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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.04.2022	Delivered on: 15.06.2022
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.13949 of 2021
and W.M.P.No.14819 of 2021

Ascendas IT Park (Chennai) Limited,
Unit Nos.7 & 8, 1st Floor, Pinnacle Building,
International Tech Park, Chennai,
CSIR Road, Taramani,
Chennai 600 113,
Rep. By its Authorised signatory
Mr.A.Senthil Kumar

.. Petitioner

Vs.

1. Tamil Nadu Industrial Development Corporation Limited (TIDCO),
Rep. By its Chairman & Managing Director,
19 A, Rukmini Lakshmipathy Road,
Chennai 600 008.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
3. DLF Info Park Developers (Chennai) Limited,
Old Nos.828 & 828A, New Nos.268 & 268A Sri Ranga,
Poonamallee High Road, Kilpauk,
Chennai 600 010.
4. The Commissioner of Police (Traffic)
6th Floor, No.132, EVK Sampath Road,
Periyampet, Chennai 600 007.
5. The State of Tamil Nadu,
Rep. By its Secretary,
Industries Department,
Fort St. George,
Chennai 600 003.

.. Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1, 2 and 4 to earmark and lay the proposed road linking Taramani Road and Velacherry Road in the lands bearing Survey Nos.T.S.Nos.1/5 and 1/9 of Thiruvanmiyur Village, formerly Mylapore - Triplicane Taluk now Velacherry Taluk and in S.Nos.300/2B, 300/2C and 301/3 of Kottivakkam Village, formerly Tambaram Taluk now Sholinganallur Taluk, Chennai, Tamil Nadu admeasuring 26.64 acres, as per clause 2.2 of the said Associate Sector Agreement dated 17th June 2003 between the 1st respondent and the petitioner.

For Petitioner : Mr.P.S.Raman (Senior Counsel)
for Mr.A.R.Karunakaran

For R1 : Mr.G.Masilamani (Senior Counsel)
Assisted by Mr.Jose John
for M/s.King & Partridge

For R2 : Ms.A.S.Manisha
for M/s.P.Veena Suresh

For R3 : Mr.A.R.L.Sundaresan (Senior Counsel)
for Mr.Jayesh B. Dolia
for M/s.Aiyar & Dolia

For RR4 & 5 : Mr.U.Baranidharan
(Additional Government Pleader)

O R D E R

The petitioner has come out with the present Writ Petition seeking for a direction to the respondents 1, 2 and 4 to earmark and lay the proposed road linking Taramani Road and Velacherry Road admeasuring 26.64 acres, adjoining to the land leased out to them, as per clause 2.2 of the said Associate Sector Agreement dated 17th June 2003 between the 1st respondent and the petitioner.

Facts of the case:

2. The petitioner is a joint venture company between the 1st respondent and Ascendas Property Fund Pte Limited, a group company of CapitaLand, Singapore. CapitaLand, amongst other businesses in India, inter alia, is engaged in the business of developing Information Technology Parks (IT Park) and "built to suit" solutions. Ascendas India Private Limited, in pursuant to



an initiative by the Government of Tamil Nadu to create IT parks/hubs in Chennai, entered into a Memorandum of Understanding dated 04.07.2002 with the 1st respondent. Pursuant to the said Memorandum Of Understanding, an Associate Sector Agreement (ASA) dated 17.06.2003 was entered into by the said company with the 1st respondent. Subsequently, the petitioner was incorporated jointly by the said company with the 1st respondent on 03.11.2003 with a view to develop the land to an extent of 15 acres located at Thiruvanniyur and Kanagam Villages in Velacherry Taluk. The said land measuring 15 acres at CSIR Road at Taramani, Chennai was allotted to the petitioner by the Government of Tamil Nadu on various dates in terms of Associate Sector Agreement (ASA) dated 17.06.2003. The petitioner, subsequently developed and constructed buildings in three phases known as 'Pinnacle', 'Crest' and 'Zenith' [hereinafter referred to as 'IT parks in the said land'].

