THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL No.1594 of 2018

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B.Radhakrishnan)

The Telangana State Industrial Infrastructure Corporation "TSIIC, for short" and the State of Telangana are the appellants in this Appeal against the order issued in a writ petition instituted by the respondents seeking an appropriate writ, order or direction and more particularly, one in the nature of Mandamus declaring the action of the respondents in retaining/withholding and in not paying back the amount of Rs.165 crores (with interest) despite the frustration of the offer made by the respondents in relation to the Integrated Township/Multi Services Aerospace Park Project as unfair, arbitrary, unconstitutional, opposed to doctrine of conscionability, unbecoming of a State and resultantly direct the respondents to jointly and severally, pay back the amount of Rs.165 crores along with interest at State Bank of India Prime Lending Rate (PLR) from the date of deposit till its realization to the petitioner No.3.

2. Through the impugned order, the learned Single Judge held that the writ petitioners need not approach the civil court for relief or avail remedy by way of arbitration and that there are no disputed questions of fact and that the impugned action of the respondents in the writ petition is in violation of Article 14 of the Constitution and the claim made for refund of money is

maintainable in the instant case, under Article 226 of the Constitution of India and that, on facts of the case, the writ petitioners are eligible for the relief sought for by them. It was held that the State of Andhra Pradesh is not a necessary party, however, that the respondents in the writ petition, namely, Telangana State Industrial Infrastructure Corporation and the State of Telangana, are entitled to recover the amounts from the State of Andhra Pradesh and the Andhra Pradesh Industrial Infrastructure Corporation "APIIC, for short", if under law they are entitled to do so. The eligibility of the writ petitioners to claim other amounts from the respondents towards damages and other heads, if they are entitled to, under law, was left open. Resultantly, the impugned order was issued holding that an amount of Rs.660.55 crores is due and payable to the writ petitioners by the respondents, and a time bound direction for payment of such amount was issued. Hence, this Appeal by the respondents in the writ petition.

3. The learned Additional Advocate General and the learned Special Government Pleader appearing for the appellants argued that there is no public law element in the transaction and therefore, this is a case in which writ jurisdiction under Article 226 of the Constitution of India ought not to have been exercised. It is further argued that the facts of the case would disclose that the transaction is merely a non-statutory contract, and therefore, equity jurisdiction under the extraordinary powers under Article 226 of the Constitution of India ought not

to have been extended as a substitute for invoking the jurisdiction of the civil courts by instituting civil suit. In support, reference was made to judicial precedents leading to **Joshi Technologies International Inc., v. Union of India**[1], **Andhra Pradesh State Council of Higher Education v. Union of India**[2] and also to a Division Bench decision of this Court in **Hyderabad Urban Development Authority v. M/s.IBC Knowledge Park Pvt., Ltd.,** (W.A.Nos.477 of 2010 and batch, Judgment dated 27.12.2012). It was also argued that in terms of Clause 23.1, remedy by way of arbitration is available and that ought to have been treated as an adequate alternative remedy to refuse to entertain the matter under Article 226 of the Constitution of India. Referring to different clauses relating to refund and interest, it was argued that the question of grant of interest did not arise.

4. Per contra, the learned Senior Counsel on behalf of the respondents/writ petitioners submitted that the appellants are in contempt for not having complied with the directions in the impugned Judgment; which remain in force, having not been stayed during the pendency of this Appeal. On that premise, it is argued that the discretionary intra-court appellate jurisdiction under the Letters Patent may not be exercised at the instance of the appealing respondents, who still stand violating the directions in the impugned order. This notwithstanding, it is argued that the learned Single Judge has entered findings of fact, more so, on the basis of admitted fact

[1] (2015) 7 SCC 728
[2] (2016) 6 SCC 635

situations and such findings of fact are not liable to be disturbed since there is no cogent reason to upturn those findings and arrive at a different conclusion through this intra-court appeal. It is accordingly argued, relying on the decision of the Apex Court in **Umabai v. Nilkanth Dhondiba Chavan**[3], that the order of the learned Single Judge does not warrant interference through this Letters Patent Appeal. It is further argued that the transaction is not one that is liable to be classified as a pure and simple contract, in which there is no public law element. It is argued that the respondents in the writ petition are, undoubtedly, those who fall within the purview of State in terms of Article 12 of the Constitution and the learned Single Judge has found that Article 14 of the Constitution stands infracted by them in relation to their accent omissions complained of in the writ petition. Accordingly, it is argued that the adjudication as to contractual rights not confined; apart from the fact that the totality of the materials on record, considered in the light of the pleadings of the parties, demonstrate that the transaction cannot be treated as one which stands with no public law element. It is further argued that the findings rendered by the learned Single Judge clearly demonstrate that the matter has been decided on undisputed and indisputable fact situations. Pleadings and material documents on record have also been referred to by the learned Senor Counsel to argue that the verdict handed down by the learned Single Judge does not warrant interference through this intra-court appeal.

