constitution.

24. The counsel for petitioners contended that withholding of the monies due to the petitioners by the respondents is illegal, fraudulent and amounts to unjust enrichment apart from being irrational, unconstitutional, unfair, lacking in good faith and unreasonable apart from being violative of Articles 14 and 19(1)(g) of the Constitution of India.

25. The counsel for the petitioners relied upon **Natural Resources Allocation, IN RE, Special Reference No.1 of 2012², Real Estate Agencies v. State of Goa and others³, Municipal Corporation, Ujjain**

² (2012) 10 SCC 1

³ (2012) 12 SCC 170

and another v. BVG India Limited and others⁴, U.P. Pollution Control Board and others v. Kanoria Industrial Ltd. and another⁵, and the decision of the Division Bench of the Calcutta High Court in B.S.N.L. and others v. KEC International Ltd. and others⁶.

PETITIONERS NEED NOT APPROACH THE CIVIL COURT

26. The Special Government Pleader, appearing for respondents, firstly contended that the claim of the petitioners arises out of a pure and simple contract between the parties under the Indian Contract Act, 1872 and so petitioners should approach Civil Court for appropriate relief.

27. The question whether an aggrieved party can approach the High Court under Article 226 of the Constitution of India to enforce a contractual obligation against a State or an instrumentality of a State, is no more *res integra*. The Supreme Court in **ABL International Ltd. v. Export Credit Guarantee Corporation of India (Ltd.)**⁷, held that on a given set of facts, if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the Court by way of a Writ under Article 226 of the Constitution of India and the Court, depending on the facts of the said case, is empowered to grant relief. It followed its decision in **K.N. Guruswamy v. State of Mysore**⁸, **D.F.O. v. Ram Sanahi Singh**⁹, and rejected the contention that merely because the source of the right which a party claims was initially in a contract, for

⁴ (2018) 5 SCC 462

⁵ (2001) 2 SCC 549

⁶ MANU/WB/0171/2009

⁷ (2004) 3 SCC 553

⁸ AIR 1954 SC 592

⁹ (1983) 3 SCC 379

obtaining relief against any arbitrary and unlawful action on the part of the public authority he must resort to a suit and not to a petition by way of a Writ. It held that there is no rule that in matters of contract, the Court's jurisdiction under Article 226 of the Constitution is ousted.

28. In **Real Estate Agencies** (3 supra), the Supreme Court held that the Writ court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities on embarking upon a course of action to the detriment of the rights of the citizens. It held that when a plea is raised that injunctive relief cannot be granted under Article 226 of the Constitution of India by the State and a party should approach a Civil Court, it was incumbent on the High Court to undertake a detailed probe in the matter in order to find out whether the claim of the State had any substance or had been so raised only to relegate the petitioner to a more 'lengthy, dilatory, and expensive process' that is inherent in a civil suit.

29. Therefore, this contention of the Special Government Pleader that petitioners should file a civil suit since their claims arise under a contract is rejected.

PETITIONERS NEED NOT AVAIL ARBITRATION REMEDY

30. The Special Government Pleader also contended that there is an arbitration clause contained in Article 23.1 in the Development Agreement between the parties and so petitioners should be relegated to arbitration.

31. In Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others¹⁰, a similar contention raised on behalf of the respondent before the Supreme Court was rejected. The Court held that the rule of exclusion of Writ jurisdiction because of availability of an alternative remedy is a rule of discretion and not one of compulsion; and in an appropriate case, in spite of availability of alternative remedy the High Court can still exercise its Writ jurisdiction, i.e., where the Writ petition seeks enforcement of fundamental rights or where there is a failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. In that case, the petitioner's dealership was terminated by the respondent-Corporation for an irrelevant and non-existent cause. The Supreme Court held that they should have been allowed relief by the High Court itself instead of being driven by the High Court to arbitration proceedings. This was reiterated in **Ram Barai Singh and Co. v. State of Bihar and others¹¹** wherein the Supreme Court declared that a constitutional remedy by way of a Writ Petition is always available to an aggrieved party and an arbitration clause in an agreement between the parties cannot *ipso facto* render a Writ Petition "not maintainable". Therefore, this contention is also without any merit.

NO DISPUTED QUESTIONS OF FACT

32. In the instant case, admittedly on account of the then State of Andhra Pradesh and the A.P.I.I.C. not having title to the land, as declared

¹⁰ (2003) 2 SCC 107

¹¹ (2015) 13 SCC 592

by the Supreme Court in **Pratap Karan** (1 supra), no delivery of possession of the subject land or transfer of title of the said land, for which the Development Agreement dt.19.08.2008 was entered into, could be made to the petitioners.

