

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.
WRIT PETITION NO. 18 OF 2022.**

GOAN REAL ESTATE AND
CONSTRUCTION PVT. LTD. A
Company Registered under Companies
Act 1956, having its Registered Officer at
Aldeia de Goa, P.O. Goa University, North
Goa, Goa Represented thr. Its authorised
representative B. K. Satish s/o Mr. Krishna
V. Bhat, Aged 46 years, having office at
Aldeia de Goa, PO Goa University, North Goa. ...Petitioner

V e r s u s

1. The Chief Engineer, Electricity
Department, Vidyut Bhavan, Panaji,
Goa-403001.
2. State of Goa, Through Chief
Secretary, Secretariat, Porvorim,
Bardez, Goa-403521 ...Respondents

Mr. J. Supekar and Mr. S. Sayed, Advocate for the petitioner.

Mr. D. Pangam, Advocate General with Mr. P. Arolkar, Addl. Govt.
Advocate for the respondents.

**CORAM: G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ.**

**Reserved on : 13 October 2022
Pronounced on : 25 November 2022**

JUDGMENT : (PER G. S. KULKARNI, J.)

This judgment is divided into the following parts to facilitate analysis:

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A. Prelude:-

1. About ten years back, a plot of land under a registered “Deed of Transfer” was conveyed by the petitioner in favour of the Governor, State of Goa, to be utilised for an electricity sub-station. The petitioner now in the year 2022 asserts that the land cannot be retained by the State of Goa and should be reconveyed or re-transferred to the petitioner on various grounds including that the land was transferred under duress and coercion.

2. This is a petition filed under Section 226 of the Constitution of India, wherein the petitioner has made a peculiar prayer, namely, for issuance of a Writ of Mandamus to the Chief Engineer of the

Electricity Department (respondent no.1) and the State of Goa through its Chief Secretary to “reconvey and/or re-transfer” a plot of land admeasuring 1000 sq.mts situated in Survey no.35/1-part of Bambolim village in favour of the petitioner, by cancelling the Deed of Transfer dated 23 October 2012, registered before the Sub Registrar of Ilhas, Tiswadi, Goa.

3. The prayers are required to be noted which read thus:-

- a This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or any other writ, order or direction directing the Respondents to reconvey/re-transfer the plot of land admeasuring 1000 sq. mtrs. situated in Survey no. 35/1(part) of Bambolim village in favour of the Petitioners which land was caused to be transferred to the Respondents vide said Deed of Transfer dated 23/10/2012 registered before the Sub Registrar of Ilhas, Tiswadi, Goa, bearing registration no. PNJ BK1 02811-2012, CD no. PNJD18 on 25/10/2012.*
- b In the alternate, this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari, or a writ, order or direction directing the Sub-Registrar of Tiswadi at Panaji to cancel the Deed of Transfer dated 23/10/2012 registered before the Sub Registrar of Ilhas, Tiswadi, Goa, bearing registration no. PNJ BKi 02811-2012, CD no. PNJD18 on 25/10/2012.*

(emphasis supplied)

4. By consent of the parties, heard finally.

B. Facts :-

5. Factual antecedents as set out in the petition can be noted. The petitioner is the owner of a larger property situated at village Bambolim, Tiswadi Taluka, Goa. The petitioner had sought to develop the said property by constructing residential and commercial units. The petitioner's project is known as “Aldeia de Goa”.

6. In undertaking such development and on its completion there was to be a substantial demand and consumption of electricity by the units within the project. After due consultation with the Electricity Department, the petitioner was informed by the electricity department that a new sub-station would be required to be put up *inter alia* for the supply of electricity to the petitioner's project.

7. It is the petitioner's case that after various meetings, the respondents insisted the petitioner to transfer and convey property admeasuring 1000 sq. mts. in favour of the respondents for the purpose of setting up a new 33 KV sub-station which would cater to the electricity needs of the petitioner, as also cater to the power supply in the surrounding area. It was decided that the land to be so

transferred would be provided by the petitioner, free of cost and that the respondent would put up a sub-station and supply electricity. The petitioner has contended that as per the applicable law and as per the notification of Condition of Supply of Electrical Energy, dated 6 July 2012 published by the Government of Goa in the Official Gazette dated 12 July 2012, under the provisions of the Joint Electricity Regulatory Commission (Electrical Supply Code) Regulations, 2010, the Petitioner was merely liable to provide the land for setting up a new 33KV sub-station and according to the petitioner, there was no need to transfer the ownership of the land to the respondents.

8. The petitioner contends that the respondents however 'coerced' the petitioner to transfer the land free of cost in their favour and the petitioner was required to concede to such illegal demand as made by the respondent.

9. The petitioner contends that on such backdrop, the petitioner vide 'Deed of Transfer' which according to the petitioner was entered under duress and coercion, transferred 1000 sq. mt of land in favour of the respondent, solely for the purpose of setting up of 33KV sub-station for providing electricity supply to the petitioner's project-

which included commercial and residential unit. The deed of transfer was duly registered with the Sub Registrar of Ilhas. It is stated by the petitioner that although the land was transferred in favour of the respondents in the year 2012, however, no steps were taken by the respondents to utilise the land for the purpose it was transferred. It is stated that also steps were not taken to carry out mutation, as also the possession of the property continued with the petitioner and physical possession was never handed over to the respondents.

10. It is the petitioner's case that all this period and till date the respondents have continued to supply electricity to the petitioner's project from the existing 33KV sub-station and for the purpose of which various other portions out of the petitioner's property have been used for setting up transformers to tap the electricity supply. The petitioner contends that till date, the respondents have not set up the 33 kv sub-station on the said land so transferred in favour of the respondents. Thus, as the respondents have not used the plot for the purpose for which it was transferred, it is the petitioner's case that it was necessary that the respondents reconvey the plot in favour of the petitioner. For such purpose, the petitioner addressed a letter dated 19 February 2021 to the respondents requesting to reconvey the said plot

to the petitioner on the ground that it was illegally taken over and not utilized as also electricity was also supplied to the petitioner through transformers, set up at different places of the petitioner's property.

11. The petitioner contends that in any event, there was no requirement for the transfer of the plot free of cost to the respondents, however, no steps were taken by the respondents to reconvey the said property to the petitioner. In such circumstances, the petitioner has approached this Court contending that the transfer of the said plot in favour of the respondent amounts to an unjust enrichment. The respondents cannot enrich themselves by illegally obtaining a transfer of the said property, free of cost. The transfer is therefore void and unconstitutional. It is also contended that without following due process of law, the property could not get conveyed by the respondents in their favour, which would be in violation of the provisions of Article 300A of the Constitution. The petitioner was forced to transfer the said property free of cost in favour of the respondents which is a wrongful exercise of power by the respondents.