2(a). On 11.04.2007, the Associate Sector Agreement (ASA) dated 17.06.2003 was amended by deleting certain clauses, but clause 2.2 of Associate Sector Agreement (ASA) was retained, which reads as follows:

"2.2. The Company will use the current access of Taramani road for the Project and First party agrees to lay a connecting road by start of the third phase to both the Velacherry and Taramani roads"

2(b). The 1st respondent agreed to lay a connecting road at the time of petitioner starting the development of third phase. The proposed road was to be formed over an adjoining plot of the land and was to a butt the land allotted to the petitioner (known as ITPC). The 1st respondent agreed to lay the said road as and when the petitioner completes the first two phases as traffic would be increased to a great extent and a new connecting road would enable the traffic to avoid already congested Rajiv Gandhi Salai (OMR). The laying of new connecting road was discussed in the meeting and 1st respondent agreed to consider the laying of said road in all the Board Meetings. Originally, the connecting road was agreed to be in 9 meters in width and subsequently it was proposed to lay 18 meters width road. The 1st respondent raised the issue of bearing of cost of 9 meters road, as according to 1st respondent, only the Corporation of Chennai must bear the cost of laying the road. In the meeting held on 16.02.2005, when the petitioner pointed out that the 1st respondent agreed to pay the entire cost for developing the road of 9 meters width, the then Chairman of 1st respondent agreed to bear the cost of 9 meters width. The petitioner had a first



right to develop the adjoining land measuring 26.64 acres and petitioner suggested to convert such first right into a firm commitment in favour of the petitioner, so that the petitioner can consider funding cost of additional width of the road. The 1st respondent informed the petitioner that if a letter to that effect is sent to the 1st respondent, the same will be considered. The petitioner sent a letter dated 07.03.2007 to the 1st respondent to initiate the process of laying the proposed 18 meters width road connecting Taramani Road and Velacherry Road alongside the three phases constructed by the Ascendas. Based on the discussions, the petitioner paid a sum of Rs.24,94,14,660/- being the cost of 5 acres to develop the third phase. The petitioner was repeatedly issuing letters to the 1st respondent to initiate the laying of road. While so, the 1st respondent leased out the adjoining land of 26.64 acres to the 3rd respondent. Hence, a meeting was arranged by the 1st respondent with 3rd respondent to discuss about the road. The petitioner, pursuant to the meeting on 15.02.2008, sent a letter dated 27.02.2008 insisting the commitments made by the 1st respondent. All of a sudden, the 1st respondent sent a letter dated 11.03.2008 informing the petitioner that connecting road is not necessary as Rajiv Gandhi Salai (OMR) satisfy the requirements of clause 2.2 of Associate Sector Agreement (ASA). The 1st respondent denied having any agreement with the petitioner on the location of connecting link road, but directed the petitioner to negotiate with 3rd respondent and a draft tri-partite agreement was also made between the petitioner, 1st respondent and 3rd respondent. The petitioner protested the stand taken by the 1st respondent in its letter dated 27.03.2008. By that time, the petitioner has completed the third phase.

2(c). There was a dispute between the 1st respondent and 3rd respondent and hence, the 3rd respondent filed W.P.No.5533 of 2011 against the 1st respondent before this Court. The said W.P.No.5533 of 2011 was dismissed as withdrawn by the order of this Court dated 20.04.2018. The 1st respondent, by its letter dated 28.08.2018 informed the petitioner that Rajiv Gandhi Salai (OMR) is sufficient and there is no need for laying a connecting road. The petitioner stated that Rajiv Gandhi Road (OMR) is in existence even in the year 2003 when the Associate Sector Agreement (ASA) dated 17.06.2003 was entered into with clause 2.2. While so, the 3rd respondent applied for planning permission on 03.03.2020 to the 2nd respondent. According to the petitioner, the land leased out to the 3rd respondent is adjoining to the petitioner's land which includes the land earmarked for proposed link road. The petitioner objected to the 2nd respondent for granting sanction to the plan submitted by the 3rd respondent.