33. Thus, the A.P.I.I.C. failed in performing its obligation under Clause (G) and 13.3 of the Development Agreement to sell and transfer the land absolutely by (a) executing sale deed in favour of the petitioner no.3, (b) to hand over the land without any encumbrances, and (c) to clear any encumbrances.

34. Clause 14.3.1 of the Development Agreement states that if the A.P.I.I.C. / G.O.A.P. is unable to execute sale deed in favour of the developer in respect of the land, within the time specified, the A.P.I.I.C. shall, if so required by the developer, pay 'compensatory payment' to the developer.

35. The term 'compensatory payment' is defined in Clause 1.1(l) as under :

"1.1(l) : 'Compulsory payment' with reference to all or any portion of the Project Site (the 'Compensated Land') as on a particular date ('the Reference Date') for the purpose of this Agreement including for the purposes of Clauses 14.3.1, 14.3.2, 17.6 and 23.3 hereof shall mean an amount equal to the sum aggregate of the following:

(ii) The Total Price in respect of the Compensated Land until the Reference Date, as per the audited accounts of the Developer;

(iii) Interest calculated at the rate of SBI PLR ('Interest'), on the Total Purchase Price of the Compensated Land, from the date on which the first payment of purchase price in respect of the Compensated Land

is made (whether by way of an advance or an earnest money deposit), until the Reference Date.

All the above payments shall be denominated in Indian Rupees.”

36. Clause 14.3.4 states that the developer shall in no event be liable for failure to meet any of its obligations under the agreement in the event such failure could be attributed to (i) a default or delay on the part of the A.P.I.I.C. in fulfillment of any of their obligations under Article 13.3 of the Agreement and / or (ii) encumbrances or title issues or any portion of the land, which may have material adverse effect on the project.

37. In the instant case, it is not in dispute that the A.P.I.I.C. did receive Rs.165 crores from the petitioners. Once the A.P.I.I.C. failed to deliver possession and execute sale deed in favour of the petitioner no.3 by virtue of Clause 14.3.1, it was obliged to refund the above amount along with interest at S.B.I. Prime Lending Rate.

38. The pleas of the respondents that petitioners failed to comply with certain terms and conditions of the Development Agreement such as furnishing Bank Guarantee of Rs.30 crores under clause 2.8 of the Development Agreement, furnishing of Corporate Guarantee of Rs.50 crores towards Revenue Share Guarantee, submit the DPR for approval or commence activities relating to construction cannot be accepted because under Clause 14.3.4, the Developer has no liability for failure to meet any of its obligations under the Development Agreement in the event such failure is attributable to a default on the part of APIIC in fulfillment of its obligations under clause 13.3 to execute sale deed or

handover land or clear encumbrances. Such being the case, and the project became impossible of execution on account of failure of the APIIC to deliver possession of land and execute valid sale deed, the obligation on the part of the petitioners to do the above acts does not arise and the respondents cannot contend that they can retain the amounts paid by petitioners.

39. Though the Special Government Pleader sought to contend that as per the terms of the advertisement, no interest was payable on the E.M.D. if title was not conveyed, this contention is without merit since as per Clause 1.7 of the Development Agreement, the agreement would prevail over any other document, which would include the advertisement.

40. In my opinion, there are thus no serious disputed questions of facts between the parties as was contended by the learned Special Government Pleader to decline exercise of jurisdiction under Article 226 of the Constitution of India and to compel the petitioners to approach the Civil Court or initiate Arbitration.

STATE OF ANDHRA PRADESH NOT NECESSARY PARTY

41. It is also contended by learned Special Government Pleader that the APIIC had deposited the amounts paid under the agreements with the then State of Andhra Pradesh along with other amounts in 2008-2009 and so the State of Andhra Pradesh is a necessary party to the Writ Petition and ought to have been impleaded as a party-respondent in this Writ

Petition. He contended that the petitioners' failure to do so should be punished by dismissal of the Writ Petition.