[3] (2005) 6 SCC 243

5. The relevant material facts as noted by the learned Single Judge in the impugned order are not disputed in the writ appeal. The contentions and arguments are based on such undisputed fact situations. Of them, the eligibility of the writ petitioners to claim relief against the respondents is on the basis of the fact that TSIIC is the successor of APIIC, post bifurcation of the composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh and the second respondent, State of Telangana, was created under the Andhra Pradesh Reorganisation Act, 2014, hereinafter referred to as 'Reorganisation Act'.

6. APIIC professed itself as the premier undertaking of Government of Andhra Pradesh engaged in providing world-class Industrial Infrastructure in the State. It conceived the need to develop an Integrated Airport Township/Multi-Services Aerospace Park for Knowledge-based industries/Avionics and related Industries and an Integrated township with world-class recreational and support services on approximately 350 acres of land, which could have the facilities such as Industrial buildings/plots suitable for IT/ITES/Aerospace Industry, Logistics and Warehousing, Commercial, Residential, Health care, Hospitality, Leisure and Amusement. With that avowed object, it offered 350 acres of land under that project on terms and conditions, which are not in dispute, and are evidenced by the material documents commencing from the public advertisement and press release as well the bid documents as

available among the material papers in the writ proceedings. The writ petitioners participated in the bid and were declared as the successful bidder in September, 2007. On 28.11.2007, APIIC issued Letter of Award (LoA) to the writ petitioners for development of Integrated Airport Township/Multi-services Aerospace Park. In paragraph 7 of that LoA, it was mentioned that the allotment of the said land was subject to the outcome of Appeal Suit No.274 of 2007 and certain writ petitions pending before the High Court.

7. The writ petitioners accepted the LoA and paid Rs.35 crores each on 04.12.2017, 02.01.2008, 16.01.2008 and 28.01.2008 towards purchase price of land and the said payments were acknowledged by APIIC. The writ petitioners also paid an amount of Rs.20 crores as Earnest Money Deposit (EMD) in September, 2007 and paid Rs.5 crores on 27.12.2007, towards Project Development Expenses. On 19.08.2008, APIIC executed a Development Agreement with the writ petitioners.

8. APIIC issued a show cause notice to the writ petitioners on 29.04.2011 to commence works on the Project Land. That was even before the State of Andhra Pradesh had got its title to the said land established in the pending litigation noted above. On 11.05.2011, the writ petitioners requested APIIC to return the EMP of Rs.20 crores within terms of Article 11.3 of the Development Agreement and also to intimate the writ petitioners within seven days of the steps being taken to

handover the land with reference to Article 13.3(b) of that Development Agreement. The writ petitioners also requested APIIC to execute Sale Deed and handover the project site on payment of the final instalment towards purchase price. In response to the APIIC's show cause notice, dated 29.04.2011, the writ petitioners issued a detailed reply stating that the title of the APIIC must be first established and encumbrances over the project land may be removed to enable commencement of works. On 19.12.2011, the High Court allowed A.S.No.274 of 2007 against the State of Andhra Pradesh and restrained the State of Andhra Pradesh from interfering with the plaintiff's peaceful possession. On 27.03.2012 and 12.07.2012, the writ petitioners requested the State of Andhra Pradesh to clarify the situation, especially in view of the allowing of A.S.No.274 of 2007, declaring that the Government of Andhra Pradesh has no title over the project site. The State of Andhra Pradesh filed Civil Appeal No.2963 of 2013 before the Hon'ble Supreme Court of India. In the meanwhile on 02.06.2014, State of Telangana was created. On 19.12.2011, the Hon'ble Supreme Court of India dismissed the Civil Appeal confirming the Judgment of the High Court. The writ petitioners made different communications to the State of Telangana asking for refund of the amounts paid by the writ petitioners with interest and damages. On 13.06.2016, the writ petitioners issued a legal notice to the State of Telangana for recovery of the amounts along with compensatory payment in view of the breach of terms of the Development Agreement.