3. The learned Senior Counsel appearing for the petitioner submitted that the lease granted in favour of the 3rd respondent is subject to encumbrance of the undertaking given by the 1st respondent to the petitioner. The proposed road if laid will ultimately benefit the public, mainly the employees / occupiers of the IT complex put up by the petitioner as well as the 3rd respondent and thus, the petitioner is not availing a civil remedy and approaching this Court under Writ jurisdiction. Further, the petitioner alone is challenging the action of the 1st respondent for not laying the connecting road and therefore, the petitioner has not filed Public Interest Litigation (PIL) and filed the present Writ Petition.

4. The learned counsel appearing for the petitioner filed written submissions.

5. The learned Senior Counsel appearing for the petitioner submitted that Rajiv Gandhi Salai (OMR) was 40 feet wide road which served the IT companies set up alongside in the late 1990s and early 2000s. In early 1995, a proposal was mooted to widen OMR into an IT corridor by the Government of Tamil Nadu. After much delay, the OMR was widened to 80 feet road in the year 2005, which was decided to develop the Rajiv Gandhi Road (OMR) as world class facility and to build entire stretch as six lane road with service road on both sides and incorporated a SPV called 'IT Expressway Limited' (ITEL) by Tamil Nadu Road Development Company (TNRDC). Due to enormous growth in employment at IT / ITES companies and other commercial and major institutional development that has taken place in laying Rajiv Gandhi Salai (OMR), huge residential developments and Special Economic Zones and multiple complex were constructed including an elevated corridor, developing side roads, rapid transit, etc,. In view of the same only, clause 2.2 was incorporated in Associate Sector Agreement (ASA) in the year 2003. Due to need for a road connecting Taramani Road to north of the plot and Velacherry road to the south of the plot measuring 15 acres, to avoid congestion on Rajiv Gandhi Salai (OMR), the connecting road was to be laid over an adjoining plot of the land about 25 acres that was also pre-allotted by the Government of Tamil Nadu to the 1st respondent for development as an IT park. The Associate Sector Agreement (ASA) dated 17.06.2003 was amended by Supplemental Agreement (SA) dated 17.09.2007, but clause 2.2 of the Associate Sector Agreement (ASA) dated 17.06.2003 was retained even in the year 2007 considering the necessity to provide connecting road.

5(a). The 1st respondent floated the tender for granting lease for the plot about 25 acres. The petitioner was



unsuccessful in the bid and the said land was allotted to the 3rd respondent. Due to some dispute between the 3rd respondent and 1st respondent, the 3rd respondent filed W.P.No.5533 of 2011 before this Court and subsequently, it was compromised in the year 2018 between the 1st respondent and 3rd respondent and the said Writ Petition was dismissed as withdrawn. The 1st respondent, suddenly took a stand that there is no necessity for connecting road as Rajiv Gandhi Salai (OMR) was widened. The widening of Rajiv Gandhi Salai (OMR) was known even in the year 2003 itself, when the Associate Sector Agreement (ASA) was signed incorporating clause 2.2 in Associate Sector Agreement (ASA).

5(b). The 1st respondent is bound by undertaking to lay the connecting road as per clause 2.2 and is estopped from stating that there is no need for connecting road as the 1st respondent is fully owned by the Government of Tamil Nadu.

6. The petitioner company is an Infrastructure Development Company proposed by the Government of Singapore. The said company was invited for providing infrastructure facilities for providing employment of people in Information Technology and agreement was signed. The petitioner completed all the three phases and now more than 40,000 people are working and the employees have to travel 2.2 or 3 kms. to reach Taramani or Velachery Road.