42. Learned Senior Counsel appearing for the petitioners contended that the subject land falls in the State of Telangana, after the division of the State of Andhra Pradesh on 02-06-2014; that the Development Agreement in relation to the development of the subject land was for the exclusive benefit of the State of Telangana and all liabilities arising pursuant to the said Development Agreement is the sole liability of the State of Telangana. Reliance is also placed on Section 60 of the A.P. Reorganization Act, 2014 fixing liabilities under contracts executed by the erstwhile combined State of Andhra Pradesh. It is also pointed out that as per the provisions of the said Act, Telangana State has obligations in relation to the territory of that State, that the State alone must undertake the contractual and constitutional obligation of repayment and restitution and it is open to the State of Telangana to make any claim against the State of Andhra Pradesh after meeting the liability/refund claim of petitioners.

43. It is not in dispute that the A.P.I.I.C. is a Government Company/ Corporation mentioned in Schedule IX to the A.P. Reorganization Act, 2014.

44. Sub-section (1) of Section 68 of the A.P. Reorganization Act, 2014 directs the Corporations specified in the IX schedule constituted for the existing State of Andhra Pradesh to continue to function, on and from the

appointed day, in those areas in respect of which they were functioning immediately before that day and sub-Section (2) of Section 68 directs apportionment of assets, rights and liabilities of the Companies and Corporations referred to in sub-Section (1) between the successor States in the manner provided in Section 53.

45. Sub-Section (1) of Section 53 of the said Act states that assets and liabilities relating to any commercial or industrial undertaking of the existing State of Andhra Pradesh, where such undertaking or part thereof is *exclusively located in, or its operations are confined to, a local area, shall pass to the State in which that area is included on the appointed day, irrespective of the location of its head quarters.* There is a proviso to sub-Section (1) which states that where the operation of such undertakings becomes *inter-state* by virtue of provisions of Part-II, the assets and liabilities of: (a) the operational units of the undertaking shall be apportioned between the two successor States on location basis; and (b) the Head Quarters of such undertaking shall be apportioned between the two successor States on the basis of population ratio.

46. Section 60 of the said Act insofar as it is relevant states:

*“60. **Contracts** : (1) Where, before the appointed day, the existing State of Andhra Pradesh has made any contract in exercise of its executive power for any purpose of the State, that contract shall:*

(a) if the purposes of the contract are, on and from the appointed day, exclusive purposes of either of the successor States of Andhra Pradesh and Telangana, then it shall be deemed to have been made in exercise of the executive power

of that State and the liability shall be discharged by that State; and

(b) in any other case, all rights and liabilities which have accrued or may accrue under any such contract shall be apportioned between the successor States on the basis of population ratio or in any other manner as may be agreed by the successor States.

(2) For the purposes of this section, there shall be deemed to be included in the liabilities which have accrued or may accrue under any contract

(a) any liability to satisfy an order or award made by any court or other tribunal in proceedings relating to the contract; and

(b) any liability in respect of expenses incurred in or in connection with any such proceedings.

(3) This section shall have effect subject to the other provisions of this Part relating to the apportionment of liabilities in respect of loans, guarantees and other financial obligations; and the bank balances and securities shall, notwithstanding that they partake of the nature of contractual rights, be dealt with under those provisions.”

47. Admittedly, the division of assets and liabilities between the residuary State of Andhra Pradesh and the new State of Telangana contemplated by Part-VI and Sec.47 of the above Act has not been completed till date. Likewise there has been no complete division of assets and liabilities between the two states in relation to Schedule IX Companies/ Corporations, and in particular of the APIIC, under Sec.53.

48. When, such a division is likely to happen (it has not happened for last more than 4 years), is difficult to predict. So, in my opinion, it would

unjust to make the petitioners wait till such division of assets and liabilities happens to claim the amounts due and payable to it.

49. It is not in dispute that the 1st respondent i.e. the Telangana State Industrial Infrastructure Corporation was incorporated by the State of Telangana after 02-06-2014, when the State of Telangana came into existence and that it is dealing, in the State of Telangana, with development of industrial infrastructure in the area falling in the said State. It is also not in dispute that it is carrying on the activities which, prior to the bifurcation of the combined State of A.P, the APIIC was discharging in the land mass relating to the State of Telangana.

50. Admittedly, the subject land falls in the State of Telangana, after the division of the combined State of Andhra Pradesh on 02-06-2014. Also the Development Agreement in relation to the development of the subject land, had it been executed, would have been for the exclusive benefit of the State of Telangana.