9. Contending that once the Hon'ble Supreme Court of India had declared that APIIC had no right, title or interest over the project lands. It was the duty of the respondents to release the same of Rs.165 crores along with interest at SBI prime lending rate and refusal to do so is in contravention of Article 300A of the Constitution. The writ petitioners moved the Hon'ble Supreme Court of India for relief by filing a writ petition which was disposed of without expressing any opinion on the merits, but observing that the writ petitioners may choose to approach the High Court. On this plea and further stating that the project land is not in existence as professed by the APIIC and the State, the writ petitioners filed the writ petition also pleading that there is no principle of law or entitlement for the respondents to hold on to the monies of the writ petitioners and is bound to return with compensatory components in terms of the bilateral agreement between the parties. It also pleaded that it has very many ongoing projects and was also facing proceedings before the National Consumer Disputes Redressal Commission and before the Hon'ble Supreme Court of India by customers for refund of monies deposited with the writ petitioners as developer and builder. The writ petitioners also projected the situation where the Hon'ble Supreme Court of India had permitted the writ petitioners to come up with comprehensive plan which will subserve the interest of the customers as well as

it was pleaded that it was necessary to issue directions as sought for on the peculiar facts and circumstances of the case and adequate grounds exist for exercise of writ jurisdiction under Article 226 of the Constitution.

10. The first respondent in the writ petition, namely, TSIIC, which is the first appellant in this writ appeal, filed a counter affidavit contesting the writ petition contending that there is no dispute that is to be resolved in writ jurisdiction and there is no public law element involved in the contract in question and the disputes are purely private without involvement of public interest. It was also pleaded that there is a provision for arbitration in the development agreement, the factual aspects relating to civil appeal, i.e., A.S.No.274 of 2007 was also mentioned. O.S.No.155 of 2005 was filed by Pratap Karan and others against Government of Andhra Pradesh and four others seeking declaration that the property described in the schedule in that suit belonged to them. That suit was dismissed on 30.04.2007. It was reversed in A.S.No.274 of 2007 filed by the plaintiffs before this Court on 19.12.2011 and that the issue sought to be raised in writ jurisdiction do not fall within the realm of matters justiciable under Article 227 of the Constitution and there is no violation of fundamental rights and other constitutional rights of the writ petitioners. The learned Single Judge relied on the decisions of the Apex Court in **ABL International Limited v. Export Credit Guarantee Corporation of India**

Limited[4], **K.N.Guruswamy v. State of Mysore**[5] and **D.F.O. v. Ram Sanehi Singh**[6] as well as **Real Estate Agencies v. State of Goa**[7] held that depending upon the facts of the case, if it is shown that a State has acted in an arbitrary manner even in relation to a contract, relief can be granted under Article 226 of the Constitution of India and it is to be considered whether the plea raised in opposition to the writ petition has any substance or has been raised only to relegate the writ petitioners to a more lengthy , dilatory and expensive process, the learned Single Judge held that the plea of the respondents in the writ petition that the writ petitioners have to be relegated to the civil court did not deserve to be upheld. Relying on **Harbanslal Sahnia v. Indian Oil Corporation Limited**[8] and **Ram Baria Singh and Company v. State of Bihar**[9], learned Judge held that on the facts of the case, constitutional remedy by way of writ petition is available and the existence of arbitration clause does not *ipso facto* render the writ petition as one which should be treated as 'not maintainable'. The learned Judge proceeded to elaborately consider the facts and held that there is no serious disputed questions of fact between the parties in view of the sequence of events and contacting conditions as noticed by the learned Single Judge, particularly in paragraphs 32 to 39 of the impugned order and concluded that there is no ground to decline exercise of jurisdiction under Article 226 of the

[4] (2004) 3 SCC 553
[5] AIR 1954 SC 592
[6] (1983) 3 SCC 379
[7] (2012) 12 SCC 170
[8] (2003) 2 SCC 107
[9] (2015) 13 SCC 592