C. Reply Affidavit filed by the Respondents:-

12. The respondents have appeared and a reply affidavit has been filed denying the case of the petitioner. The preliminary contention of the respondents is that the petition itself is not maintainable as the disputes being raised in the present petition are disputes which involve an inquiry on disputed facts which can be gone into only in a proceedings of a civil suit, wherein the parties can lead their respective evidence in support of their contentions. It is submitted that in any event, there is no justification for filing belated proceedings inasmuch as the Deed of Transfer was executed way back on 23 October 2012 and the present petition has been filed on 29 January 2022, and that too under Article 226 of the Constitution. It is therefore contended that the petition is liable to be dismissed on the sole count of delay and laches.

13. It is next contended by the respondents that the petitioner's case that the respondents have illegally enriched themselves and forced the petitioner to transfer the said land in favour of the respondents is totally false. It is contended by the respondents that there was nothing illegal for the petitioner to transfer such a plot in favour of the

respondents referring to clause 3.6(B) (11) of the Condition of Supply of Electrical Energy, dated 6 July 2012 notified in the Official Gazette dated 12 July 2012, notified under the provisions of the Joint Electricity Regulatory Commission (Electrical Supply Code) Regulations 2010 which *inter alia* provides that the land/room required for housing the transformer shall be provided by developer/builder/society/consumer free of cost for which rent premium shall not be paid by the Department.

14. It is stated by the respondents that the respondents inspected the said sub-station plot and on being satisfied that the same is adequate and proper for the purpose intended by them for installing a 33/11 KV sub-station for the area owned by the petitioner, which would cater to the power requirements of the petitioner, as also in the vicinity, of the area has agreed to accept the said plot. The respondents stated that there are space constraints for future expansion and as such, a new sub-station with adequate capacity is needed to feed power supply to the surrounding area and give relief to the existing Bambolim sub-station. It is stated that looking at the present scenario of the developments taking place and the increase of electricity load, the

petitioner as also the surrounding areas would require an additional load of electricity in the future. It is stated that accordingly, a requirement for additional power sub-station is very much essential for the said area. It is stated that the land once entrusted to the Department in the interest of public utility cannot be claimed by the petitioner as the installation of the sub-station shall be beneficial to the petitioner and to the public at large.

15. Thus, as seen from the reply affidavit, the primary contention of the respondents is to the effect that the land has been transferred in favour of the respondent by the petitioner under a registered conveyance dated 23 October 2012, which is in conformity to Clause 11 of the Condition of Supply of Electrical Energy, dated 6 July 2012 published by the Government of Goa in the Official Gazette dated 12 July 2012, under the provisions of the Joint Electricity Regulatory Commission (Electrical Supply Code) Regulations, 2010. The contention on behalf of the respondent, is also that, looking at the present developments and increase of load in the said area, the petitioner's property as also the surrounding areas, would require additional load of electricity in the future. Thus, it is very much

essential to have an additional sub-station for the surrounding area. It is accordingly contended that the land once entrusted to the Department in the interest of public utility, cannot be reclaimed/re-transferred by the petitioner, as installation of the sub-station shall be beneficial not only to the petitioner but to the public at large, as pleaded in paragraph 21 of the reply/affidavit. It would be necessary to note relevant averments as contained in paragraphs 20, 21, 22 and 28 of the reply affidavit which read thus:-

- “20. *I say that there are space constraints at Bambolim sub station for future expansion, as such a new sub-station with adequate capacity has to be planned to feed power supply to the surrounding area and giving relief to the existing Bambolim Sub-station.*
21. *I say that looking at the present scenario of developments happening and increase of load in the said area, the Petitioner and the surrounding areas will require additional load of electricity in future. Accordingly, a requirement of additional power substation is very much essential and envisaged in the surrounding area. The land once entrusted to the Department in interest of public utility shall not be claimed by the Petitioner as the installation of a substation shall be beneficial to the Petitioner and to the public at large.*
22. *I say that as per the said Electrical Supply Code the Petitioner is required to provide the land for housing such transformer, sub-station and meters free of cost. Accordingly, the Petitioner and Respondent had arrived at an understanding that the Petitioner would transfer a plot of land admeasuring 1000 sq. mts. for setting up of sub-station in the area*

and accordingly a Deed of Transfer dated 23/10/2012 was executed. I say that the Petitioner otherwise has to provide the land free of cost to the Department of setting up of the sub-station which is very much required looking at the ever-increasing rise in load of electricity and provide some relief to the existing overburdened infrastructure. The land once entrusted to the Department in interest of public utility shall not be claimed by the Petitioner as the installation of a substation shall be beneficial to the Petitioner and to the public at large. So also because of the project of the petitioner; which is a commercial project, common man should not suffer.”

28. *I say that the sub-station which is supposed to be set up in the plot of the Petitioner is required for extra high voltage 33 KV infrastructure for that area and the transformers which set up in the Petitioner's property are for the distribution of power at LT level so that electricity can be supplied to the residential and commercial units. A transformer is used to reduce the voltage from one level to another level without changing the frequency and distribute the load coming from the sub-station. I say that a new proposed sub-station in the Petitioner's plot will reduce the load at Bambolim sub-station thereby maintaining quality power supply and less interruption. I say that the proposed sub-station to be built in the said property is in the interest of public residing in the locality. The land once entrusted to the Department in interest of public utility shall not be claimed by the Petitioner as the installation of a Substation shall be beneficial to the petitioner and to the public at large.”*

16. On the above case, it is contended on behalf of the respondents that the Writ Petition be dismissed.

D. Rejoinder affidavit filed on behalf of the Petitioner:-

17. There is a rejoinder affidavit filed on behalf of the respondents to the reply affidavit as filed on behalf of the petitioner. The rejoinder affidavit reiterates the case of the petitioners as set out in the petition, in addition thereto, it is contended that in setting up the transformers, an additional area of the petitioner being an area of 615 sq. mts has been utilised by the respondents, having already provided the area of 1000 sq. mts under the deed of transfer. It is hence contended that there was no question of the said land although transferred under the deed of transfer being retained by the respondents and the same is required to be reverted to the petitioner.

18. On the above pleadings, we have heard learned Counsel for the parties.

E. Submissions of the petitioner:-

19. Learned Counsel for the petitioner in support of the prayers as made in the petition, would contend that the action of the respondents in inducing the petitioners to enter into a Deed of Transfer dated 23

October 2012 to transfer the plot in question in favour of the respondent is an illegal act on the part of the respondents amounting to unjust enrichment. It is also his submission that the action is illegal and is violative of the petitioner's right under Article 300-A of the Constitution.