51. If the State of Telangana had no interest in the development project covered by the subject development agreement, it's Advocate General would not have defended the title of the erstwhile State of A.P and the APIIC to the subject land in **Pratap Karan** (1 supra). Obviously, he did so, since the subject land was located in the new State of Telangana and the project, if executed would benefit the State of Telangana.

52. Though, the Development Agreement was entered into by the APIIC and the petitioners 1 and 3, it stated that the expression 'APIIC',

unless repugnant to the context or meaning thereof, shall mean and *include its successors*.

53. The 1st respondent is, in my opinion, undoubtedly the successor of the APIIC, in the State of Telangana. So all liabilities arising pursuant to the said Development Agreement are primarily, the responsibility of the 1st respondent.

54. However, this would not preclude the respondents from recovering the payments which they make to petitioners from the State of Andhra Pradesh and the APIIC, if they are entitled in law to so claim and recover, during the division of assets under Sec.53 or under sec.47 of the Act or otherwise. I am however not expressing any opinion on the issue whether the APIIC or the State of Andhra Pradesh are also jointly responsible for discharge of the claim of the petitioners.

55. In this view of the matter, I hold that the State of Andhra Pradesh or the APIIC are not necessary parties to the Writ Petition and it cannot be dismissed for their non-joinder since the respondents can be directed to satisfy the claim of the petitioners and , if permitted in law, recover it from the APIIC or the State of Andhra Pradesh.

ACTION OF RESPONDENTS IS IN VIOLATION OF ART.14

56. In **Natural Resources Allocation, IN RE, Special Reference No.1 of 2012** (2 supra), a Constitution Bench of the Supreme Court considered its earlier judgments and reiterated its decision in **Shrilekha**

Vidyarthi v. State of U.P.¹² that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity including contractual field and that it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters; and 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.

57. In my opinion, when the respondents have no valid defence to the claim made by the petitioners for refund of the amounts paid by the petitioners, which they are entitled under clause 14.3.1 of the Development Agreement dt.19-08-2008, their refusal to make such refund, even though the claim of the petitioners arises under the said Agreement, is clearly violative of Article 14 of the Constitution of India.

CLAIM FOR REFUND OF MONEY IS MAINTAINABLE UNDER ARTICLE 226 OF CONSTITUTION OF INDIA

58. In **U.P.Pollution Control Board** (5 supra), the State Government levied water cess under the Water (Prevention and Control of Pollution) Cess Act, 1977. The respondents denied their liability to pay it on the ground that their industrial units were not covered by entry 15 of schedule-I to the Act. The demand was, however not withdrawn and so the respondents paid the cess under protest. Some of the respondents filed Writ Petitions which were dismissed by the High Court of Allahabad in 1987. Upon S.L.Ps. being filed by some of the respondents,

¹² (1991) 1 SCC 212

the Supreme Court by judgment in another case reported in **Saraswathi Sugar Mills Vs. Haryana State Board**¹³ held that sugar manufacturing industries were not included in entry 15 of Schedule-I of the Act. The respondents then sought refund of the amounts they had paid, but without success. The then filed Writ Petitions in the High Court seeking Mandamus against the appellants directing refund of the amount collected as water cess along with 18% interest. The High Court allowed the Writ Petitions. Special Leave Petitions were filled by the appellants. The Supreme Court dismissed the Special Leave Petitions holding that the water cess was paid under protest and there was a challenge to the levy immediately and the challenge had succeeded and the collection of money as cess was itself without the authority of law. It held that claims for refund of money can be entertained under Article 226 of the Constitution of India where facts are not in dispute. It also rejected the defence set up by the appellants that it had passed on the money to the State Government and in turn the money was sent to the Central Government and later the Central Government appropriated the same by passing it back to various State Pollution Control Boards.

59. Following the said decision, I hold that the petitioners' claim for refund of money paid by them under the Development Agreement is maintainable under Article 226 of the Constitution of India and the contention of the respondents that the said amounts claimed by the petitioners were deposited by the APIIC with the then State of Andhra

¹³ (1992) 1 SCC 418

Pradesh along with other amounts in 2008-09, and so the respondents cannot be made liable for the same, is rejected.

CONCEPT OF UNJUST ENRICHMENT

60. The Supreme Court recently in **Rameshwar v. State of Haryana**¹⁴ explained the said concept of unjust enrichment as retention of a benefit by a person which is unjust or inequitable. It explained:

*“31. ... The issue concerning unjust enrichment was dealt with by this Court very succinctly in **Indian Council for Enviro-Legal Action v. Union of India**¹⁵ as under: (SCC pp. 234-36, paras 151-56 & 159-161)*

“151. Unjust enrichment has been defined as:

‘Unjust enrichment.—A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense.’