Constitution of India on the premise that there are no serious questions of disputed facts as between the parties. Making reference to the provisions of the Reorganisation Act, particularly Sections 53 to 60 thereof, learned Single Judge held that the State of Andhra Pradesh or the APIIC are not necessary parties to the writ petition and the writ petition cannot be dismissed for non-joinder of those parties. Since the respondents in the writ petition could be directed to satisfy the claim of the writ petitions and if permitted in law, they could recover it from APIIC or the State of Andhra Pradesh. The learned Single Judge held that the claim for refund of the monies is maintainable under Article 226 of the Constitution of India relying on the facts and circumstances of the case applying the law laid down in **U.P.Pollution Control Board v. Kanoria Industries Limited**[10] and **Saraswathi Sugar Mills v. Haryana State Board**[11], after holding that the action of the respondents in the writ petition is in violation of Article 14 of the Constitution of India. Applying the ratio of the decision of the Constitution Bench in **Shrilekha Vidyarthi v. State of U.P.**[12], the learned Judge dilated on the concept of unjust enrichment as retention of a benefit applying the principles stated by the Hon'ble Supreme Court of India in **Rameshwar v. State of Haryana**[13] and the judicial precedents noted therein. It was concluded that the retention of amounts paid by the writ petitioners is against the fundamental

[10] (2001) 2 SCC 549
[11] (1992) 1 SCC 418
[12] (1991) 1 SCC 212
[13] (2018) 6 SCC 215

principles of justice and it will amount to unjust enrichment of the respondents in the writ petitions, particularly when act of such retention is arbitrary and also violates of Articles 14 and 300A of the Constitution of India. It was held that the respondents in the writ petition are bound to make restitution of the amounts claimed by the writ petitions with interest as per SBI Prime Lending Rate as per Clause 14.3.1 r/w Clause 1.1(1) of the Development Agreement from the date of receipt of the said amount till payment. The learned Judge accordingly arrived at the amount, issued the impugned direction and ordered the writ petition in favour of the writ petitioners. This is challenged in the Writ Appeal.

11. Referring to various judicial precedents laid down by the Hon'ble Supreme Court of India, their Lordships, in **Joshi Technologies** (supra), culled out the cardinal principle that while in pure contractual matters, the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked; in a limited sphere, such remedies are available and that would be only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy *simpliciter* under the contract. Discussing the law laid in various judicial precedents, it was noted that the legal position that emanates; also on the basis of the conclusions in **ABL International Limited** (supra); is that while there is no absolute bar to the maintainability of writ petition even in contractual

matters or where there are disputed questions of fact or even when monetary claim is raised, discretion lies with the High Court, which under certain circumstances, can refuse to exercise such discretion. Laying down the principles which would govern the exercise of such discretion, the legal position which emerges from various Judgments of the Apex Court dealing with different situations and aspects relating to contracts entered into by the State/Public Authority with private parties were summarized in paragraph 70 and the sub-paragraphs thereunder of the Judgment in **Joshi Technologies** (as reported in SCC). This includes the principles that at the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness; and the State in its executive capacity, even in the contractual field, is under obligation to act fairly. Holding that if the contract between private party and the State/instrumentality and/or agency of the State is under the realm of 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. Their Lordships noticed that the distinction between public law and private law element in the contract with the State is getting blurred; however that, it has not been totally obliterated and where the matter falls purely in private field of contract, the Apex Court had maintained that the writ petition is not maintainable. It was laid down that each case has to be examined on its facts, whether the contractual relations between the parties bear insignia of public law element. It is profitable to quote paragraph 70.9 of **Joshi Technologies** (as reported in SCC) which reads as follows:-

> 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.

13. In **Joshi Technologies** (supra), the legal principles summarized by the Apex Court in **ABL International Limited** (supra) were quoted to note that 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; that merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule; and, that a writ petition involving a consequential relief of monetary claim is also maintainable. The word of caution sounded in **ABL International Limited** (supra), that 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 the discretion to entertain or not to entertain a writ petition. Self-imposed restrictions on the exercise of that power to issue prerogative writ is within the plenary right of the High Court and such power of issuing writs in such cases would not normally be exercised by the High 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. In the case on hand, the learned Single Judge has specifically considered the issue relatable to the question as to whether Article 14 of the Constitution is breached by the action of the respondents in the writ petition. Referring to the Constitutional Bench of the Supreme Court of India in **Natural Resources Allocation, IN RE, Special Reference No.1 of 2012**[14] and **Shrilekha Vidyarthi** (supra), the learned single Judge held that the respondents in the writ petition did not have any defence to the claim made by the petitioners for refund of the amounts paid by the petitioner, which they are entitled under Clause 14.3.1 of the Development Agreement, dated 19.08.2008, and consequently, the refusal of the respondents in the writ petition

[14] (2012) 10 SCC 1

to make such refund is violative of Article 14 of the Constitution of India even though the claim of the writ petitioners arises under the said Development Agreement. The claim for refund of money was held to be sustainable in the writ court, in view of the judicial precedents referred to in that regard, namely, **U.P.Pollution Control Board** (supra) and **Saraswathi Sugar Mills** (supra).