20. Learned Counsel for the petitioner has submitted that such decision on the part of the respondents will be required to be held to be arbitrary and illegal and the plot of land is required to be reverted back to the petitioner as the same has not been utilised since its transfer. It is his submission that even the revenue record continues to exist in the petitioner's name, hence the land being not utilised for setting up the electrical sub-station for the benefit of the petitioner, it cannot be retained by the respondents.

21. It is his submission that the petitioner was bonafide made to believe that the plot would be used for setting up the electricity sub-station for the purpose of requirements of the petitioner, and in fact the petitioner's requirements was fulfilled by setting up transformers on the other land belonging to the petitioner, from which an additional area of 615 sq. mts has been utilised and, for such reason, there is no

warrant in the respondents retaining the petitioner's land, by not utilising it for the purpose for which it was transferred.

22. It is submitted that Rule 11 of the Conditions of Supply of Electrical Energy Rules also would go to show that respondents cannot seek a transfer of the said land on ownership basis even for putting up a sub-station and hence, there is no statutory mandate for the respondents to justify the Deed of Transfer of the said land in their favour. It is his submission that once the law itself does not make it obligatory that the land be transferred in favour of the respondents, in that event, the Deed of Transfer is required to be held as illegal. It is for this reason, that the land necessarily is required to be reverted back to the petitioner. Learned Counsel for the petitioner has submitted that in any event there is no utility of the land to the respondents, inasmuch as, already the transformers are put up in the larger property of the petitioner for which petitioner's land admeasuring 615 sq.mts has been utilised. It is hence his contention that as electricity requirements are fulfilled by installation of the transformers, there is no requirement of the petitioner's land, subject matter of Deed of Transfer, being used also in the future. For such

reason, there is no justification by the respondents to keep such land. It is also the submission of the learned Counsel for the petitioner, that retaining the petitioner's land would certainly constitute unjust enrichment.

23. The learned Counsel for the petitioner has submitted that the contention as urged on behalf of the respondents in reply/affidavit that a Writ Petition for such a prayer is untenable. He submits that respondent no.2 is the State of Goa and the issue in question in the petition pertains to the action of the “State” falling within the meaning of Article 12 of the Constitution, thus, even in the contractual sphere where the parties have contracted with the State, the Court possesses jurisdiction to entertain a petition under Article 226 of the Constitution of India and issue an appropriate writ, if it is found that the action of the State is arbitrary, illegal and violatory of the provisions of the Constitution and the laws.

24. In support of above submissions, learned Counsel for the petitioner has relied on the following decisions:-

- 1. *Mahabir Auto Stores and ors Vs Indian Oil Corporation and ors.*¹**

1 (1990) 3 SCC 752

2. *Reliance Energy Ltd. And ors. Vs Maharashtra State Road Development Corporation Limited and ors.* ²
3. *Indian Council for Enviro-Legal Action Vs Union of India and ors.* ³
4. *Union of India and ors. Vs Dhanwanti Devi and ors.* ⁴
5. *Unitech Limited and ors. Vs Telangana State Industrial Infrastructure Corporation (TSIIC) and ors.* ⁵
6. *PT. Chet Ram Vashist Vs Municipal Corporation of Delhi*⁶
7. *M/s Cosmos Realtors Vs The Municipal Corporation of the City of Thane and ors.* ⁷

F. Submissions of the respondents:-

25. On the other hand, Mr. Pangam, learned Advocate General along with Mr. P. Arolkar, appearing for the respondents in opposing the petition, at the outset, would submit that the petition is *per se* not maintainable as a writ petition under Article 226 of the Constitution of India for setting aside a registered conveyance of land, would not be maintainable, as such rights being asserted by the petitioner, are not the rights which could be espoused taking recourse to a public law

2 (2007) 8 SCC 1

3 (2011) 8 SCC 161

4 (1996) 6 SCC 44

5 (2021) SCC online 99

6 1995(1) SCC 47

7 2019 SCC online Bom 1486

remedy.

26. Mr. Pangam would next submit that the petitioner would not be entitled to any relief also for the reason that transfer of land in favour of the respondents was for dual purposes, firstly, for achieving benefits to the larger property of the petitioner where a residential as well as commercial township has been set up by the petitioner and which certainly requires electricity supply and secondly, for the benefit of the surrounding area. It is his submission that under the Deed of Transfer dated 23 October 2012 by which the land is transferred in favour of respondents, the land is to be utilised not only for the purposes of the petitioner but also for the benefit of the areas in the vicinity. He submits that such transfer being voluntarily made, there is no question of the petitioner now turning its back and re-claiming the land by seeking an annulment of the Deed of Transfer.

27. Mr. Pangam has submitted that the basis for such transfer was very much available under clause 11 of the Condition of Supply of Electrical Energy Rules, which itself has not been challenged by the petitioner. Mr. Pangam, submits that clause 11 of the Rules clearly provides that land/room required for housing the transformer sub-

station and meters shall be provided by the developers, builders free of costs for which rent or premium shall not be paid by department. It is his submission that once under the statutory provisions, the said land came to be transferred in favour of the respondents and without such law being declared to be illegal, the petitioner would not have a legal right to seek restoration of land and that too by seeking orders in a Writ Petition.

28. Mr. Pangam has next submitted that the basic contention of the petitioner is that land has been transferred without a utility/purpose, itself is unfounded, for the reason that if a larger township of the petitioner was not to come up in such area, there would not have been any requirement of handling additional load of power requirements. It is submitted that although the previous requirements of electricity supply for the petitioner are fulfilled, however, the land in question is certainly required for setting up a sub-station as considering the already existing load would make the present infrastructure insufficient for the future which needs to be catered to and for which a new sub-station would be required to be set up. It is his submission that it is incorrect for the petitioner to contend that the respondents

have no plan to utilise the land in future for setting up the sub-station being the purpose for which the said land was transferred by the petitioner in favour of the respondents.

29. Mr. Pangam's next submission is that, in any event, the petition needs to fail, for the reason that such a relief would not be available to the petitioner even if the petitioner was to file a Civil Suit, as the Civil Suit, if was to be filed, itself would be ex-facie barred by the law of limitation. It is submitted that if this Court being called upon to exercise writ jurisdiction, the petition is even otherwise ex-facie barred by the principles of delay and laches. Accordingly, it is submitted that the petition be dismissed.