See Black’s Law Dictionary, 8th Edn. (Bryan A. Garner) at p. 1573. A claim for unjust enrichment arises where there has been an “unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.”

152. “Unjust enrichment” has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is ‘the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience’. A defendant may be liable ‘even when the

¹⁴ (2018) 6 SCC 215, at page 277

¹⁵ (2011) 8 SCC 161

defendant retaining the benefit is not a wrongdoer' and 'even though he may have received [it] honestly in the first instance'. (Schock v. Nash¹⁶, A 2d, 232-33.)

154. *Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain. In the leading case of **Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd**¹⁷ Lord Wright stated the principle thus: (AC p. 61)*

'... [A]ny civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution.'

155. Lord Denning also stated in *Nelson v. Larholt*¹⁸ as under: (KB p. 343)

'... It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution, if the justice of the case so requires.'

156. *The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment.*

* * *

159. *Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust*

¹⁶ 732 A 2d 2017 (Delaware, 1999)

¹⁷ (1943) AC 32(HL)

¹⁸ (1948) 1 KB 339

enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

160. While the term “restitution” was considered by the Supreme Court in **South Eastern Coalfields Ltd. v. State of M.P.**¹⁹ other cases excerpted later, the term “unjust enrichment” came to be considered in **Sahakari Khand Udyog Mandal Ltd. v. CCE**²⁰. This Court said: (**Sahakari Khand case** (20 *supra*) SCC p. 748, para 31)

‘31. ... “unjust enrichment” means retention of a benefit by a person that is unjust or inequitable. “Unjust enrichment” occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.’

161. The terms “unjust enrichment” and “restitution” are like the two shades of green—one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Which label is appropriate under which circumstances would depend on the facts of the particular case before the court. The courts have wide powers to grant restitution, and more so where it relates to misuse or non-compliance with court orders.”

61. In the instant case, retention of the amounts paid by the petitioners by the respondents is against the fundamental principles of justice, equity and good conscience and clearly amounts to unjust enrichment of the respondents particularly when such a retention is arbitrary and also

¹⁹ (2003) 8 SCC 648

²⁰ (2005) 3 SCC 738

violates Article 14 and 300-A of the Constitution of India. Therefore, the respondents are bound to make restitution of the amounts claimed by petitioners with interest as per SBI Prime Lending Rate as per Clause 14.3.1 r/w Clause 1.1.(l) of the Development Agreement from the date of receipt of the said amount till payment.

THE CONCLUSION

62. According to the petitioners, as on 30-09-2018, the following amounts are payable:

<i>S.No.</i>	<i>Date of payment</i>	<i>Particulars</i>	<i>Principal Amount (INR Cr)</i>	<i>Interest @ SBI PLR</i>	<i>Total Refund (INR Cr)</i>
1	17-Sep-07	Earnest Money	20.00	62.64	82.64
2	03-Dec-07	Installment	15.00	45.38	60.38
3.	04-Dec-07	Installment	20.00	60.48	80.48
4	26-Dec-07	Development Charges	5.00	14.97	19.97
5	01-Jan-08	Installment	35.00	104.52	139.52
6	11-Jan-08	Installment	35.00	104.08	139.08
7	25-Jan-08	Installment	35.00	103.48	138.48
<i>Total</i>			165.00	495.55	660.55

Interest was calculated compounded annually @ SBI PLR Rate. Counsel for petitioner stated that since SBI PLR was only available till 5th Oct 2015 as per SBI website, post that period, SBI PLR has been taken at same rate as 5th Oct 2015 i.e. 14.05% p.a.

63. The respondents have not disputed either the dates of the payments or the interest at SBI Prime Lending Rate mentioned by the petitioners or placed any material to contradict the same.

64. Therefore I hold that the amount of Rs.660.55 crores is due and payable to the petitioners by respondents, which shall be paid by respondents to petitioner no.3 within 4 weeks from today. However they are entitled to recover it from the State of Andhra Pradesh and the APIIC, if under law they are entitled to do so. This does not preclude the petitioners from claiming other amounts from respondents towards damages under other heads, if they are entitled to do so under law.

65. Accordingly the Writ Petition is allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by 1st respondent to the petitioners.

66. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-10-2018

Ndr/Vsv