6(a). The learned Senior Counsel appearing for the petitioner referred to copies of the Minutes of Board Meetings in the consolidated typed set of papers and submitted that in every Board Meeting, the representatives of the 1st respondent informed ASCENDAS that laying of the road will be considered. Subsequently, they informed that due to the pendency of W.P.No.5533 of 2011 filed by the 3rd respondent, they cannot proceed with laying of the road. Even after withdrawal of the Writ Petition and the same was dismissed as withdrawn, in the Board Meetings held on 30.04.2018 and 20.02.2019, the first respondent was informing the ASCENDAS that due to pendency of Writ Petition filed by the 3rd respondent, their request cannot be considered. They also informed the ASCENDAS that they will arrange a meeting of petitioner with 3rd respondent to resolve the issue. The 1st respondent ought to have informed the 3rd respondent about laying of the road connecting Taramani road and Velachery Road. The 3rd respondent was aware of clause 2.2. of Associate Sector Agreement (ASA) and they cannot say that they are not aware of the proposal to lay the said connecting road. When the 1st respondent informed that there is no need and it is not possible to lay a connecting road, the petitioner has approached this court.



6(b). The contention of the respondent that Writ Petition filed to enforce contractual liability is not maintainable, is contrary to the judgment of the Hon'ble Apex Court reported in 2021 (2) SCJ 19 [UNITEC Limited Vs. Telungana State Industrial Infrastructure Corporation]. In similar case which arose from Telungana, in the matter of TSISC which is equivalent to 1st respondent Corporation, the Hon'ble Apex Court in the judgment dated 17.02.2021 held that writ petition to enforce contractual liability is maintainable.

6(c). The report filed by the Additional Commissioner (Traffic) is with regard to survey of traffic before 01.04.2022. Upto 31.03.2022, lock down was there and 80% of the employees were working from home. From 01.04.2022, all the employees are attending the offices. As such, the report filed by the Additional Commissioner (Traffic) is not valid.

6(d). The petitioner constructed Phase 1 to 3 on the promises given by the 1st respondent that they will lay the connecting road between Taramani Road and Velachery Road. Having given such a promise, the 1st respondent is bound by promissory estoppel and they cannot go back on their promise that adjoining land was allotted to 3rd respondent. The Writ Petition is maintainable and the petitioner is entitled to the relief sought for on the principle of promissory estoppel. The Promissory estoppel has given cause of action to the petitioner to seek the present relief.

6(e). The learned Senior Counsel for the petitioner, in support of his contention, relied on the following judgments -

(i) AIR 1951 SC 469 [Collector of Bombay v. Municipal Corporation of the City of Bombay and Others]

"22. Can the Government be now allowed to go back on the representation, and ,if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must pre- vent being committed? If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in section 115 of the Indian Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to



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have bound themselves to fulfil it. Whether it is the equity recognised in Ramsden's case (1), or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkins C.J. in Dadoba Janardhan's case (2), a different conclusion would be "opposed to what is reasonable, to what is probable, and to what is fair."

(ii) AIR 1979 SC 621 [M/S Motilal Padampat Sugar Mills Co. Pvt. Ltd. vs. State of Uttar Pradesh and Others]

"10..... The case was one which fell within the category of promissory estoppel and it may be regarded as supporting the view that promissory estoppel can be the basis of a cause of action. It is possible that the case also came within the rule of proprietary estoppel enunciated by Lord Kingsdown in Ramsden v. Dyson :

"The rule of law applicable to the case appears to me to be this : If a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the land lord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation."

and Spencer Bower and Turner may be right in observing that that was perhaps the reason why it was held that the promise made by Arun District Council gave rise to a cause of action in favour of Crabb. But, on what principle, one may ask, is the distinction to be sustained between promissory estoppel and proprietary estoppel in the matter of enforcement by action. If proprietary estoppel can furnish a cause of action, why should promissory estoppel not ?



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There is no qualitative difference between the two. Both are the off- springs of equity and if equity is flexible enough to permit proprietary estoppel to be used as a cause of action, there is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity."

(iii) 1993 (1) SCC 71 [Food Corporation of India v. M/s.Kamadhenu Cattle Feed Industries]

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review.