G. Reasons and Conclusion:-

30. We have heard learned counsel for the parties and with their assistance we have perused the record.

31. At the outset, we may state that the relief as prayed for in the present petition is primarily a relief for issuance of a writ of mandamus to the respondents to reconvey/re-transfer the plot of land in question in favour of the Petitioner as transferred to the respondent under a registered Deed of Transfer dated 23 October 2012. Thus, ex-

facie, such relief pertains to the petitioner asserting its rights qua the land as transferred to the respondents under the Deed of Transfer dated 23 October 2012, which is by itself a contract between the parties. Such relief presupposes an annulment of the said Deed of Transfer in the absence of such annulment of the said document, a reconveyance of the said land cannot be granted in favour of the petitioner.

32. Before we embark to consider the principal issue, we may refer to some relevant clauses in the Deed of Transfer entered between the parties, namely, between and the Governor of the State of Goa and the petitioner which reads thus:-

“B The Transferors are in the process of developing the above larger property by constructing hereon various residential and other units for sale for prospective purchasers thereof including sub-division of land of the said larger property into plots of various dimension and areas as may in a phased manner as may be determined by the transferors and duly permitted by the authorities concerned from time to time with statutory amenities, facilities, internal roads, open spaces and other necessary statutory requirements for approval of such development scheme by the authorities concerned and have named the Development Scheme as “Aldeia De Goa”.

C The Transferors have already completed Phase I of the aforesaid Development scheme consisting of sub-divided sub-plots in the part of the said larger property bearing survey No.31/1-A for

which the Sale Deed and Conveyance of plots have already been carried out .

- D The Transferors have also completed Phase II of the said development scheme in the part of said larger property having survey nos.15/1, 16/1, 35/1, 17/3, 19/2, 20/2, 21/1, 21/3, 21/5, 14/1, 19/3, 17/2, 18/1, 19/1, 20/1, 21/2, 20/3, 21/4, 21/6, 21/7 and 21/8 of different separate properties purchased under six Deeds of Sale and Conveyance, totally admeasuring 1,80,750 sq.mtrs fully mentioned and described in the Schedule I hereunder written hereinafter collectively referred to as “the said property”*
- G The Transferee is providing power supply to the said development scheme of the Transferors, and being in need of piece or parcel of land in order to install a 33kv sub station in the locality to provide power supply in the surrounding area including the development scheme of the Transferors have approached the Transferors with a request to provide necessary piece or parcel of land conveniently located within the area of the said property of the Transferors more specifically located within the survey no. 35/1 of village Bambolim Taluka Tiswadi Goa admeasuring 1000 sq.mtrs area as fully mentioned and described in Schedule II hereunder written and shown in the plan annexed hereto in red outline of the said survey no.35/1 hereinafter referred to as the “said sub station plot”.*
- I The Transferors have consented to provide to the transferee such piece or parcel of land free of cost to the Transferee as it would be in the interest and to the advantage of the Transferors to obtain regular power supply in the area including the development scheme of the Transferors.***

- J. The Transferees have inspected the said “Sub Station Plot” and have satisfied themselves that the same is adequate and proper for the purpose intended by them the Transferee and have also expressed their appreciation for the generosity of the Transferors in helping the authorities to carry out their public duty.*
- 1. That in pursuance of the request of the Transferee and the consent of the Transferors and in consideration of the advantage and benefit of having a sub station located within the development scheme of the Transferors, the Transferors do hereby grant, convey, transfer and assign free of cost without consideration and free from encumbrances, charges, liens, claims and demands of whatsoever nature, and forever by way of transfer to the Transferee the said “Sub Station Plot” admeasuring 1000 sq. mtrs situated in survey No. 35/1 of Village Bambolim, Taluka Tiswadi Goa, fully mentioned and described in detail in Schedule II “hereunder written and shown in the plan of survey no. 35/1 of Village Bambolim Taluka Tiswadi Goa Annexed hereto for installing thereon solely and specifically an Electric Sub Station with necessary structure to enable the Electricity Department to supply regular power supply in the area within which the development scheme of the Transferors is located together with all and singular areas, ways, paths, passages, waters, water courses, ditches, plants, trees, liberties, easements, profits, privileges, advantages, rights, members and appurtenances whatsoever to the said “Sub Station Plot” belonging or in any way| appertaining thereto or with the same or any part thereof now or at any time heretofore usually held, used occupied and enjoyed or known as part and member thereof or be*

appurtenant thereto and all the rights, title, use, property, possession, benefit, claim demand whatsoever both at law and in equity of the Transferors, into, out of or upon “the said sub station plot” hereby granted, conveyed, transferred and assured, To have And To Hold the same with its and every one of its rights unto and to the use and benefit of the Transferee as herein above mentioned that is solely and specifically for installation of electric sub station thereon subject always to obligation of the Transferee to the Government, the Village Panchayat of Bambolim, Tiswadi Goa and Further Subject ‘Always To erection of the structure thereon restricted to Electric Supply Sub Station and its appurtenances.

2. *..... the Transferee shall and may at all times hereafter subject to these presents peaceably and quietly enter upon, have, occupy, possess and enjoy “the said sub| station plot” and receive rents, issues, profits thereof and every part thereof, for their own use and benefit without any suit, eviction, interruption, claim or demand whatsoever from or by the Transferors or their successors, legal representatives or by any person or persons lawfully and equitably claiming or to claim by, from, under or in trust for them.*
4. *And the Transferors do hereby further covenant with the Transferee that they the Transferors and all persons having or lawfully or equitably claiming any estate or interest whatsoever, in “the said sub station plot” as and in the manner hereby transferred and conveyed, or any part thereof, from, under or in trust for the Transferors or their successors, legal representatives or any of them shall and will from time to time and at all times hereafter at the*

request Transferee do and execute or cause to be done and executed all such further acts, deeds, matters, things, conveyances, and assurances in law whatsoever for the better and more perfectly assuring the said “sub station plot” unto and to the use and benefit of the Transferee, their successors in office as shall be reasonably required.

- 5 *And is hereby agreed and declared by the Transferee for himself or his successor in office that they shall not interfere with the right of the Transferors to utilise the other area excluding the area of the said “sub station plot” of the said property as permissible in respect of the remaining portion of the said property.”*
(emphasis supplied)

33. From the above clauses of the Deed of Transfer the salient features recalling the purpose of the transfer of the land by the petitioner in favour of the respondents are as under:-

- i. That the petitioner was in the process of the developing the larger property by constructing various residential and other units for the sale of prospective purchasers and it had completed phase-I of the development scheme.
- ii. It had also completed phase-II of the development scheme totally admeasuring 180750 sq. mts.
- iii. Respondents were providing power supply to the said development scheme of the petitioner and were in need of a piece or parcel of land in order to install a 33 KV

sub-station in the locality to provide power supply in the surrounding areas including the development scheme of the petitioner.