14. The concept of unjust enrichment has been considered by the learned Single Judge in the backdrop of the law laid by the Apex Court in **Rameshwar** (supra) and the judicial precedents referred to therein, it has been held that the retention of the amounts paid by the writ petitioners by the respondents in the writ petition is against the fundamental principles of justice, equity and good conscience and clearly amounts to unjust enrichment of the respondents, particularly when such retention is arbitrary and also violative of Articles 14 and 300-A of the Constitution of India. It was, therefore, that the learned Single Judge held that the respondents in the writ petition are bound to make restitution of the amounts claimed by the writ petitioners with interest as per SBI Prime lending Rate as per Clause 14.3.1 r/w Clause 1.1(1) of the Development Agreement from the date of receipt of the said amount till payment. The said decision has been rendered after considering the material pleadings and relevant facts and particulars, it has been rendered in exercise of the discretionary writ jurisdiction.

15. Having noticed that the adjudication by the learned Single Judge by entertaining the writ petition, is for reasons which are disclosed in the impugned order and which are sustainable on the basis of the law laid by the Supreme Court of India, the question would be whether it would be appropriate for us to interfere with that order of the learned Single Judge in exercise of intra-court appellate jurisdiction under the Letters Patent. The decision rendered by the learned Single Judge in exercise of discretionary jurisdiction has been considered by us in the backdrop of what has been stated above. We have already noticed that in the light of principles discussed above and also stated in the impugned order, we see that the learned Single Judge took cognizance of the entire facts and pleadings of the writ petitioners and the respondents in the writ petition, and has dealt with the different aspects including those touching exercise of jurisdiction. The learned Single Judge leaned in favour of entertaining the writ petition exercising the discretionary jurisdiction and granted relief to the petitioners, having adjudicated on facts. The resultant order, which is impugned in this Writ Appeal, is seen to be one passed on the basis of the pleadings and materials, and undisputed and indisputable facts as between the parties. We are, therefore, unable to hold that the impugned order of the learned Single Judge, rendered in discretionary writ jurisdiction, deserves to be interfered through this intra-court appeal under the Letters Patent.

16. As far as interest aspect is concerned, even according to the writ petitioners, as per letter of Award dated 28.11.2007 issued to the petitioners, the Award of Contract is subject to outcome of result in A.S. No.274 of 2007, Writ Petition Nos.19670, 20667 and 22043 of 2007. The petitioners accepted the said Award vide letter dated 03.12.2007 and paid amounts accordingly between September, 2007 and 28th January, 2008. Even the advertisement also goes to show that the Award of contract is subject to outcome of the First Appeal. But the respondents/writ petitioners, for the first time claimed release of the Earnest Money Deposit vide letter dated 02.04.2015. Even though they had addressed several letters regarding status of the land, but for the first time, addressed letter dated 14.10.2015 seeking refund of the amounts paid with interest after Civil Appeal Nos.2963 and 2964 of 2013 filed by the Government and Corporation against judgment and decree in A.S.No.274 of 2007, dated 19.12.2011 were dismissed on 09.10.2015, followed by letters dated 24.12.2015, 31.05.2016, 07.06.2016 and 13.06.2016. The first appeal i.e., A.S. No.274 of 2007 filed by third parties against Government in respect of subject land in this writ petition, against judgment and decree in O.S.No.155 of 2007 is allowed. The respondents/writ petitioners are aware of allowing of the first appeal in respect of the subject land, which is evident from the fact that they have addressed letters dated 27.03.2012, 12.07.2012, 08.04.2013 and 12.03.2015, which goes to show that the respondents/writ

petitioners are awaiting for the outcome of the Civil Appeal filed against A.S.No.274 of 2007 by the Government and the APIIC, as such, we are of the considered opinion that respondents/writ petitioners are aware of the litigation, as same is mentioned in the advertisement. The tenor of the letters also indicates that they wanted to continue with the project. Even after first appeal is dismissed, they did not claim amount with interest and they were awaiting for the result of the Civil Appeal, as such, they are entitled for the interest from 14.10.2015 only at the rate of SBI Prime Lending Rate. In view of the same, the question of unjust enrichment as held by the learned Single Judge starts from 09.10.2015 i.e., the date of dismissal of Civil Appeal by the Apex Court.

In view of above facts and circumstances, the Writ Appeal is allowed in part to the extent indicated above. As far as other aspects are concerned, the order of the learned Single Judge is confirmed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

01.04.2019
Pln