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



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arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

(iv) 2021 (2) SCJ 19 [UNITECH Limited & Others v. Telangana State Industrial Infrastructure Corporation (TSIIC) & Others]

32. 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 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.

33. A two judge Bench of this Court in ABL International Ltd. v. Export Credit Guarantee Corporation of India⁷ [ABL International] analyzed a long line of precedent of this Court⁸ to conclude that writs under Article 226 are maintainable for asserting



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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." 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 Kumar⁹ and Popatrao Vynkatrao Patil v. State of Maharashtra¹⁰. The decision in ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters. (2004) 3 SCC 553 K.N. Guruswamy v. State of Mysore, AIR 1954 SC 592; Gujarat State Financial Corporation. v. Lotus Hotels (P) Ltd, (1983) 3 SCC 379; Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769 2020 Scconline SC 847 Civil Appeal 1600 of 2000 (Supreme Court of India) Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226.¹¹ If the state instrumentality violates its constitutional mandate under Article 14 to act



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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. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction." (emphasis supplied) Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107; Ram Barai Singh & Co. v. State of Bihar & Ors., (2015) 13 SCC 592 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



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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. E.2 Contractual right to compensatory payment.

(v) Division Bench Judgment of this Court dated 30.04.2008 made in W.A.No.344 of 2008 [Kala Agencies v. Dy. General Manager LPG) & another]:

"16. So far as the question of maintainability of the Writ Petition is concerned, similar matter fell for consideration before the Supreme Court in the decision reported in 2003 (2) SCC 107 (Harbanslal Sahani vs. Indian Oil Corpn. Ltd). That was a case where the dealership of the appellant therein was terminated by the IOC for an irrelevant and non-existing cause. Having not granted the relief by the High Court under Article 226 of the Constitution of India on the ground that there is a remedy by way of recourse to arbitration, when the matter was moved before the Supreme Court, the Apex Court held as follows:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of



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exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks (1998(8)SCC 1). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

17. In the case of "The Indian Oil Corporation Ltd. (Marketing Division), Tamil Nadu State Office vs. Bommai Kadhivelu, Proprietor, JBR Indane Gas Service and 3 others" (unreported decision) in Writ Appeal No.371 of 2006, disposed of on 20.6.2006, a Division Bench of this Court noticed the similar submissions as made by the IOC in the present case. That was a case in which agreement was reached between the IOC and the first respondent therein and the first respondent therein was a dealer in petroleum products. For certain grounds, the distributorship of the first respondent in that case, was terminated, which was challenged before this Court in a Writ Petition and the learned single Judge set aside the order of termination on merits. In that case, in the appeal, the IOC took a similar plea that there was an alternative remedy before an arbitrator under the relevant clause of the agreement and the Writ Petition was not maintainable. A Division Bench of this Court, by the aforesaid judgment, dated 20.6.2006, while framing the following question in paragraph 5 of the judgment, refused to grant the relief and made the following observations:

"5. The only question which arises for our consideration is whether the discretionary



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jurisdiction under Article 226 of the Constitution of India could be refused to be exercised only on the ground of existence of an alternative remedy, which is not efficacious. It is well settled that access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief."

"7. In Harbanslal Sahnia and Another Vs. Indian Oil Corporation Limited and others (2003) 2 SCC 107, Lahoti, J. (as His Lordship then was), relied upon Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1 observing that in an appropriate case, in spite of availability of the alternative Kala Agencies vs The Deputy General Manager (Ipg) on 30 April, 2008 remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies:

(i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

18. In view of the judgment of the Supreme Court, the judgment of this Court as referred to above and observations as we have made in the preceding paragraphs, we are of the view that the learned single Judge, instead of dismissing the case for moving before arbitrator, should have entertained the Writ Petition for its determination on merit."