- iv. The petitioner consented to provide to the respondents such piece or parcel of land “free of cost” as it was to be in the interest and to the advantage of the petitioner to obtain regular power supply for its project, including development scheme of the petitioner.
- v. The respondents had expressed their appreciation for the generosity of the transferors in helping the authority to carry out their public duties.

34. Thus it is quite apparent from the terms and conditions of the Deed of Transfer that the petitioner by its free consent and in order to gain advantage and benefits for its project of having a sub-station transferred the plot in question and assigned it to the respondents free of cost and free from all encumbrances, charges, liens, claims and demands of whatsoever nature, and forever by way of the Transfer Deed in question. By virtue of such transfer, the petitioner's right, title, use, property, possession, benefit, claim demand whatsoever “both in law and in equity” into, out of or upon “the said sub-station plot” was granted, conveyed, transferred and assured to the respondents.

Respondents at all times were permitted to enter upon, occupy, possess and enjoy the plot in question, receive rents, issues, profits thereof and every part of the land thereof was for their own use and benefit without “any suit, eviction, interruption or claim or demand”, whatsoever from the petitioner or their successors, legal representatives or by any person or persons lawfully and equitably claiming under them. The petitioner also consented not to interfere with the rights of the respondents.

35. It is thus clear from the Deed of Transfer that the intention of the parties in agreeing to have such transfer was not only for a benefit which would be available to the petitioner, for its own project but also considering the benefit to the surrounding areas. It is not the case of the respondents that the respondents do not require the said land for putting up a sub-station. In fact, in the reply affidavit as filed by the respondents, it has been categorically averred, that as there are space constraints for future expansion, and as such a new sub-station with adequate capacity is being planned to feed power supply to the surrounding area, so as to give relief to the existing Bambolim sub-station and for such reasons a requirement of additional power sub-

station was very much essential.

36. It is seen from averments as made in the petition as also the reply affidavit as filed on behalf of the respondents, that the surrounding areas which are being developed which includes the petitioner's land would require an additional load of electricity in future and hence requirement of an additional power sub-station is stated to be very much essential for the surrounding area. Also as per the Electrical Supply Code, the petitioner was required to provide the land for housing, transformer, sub-station and meters free of costs. It is on such backdrop, the petitioner and the respondents had mutually agreed that the petitioner would transfer the land in question for setting up of sub-station in the area and consequent thereto the said Deed of Transfer dated 23 October 2012, was executed between the parties.

37. The respondents have referred to condition 11 of the Revised Condition of Supply of Electrical Energy dated 6 July 2012 which provides as under:-

“11 The land/room required for housing the transformer, sub-station and meters shall be provided by the developer/builder/society/ consumer free of cost for which rent or premium shall not be paid by the

Department. Transformers should preferably be placed in open areas. In case of installation in transformer in a room or closed area is unavoidable, all safety measures as per prevailing rules and regulations shall be taken.”
(emphasis supplied)

From a bare reading of the aforesaid condition, not only there is a statutory basis, but also in pursuance thereto, a free and voluntary action is resorted to on the part of the petitioner providing the said land to the respondents, free of cost under the Deed of Transfer dated 23 October 2012. It is thus surprising to hear from the petitioner, and that too, on a solemn affirmation, that the petitioner was forced by the respondents and that the respondents coerced the petitioner to transfer the said land in favour of the respondents free of cost, which in our opinion, is not only an untenable proposition but also a patently false contention. There is no material whatsoever on record to even remotely suggest that there was any coercion on the petitioner executing the Deed of Transfer with the State Government. Thus, on such false basis, if the petitioner is invoking the jurisdiction of this Court under Article 226 of the Constitution of India, to pray for a discretionary relief, the petition on this count alone would deserve to be dismissed.

38. This apart, it is a settled principle of law that once a party enters into a contract and one of the party pleads that the contract is illegal for any reason which may be permissible for the parties, to so urge in law, the parties would be governed by terms and conditions of the contract and in such event, a public law remedy to approach the writ Court would certainly not be available.

39. In *State of Jammu and Kashmir Vs Ghulam Moh. Dar and Another*⁸ it was held to be well settled that a Writ in the nature of mandamus would not ordinarily be issued for enforcing terms and conditions of a contract, and that the High Court would not entertain the Writ Petition involving disputed questions of fact. This was a case where there was a concluded contract between the parties and a dispute as arising under the contract was sought to be asserted in a writ petition. The High Court had earlier entertained the petition, and the Supreme Court while making the said observation set aside the judgment of the High Court.

40. In *Pradeep Kumar Sharma Vs Uttar Pradesh Finance Corporation, Rajpur Road, Dehradun and others*⁹, the issue as raised

⁸ (2004) 12 SCC 327.

⁹ (2012) 10 SCC 424.

before the High Court was in relation to the validity of the Sale Deed dated 29 August 2001 executed in favour of the writ petitioner by his vendors during the subsistence of the mortgage in favour of the Corporation. The rights of the appellant herein (fifth respondent in the Writ Petition) to the said property on the basis of the sale made in his favour by the respondent-Corporation pursuant to the advertisement dated 20 October 2002 was the subject matter of the proceedings. In this context, the Supreme Court held that issues raised by the writ petitioner before the High Court, in reality, pertained to the claim for a better title of the writ petitioner to the property in question, on the basis of the Sale Deed dated 29 August 2001. It was held that “validity of the Sale Deed dated 29 August 2001,” executed in favour of the writ petitioner by his vendors during the subsistence of the mortgage in favour of the Corporation and the rights of the appellant to the said property on the basis of the sale made in his favour of the Corporation dated 20 October 2002 were issues that had arisen in the writ petition before the High Court. It was held that although the powers of the High Court under Article 226 of the Constitution are broad and expansive, however, adjudication of the questions, some of which also required proof of basic facts, were not within the domain of public

law. The Supreme Court held that the essence of the dispute between the parties denuded the lis of a public law character, nor were any issues arising out of public law functions of the State or its authorities involved. It was held that the High Court should have refused the adjudication of the Writ Petition. The relevant observations in paragraphs 14 and 15 which are quite apposite in the present context are required to be noted and which read thus :-

14. *The issues raised by the writ petitioner before the High Court really pertained to the claim of better title of the writ petitioner to the property in question on the basis of the sale deed dated 29-8-2001. The validity of the sale deed dated 29-8-2001 executed in favour of the writ petitioner by his vendors during the subsistence of the mortgage in favour of the Corporation and the rights of the fifth respondent to the said property on the basis of the sale made in his favour by the Corporation pursuant to the advertisement dated 20-10-2002 are the issues that arose in the writ petition. Broad and expansive though the powers of the High Court under Article 226 may be, adjudication of the aforesaid questions, some of which also required proof of certain basic facts, in our view, was not appropriate in the domain of public law. Though the High Court in its order dated 5-12-2006 did not expressly say so, the effect of the several directions issued by it, in fact, amounts to an adjudication of the issues outlined above.*

15. The essence of the dispute between the parties denuded the lis a public law character. Nor was any issue arising out of public law functions of the State or its authorities involved. In such a situation resort to the public law remedy should not have been entertained by the High Court. (Vide Godavari Sugar Mills Ltd. v. State of Maharashtra [(2011) 2 SCC 439 : (2011) 1 SCC (Civ) 467]) Even if the vindication of the writ petitioner's rights under the sale deed dated 29-8-2001 is ignored and we are to proceed on the basis that the writ petitioner questioned the sale made by the Corporation, the writ petitioner would not be entitled to an adjudication of the rights of the parties inter se but at best to a judicial review of the administrative action of the Corporation with regard to the sale made. (Vide Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers [(2008) 12 SCC 500].) But as already noticed, neither the exercise of the statutory power under the Act by the Corporation in the matter of the sale of the property nor was the process of the sale transaction questioned in the writ petition either on account of lack of jurisdiction or abuse of authority. **In the above facts, the High Court should have refused an adjudication of the writ petition and, instead, ought to have required the aggrieved parties to seek their remedies in an appropriate manner and before the competent civil forum.**
- (emphasis supplied)

41. The above principles of law are squarely applicable to the case in hand. The petitioner has somehow by a camouflage intended to bring the cause of action within the purview of Article 226 of the

Constitution of India and has very boldly stated in paragraph 13 of the petition that the petitioner had no other efficacious remedy available.

42. In our opinion, the petitioner knowing well the scope of jurisdiction of the writ Court to grant such a relief on disputed questions of fact, nonetheless, has raised various contentions asserting rights in respect of a conveyed land, in the present petition. Such attempt of the petitioner is not innocuous, as in fact an alternate remedy of a Civil Suit was available to the petitioner, however, it appears that the petitioner had its own apprehension, as to whether the petitioner could take recourse to a suit, given the fact as that the Deed of Transfer itself is of the year 2012 and possibly as contented on behalf of the respondents, the suit itself would be barred by limitation.

43. The respondents would also be correct in their contention that the relief as prayed for by the petitioner was not available to the petitioner to be asserted in a writ petition, on the ground of the petition itself being barred by principles of delay and laches. It is also quite astonishing as to how the petitioner can seek a relief to reconvey/re-transfer the plot of land without the Deed of Transfer dated 23 October 2012 being declared to be a nullity by a competent

Court. Admittedly, there were no proceedings filed by the petitioner for assailing the validity of Deed of Transfer dated 23 October 2012. Certainly, looking at the tenor of the reliefs it is not possible for the Writ Court to grant either of the prayer clauses (a) or prayer clause (b), without the Deed of Transfer being declared to be illegal by any competent Court.

44. It is well settled that when a Court is called upon to exercise jurisdiction under Article 226 of the Constitution, it would not exercise jurisdiction in a straight jacket formula and adjudicate the lis merely because the proceedings are against the “State”, within the meaning and purview of Article 12 of the Constitution. It is well settled that it is within the discretion of the Court, to consider whether it should exercise the extraordinary constitutional jurisdiction, with reference to the particular action or 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 in question and on other like considerations. As sought to be asserted by the petitioner, it is not possible to generalise the nature of the action so as to hold that a public law remedy in the present circumstances is available to the petitioner.

45. It is also a settled principle that a writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of an obligation voluntarily incurred. In the present case, it is writ large from the Deed of Transfer that the petitioner voluntarily transferred land in question in favour of the State of Goa in the year 2012 under the Deed of Transfer. In *Joshi Technologies International INC. Vs Union of India and others*¹⁰ the Supreme Court has categorically held that the jurisdiction of the High Court under Article 226 would not facilitate avoidance of obligation which was voluntarily incurred. The relevant extract of the judgment needs to be noted which read thus:

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

70.9 *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*

10 (2015) 7 SCC 728

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.

70.11 ***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.***”

(Emphasis supplied)

46. Now, having noted the limitations on the writ Court to grant

such a relief, and more particularly considering the facts and circumstances of the case, the plea's of the petitioner are required to be examined. The first contention as urged on behalf of the petitioner referring to the decision of the Supreme Court in the case of ***Mahabir Auto Store and ors*** (supra) is that the action of the respondent in seeking a transfer of the land in question is required to be held arbitrary and violative of Article 14 of the Constitution of India. In our opinion, although the principles of law are well settled that the State in exercise of its executive powers under Articles 298 and 299 of the Constitution in entering into a contract would adhere to the principles of fairness and non arbitrariness as espoused under of Article 14 of the Constitution, however, the Supreme Court in this decision has categorically observed that exercise of the jurisdiction of the Writ Court depends upon the facts and circumstances of the particular transaction. It was held that Article 14 cannot and has not been construed as a charter for judicial review of the 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. The relevant observations in that regard are required to be noted at paragraphs 12 and 17 which read thus:-

“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 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”

17. *We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such “power” and not cases of exercise of a “right” arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.”*

(emphasis supplied)

47. The next decision as relied on behalf of the petitioner is the decision of the Supreme Court in ***Reliance Energy Ltd and ors.*** (supra) which lays down the principles that proceedings under Articles 226 and 32 of the Constitution of India would also cover the disputes in regard to contractual matters involving the government, and in such contractual matters, State policy or State action has to satisfy the test

of reasonableness. There can be no dispute on this proposition. This is a decision which had arisen from the respondent floating global tenders for completing the Mumbai Trans Harbour Link (MTHL) between Mumbai and Navi Mumbai on a BOT basis. The appellants therein had formed a consortium. The appellants were disqualified as they had failed to meet the qualification criteria in relation to the financial bid. It is in such context, that the appellants had approached the High Court. The High Court was of the view that it had no jurisdiction under Article 226 of the Constitution to interfere with the decision of the respondents, when there were two different opinions regarding adjustment of income. It is in such context, the Supreme Court examined the concept of '*level playing field*' which was held to be an important doctrine embodied in Article 19(1)(g) of the Constitution of India. The Court held that Article 14 applies to Government policies and if policies were acts of the Government, even in the contractual matters, if the policies fail to satisfy the test of reasonableness, then such action or decision would be unconstitutional. We are at a loss to appreciate as to how these principles which although are well settled would be applicable to the facts of the present case.

48. We may observe that there cannot be any quarrel on the proposition that the High Court in exercise of jurisdiction under Article 226 of the Constitution would have jurisdiction to interfere in contractual matters when tested on the touchstone of Articles 14, 19(1) (g) and 300-A of the Constitution, however, exercise of such power being discretionary, would depend on the facts and circumstances of each case as repeatedly emphasized by the Supreme Court in its several decisions. Certainly, when the petitioner asserts to reconvey/re-transfer of the plot of land in question which had stood vested with the respondents by Deed of Transfer dated 23 October 2012, it certainly cannot be a matter of judicial review in the facts and circumstances of the present case when the transfer itself is under a registered document between the parties and as per law.

49. We are thus not inclined to agree with the petitioner, that the rights of the petitioner under Article 14 and 300-A of the Constitution are in any manner breached. Apart from the above reasons, this is for the reason that the doctrine of fairness and reasonableness which are concepts under administrative law, have been held are not to be mixed up with the fair or unfair terms of the contract. More particularly, in the present circumstances when under the contract(Deed of Transfer) which has stood settled for a

period of more than 10 years and when for all these years the petitioner had no quarrel whatsoever of its land having stood transferred/ vested with the respondents. If such proposition of testing terms and conditions of concluded contracts or for that matter the contract itself, entered by private parties with State instrumentalities, in proceedings under Article 226 of the Constitution, on the ground of reasonableness or on any principles of fairness or arbitrariness, it would open a regime of total chaos and uncertainty in unsettling final and concluded contracts, so entered with the State. Thus, the principles of fairness and reasonableness being principles under Article 14 cannot be applied to assail the legality of such concluded contracts. In such context it would be apposite to refer to the decision of the Hon'ble Supreme Court in the case of *Puravankara Projects Ltd Vs Hotel Venus International and others*¹¹ wherein the Supreme Court referring to the decision in *Asst. Excise Commissioner Vs Isaac Peter*¹² observed that any contention that there is a duty upon the State to act fairly, which is sought to be imported in a “contract”, to modify and or alter its terms and/or to create any obligation upon the State Government, which is not there in the contract, is not covered by any doctrine of fairness or reasonableness. The Court in paragraph 32 of the report observed thus:-

11 (2007) 10 SCC 33

12 1994 (4) SCC 104

“32. *In Assistant Excise Commissioner and Ors. v. Isaac Peter and Ors. (1994 (4) SCC 104) this Court highlighted that the concept of administrative law and fairness should not be mixed up with fair or unfair terms of the contract. It was stated in no uncertain terms that duty to act fairly which is sought to be imported into a contract to modify and/or alter its terms and/or to create an obligation upon the State Government which is not there in the contract is not covered by any doctrine of fairness or reasonableness. The duty to act fairly and reasonably is a doctrine developed in administrative law field to ensure the rule of law and to prevent failure of justice when the action is administrative in nature.*”

50. The learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in ***Unitech Limited and ors*** (supra) in support of a proposition that a petition under Article 226 of the Constitution would be maintainable in contractual matters. In such decision the Supreme Court was concerned with bids invited by the Andhra Pradesh Industrial Infrastructure Corporation Ltd to “*develop, design and construct*” an integrated township project/Multi services aerospace parks in the area of about 350 acres of land in which the appellant had participated. The appellant's bid was accepted, upon the payment of an earnest amount deposit of 20 crores. The appellant was contractually required to pay an amount of Rs.140 crores as project land cost and Rs.5 crores towards project development expenses. The letter of award issued by the respondent stipulated condition no.17 that the allotment of the said land is subject to the outcome of the

proceedings pending before the High Court of Andhra Pradesh. The petitioner had made substantial payment as per the letter of allotment. The appellant was also called upon to commence construction. After almost about 3 years i.e on 19 December 2011, the High Court of Andhra Pradesh in the pending litigation held that Government of Andhra Pradesh did not have title to the project land. The appellant in these circumstances called upon the respondent to clarify as to the status of the land which was to be developed by the appellant. Thereafter, when the correspondence in this regard was continuing between the parties, on 9 October 2015, a two Bench Judge of the Supreme Court upheld the judgment of the High Court. After the said decision, the appellant requested the respondent to refund all amounts which had been received in relation to the land together with interest and damages for the loss suffered by it, which included the cost of borrowing capital from banks, expenses for planning and designing, opportunity Costs and other costs for development. The appellant in these circumstances had sought a refund of Rs. 457 crores towards principal and interest. Initially, the appellant had invoked the jurisdiction of the Supreme Court in a petition under Article 32 of the Constitution, which was disposed of by the Supreme Court granting

liberty to the appellant to move the High Court under Article 226 of the Constitution. The learned Single Judge of High Court allowed appellant's Writ Petition against which a Writ appeal was filed by the respondent before the Division Bench of the High Court. The Division Bench upheld the order of the learned Single Judge confirming the liability of the respondent to refund the amounts. However, the Division bench directed refund of principal sum with payment of interest from 14 October 2007 at the SBI-PLR, as opposed to the dates of payment of installments commencing from September 2007. It is in these circumstances the appellant being aggrieved by the decision of the Division Bench approached the Supreme Court. Before the Supreme Court the respondent therein had raised a contention on the maintainability of the Writ Petition under Article 226 of the Constitution of India. In such context, the Supreme Court held that it is well settled that jurisdiction under Article 226 of the Constitution of India cannot be ousted only on the basis that the dispute pertains to a contractual arena, 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. It was held that 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 be justifiably invoked. It was held that jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh when the foundational representation of the contract had failed. Observations in this regard as made in paragraph 38 to 41 are required to be noted which read thus:-

- “38. *Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing, learned Senior Counsel appearing on behalf of the State of Telangana and TSIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. Learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out of a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.*
39. *A two judge Bench of this Court in ABL International Ltd. v. Export Credit Guarantee Corporation of India* 7 [ABL International]

analyzed a long line of precedent of this Court to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution. Speaking through Justice N Santosh Hegde, the Court held:

“27. ...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.”*

40. This exposition has been followed by this Court, and has been adopted by three-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. 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. 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.”

41. *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 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.***

(emphasis supplied)

51. The next decision cited on behalf of the petitioner is the case of *Indian Council for Enviro-Legal Action* (supra) to submit that the impugned action on behalf of the respondent would result in unjust enrichment. There can be no quarrel on the principles as discussed in the said judgment, as to what may be an unjust enrichment.

However, in so far as present case is concerned, there is no basis whatsoever for the petitioner to contend that there is any unjust enrichment inasmuch as the petitioner has failed to show that the respondents are wrongfully deriving any benefit from the land, being the subject matter of the Deed of Transfer. The principles of unjust enrichment are certainly not attracted in the present case, as it cannot be said that the plot in question justly belongs to the petitioner, as the respondents have retained the said plot only after the same was lawfully transferred in their favour. In paragraph 151 of the said decision the Supreme Court has considered the definition of unjust enrichment to mean “*a benefit obtained from another; not intended as a gift and not legally unjustifiable, for which the beneficiary must make restitution or recompense.*” The decision in no manner would assist the petitioner.

52. The decision of *Union of India and ors Vs Dhanwanti Devi and ors* (supra) is relied on behalf of the petitioner to contend that the respondents in the present case are also unjustly enriching themselves by not reconveying the plot in question to the petitioner. This decision had arisen in the context of land acquisition proceedings under the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968. The question before the Supreme Court was whether the said Act expresses any intention to exclude payment of interest and solatium in respect of the property acquired thereunder. It is in such context, the Supreme Court discussed the principles of unjust enrichment to observe that the unjust enrichment of a person occurs only when he has and retains money for benefits which in justice and equity belongs to another. The Supreme Court observed that three elements must be established in order to sustain a claim based on unjust enrichment: i) The benefit conferred upon the defendant by the plaintiff, ii) appreciation of knowledge by the defendant of the benefit; iii) the acceptance or retention by the defendant of the benefit under such circumstances so as to make it inequitable for the defendant to retain the benefit without payment of its value. It was held that it cannot be characterised as unjust

enrichment where such action does not involve violation of law or is opposed to public policy either directly or indirectly. This decision is equally inapplicable to the facts at hand.

53. The learned Counsel for the petitioner in contending that the respondents could not have derived transfer of the land in question in their favour under the Deed of Transfer has placed reliance on the decision of *PT. Chet Ram Vashist* (supra). In this decision, the question which fell for consideration of the Supreme Court was whether the Municipal Corporation of Delhi in the absence of any provision in the Delhi Municipal Corporation Act, 1957 was entitled to sanction the plan for building activities with the condition that the open space for parks and schools be transferred to the Corporation free of cost. The dispute in the said proceedings had arisen out of a suit which was filed by the appellant for declaration and mandatory injunction against the respondents, the main grievance was against the condition with respect of transfer of one of the open space for parks and schools. The trial Court held that the condition relating to reservation of the two plots for the purpose of an open park land was valid. The trial Court, however, held that condition relating to transfer of the sites reserved for schools and park to the corporation free of

cost was invalid. Both the parties went in appeal. The appeal of the corporation was dismissed. The appellate Court set aside the judgment and decree of the trial Court to the extent it dismissed the suit of the appellant in respect of the declaration and injunction, with respect to the condition calling upon him to leave as green park the area shown as two residential plots in the revised layout plan but held that the appellant had no cause of action and the trial Court should have rejected the plaint as the Standing Committee having rejected the plan there was no cause of action for the appellant to challenge the condition. Against the order of the appellate Court, the Corporation filed two appeals; one against the dismissal of its appeal and the other appeal was against the observation in favour of the appellant that he was entitled to relief of declaration and injunction. Such appeal was dismissed by the High Court. As regards the other appeal, the High Court held that the resolution of the Committee did not amount to transfer of ownership to it and it was only a transfer of right of management. It is in such context, the Supreme Court held that the Corporation shall have the right to manage the land which was earmarked for school, park etc. However, the Supreme Court also held that the Corporation would not have the right to change the user

of land which shall be for beneficial enjoyment of the residents of the colony. It was left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent, on the date when the sanction to the layout plan was accorded. It is in such context the observations in paragraphs 6, 7 and 8 were made which read thus:-

“6 Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in

general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.

- 7 Even then the question is, should we set aside the order of the High Court and the appellate court and restore that of the trial court or we may alter the order passed by the courts below so as to do substantial justice. We have opted for the latter course for the reasons to be mentioned hereinafter. The appellant's plan was sanctioned subject to the conditions imposed by the Corporation. He did not raise any objection immediately and appears to have proceeded to sell and transfer the land. The suit was filed after nearly one year from the date of sanction. The Corporation has been exercising right over the land in dispute as transferor, since then, for nearly a quarter of a century. In these circumstances interfering with the order of the High Court would be setting at nought settled state of affairs. It was also stated by the learned counsel for respondent that the appellant has no land or house in the locality.*
- 8 For these reasons even though the judgment and decree of the High Court are liable to be set aside but we refrain from doing so. Yet in order to protect interests of the owners of house and residents of the colony it is directed that the order of the High Court shall stand modified to the following effect:*

(1) The Corporation shall have right to manage the land which was earmarked for school, park etc.

(2) The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.

(3) It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded.”

In our opinion, the above decision is certainly not applicable as in the present case stands completely on a different footing. Firstly, for the reason that Condition 11 of Revised Condition of Supply of Electrical Energy provided that the land required for housing the transformers, sub-station shall be provided by the developer/builder /society/consumer free of cost. As seen from the Deed of Transfer dated 23 October 2012, the land has not only been transferred by such registered document for the benefit of the petitioner but also for the benefit of others. Also the transfer deed expresses and records the appreciation of the generosity of the petitioner in helping the authority to carry out their public duties as noted above. The decision of the petitioner to transfer the land was wholly voluntary. There was no coercion whatsoever as falsely alleged. For a long period from the

year 2012 up to 2021, even when for the first time the petitioner addressed a letter dated 19 February 2021 to the respondents, requesting the respondents to re-convey the plot of land to the petitioner, there was not a whisper and/or any grievance whatsoever of the petitioner against the respondents of any coercion being practised by the State on the petitioner. Even the said communication dated 19 February 2021 does not make out any case of forceful transfer or any coercion etc and the said story of forceful transfer of coercion is made out only for the purpose of the present proceedings.

54. In any event if the petitioner's case is premised on coercion, it is certainly a disputed fact which by no stretch of imagination can be gone into the proceeding of a Writ Petition under Article 226 of the Constitution. Thus, the reliefs as prayed by the petitioner, that the land in question be reconveyed/re-transferred to the petitioner cannot be granted, and more so, when the Deed of Transfer itself is legal and valid and/or not declared to be invalid or illegal by any competent Court.

55. Resultantly, the writ petition fails, it is accordingly rejected.

56. We however refrain from imposing any costs.

BHARAT P. DESHPANDE, J

G. S. KULKARNI, J.

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