(vi) 1991 (1) SCC 533 [Indian Oil Corporation v. Amristar Services and others] - Para 9

"9. The arguments advanced by Shri Harish Salve on behalf of the appellant-Corporation to the validity of the award are these. The first contention is that the validity of the award has to be tested on the principles of Private law and the law of contracts and not on the touchstone of constitutional limitations to which the Indian Oil



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Corporation Ltd, as an instrumentality of the State may be Subject since the suit was based on breach of contract alone and the arbitrator also proceeded only on that basis to grant the reliefs....."

7. The 1st respondent filed counter affidavit and denied all the averments in the affidavit.

8. The learned counsel appearing for the 1st respondent filed written submissions on behalf of the 1st respondent.

9. The learned Senior Counsel appearing for the 1st respondent submitted that the 1st respondent is the Nodal Industrial Development Organization of the Government of Tamil Nadu. The petitioner is its joint venture with Ascendas Property Fund India Pte Limited. The 1st respondent has concluded an Associate Sector Agreement (ASA) on 17.06.2003 with Ascendas (India) Private Limited for the building and management of an IT Park of about 1.5 million sq.ft in three phases. Subsequently, on 11.04.2007, the said Associate Sector Agreement (ASA) was amended and Ascendas (India) Private Limited was replaced by Ascendas Property Fund India Pte Limited. The Government, to establish IT park in Government poramboke land, by G.O.Ms.No.455, Revenue (L.A.5 (2)) Department, dated 02.11.2001, decided to transfer 40.19 acres for development of IT park to the 1st respondent and the 1st respondent acted as custodian of the said land. But subsequently, by G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003, the Government modified the decision to transfer the entire 40.19 acres to the 1st respondent. By the said G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003, the Government decided to directly transfer 15 acres of land to the petitioner. The 15 acres of land was leased out to the petitioner in three phases of 5 acres per phase. The Government did not transfer the 40.19 acres to the 1st respondent, as originally mentioned in the G.O.Ms.No.455, Revenue (L.A.5 (2)) Department, dated 02.11.2001. The ownership and possession was retained by the Government and by G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003, the Government directly transferred 15 acres to the petitioner in a phased manner of 5 acres each. Similarly, balance 25.19 acres was also allotted to the 3rd respondent after calling for open tender, as instructed by the Government in G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007. This clearly shows that at no point of time, the 1st respondent is the authority to transfer the land to the petitioner or 3rd respondent. The petitioner has acted only as an Agent to the Government. The District Collector was authorised to transfer



the title, after 1st respondent informing the District Collector, that cost of the land being paid to the 1st respondent.

9(i). The learned Senior Counsel appearing for the 1st respondent referred to clause 3(i) of G.O.Ms.No.455, Revenue (L.A.5 (2)) Department, dated 02.11.2001 and paragraph Nos.2, 3 (i), (ii) & (iii) of G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003. The learned Senior Counsel referring to G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003 submitted that the Government decided to transfer only 15 acres of the land to the petitioner in a phased manner and initially only 5 acres of land was directed to be transferred to the petitioner on payment of cost. As per clause 3(iii) of G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003, the Government has ordered that separate orders will be passed regarding usage of balance 25.19 acres of land for other projects. In view of G.O.Ms.No.164, Revenue (L.A.5 (2)) Department, dated 11.04.2003, on the date when Associate Sector Agreement (ASA) was entered into between the 1st respondent and petitioner, the 1st respondent did not have any right or control over 25.19 acres of land reserved for other projects and has rightly did not agree to lay the link road in the said property. By G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, the Government had decided that 1st respondent may implement the development of IT/ITES SEZ Project (without the Convention Centre) on the lands behind TICEL Bio Park and a second IT park would be set up at Taramani, Chennai. As per clause 7(iii) of G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 in which, the Government permitted the 1st respondent to select the joint venture partner through open competitive bidding process in two parts namely, technical and commercial bid, as proposed by TIDCO. The learned Senior Counsel appearing for the 1st respondent also pointed out that a copy of the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 was marked to the petitioner. The Government, by the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, permitted the 1st respondent to select the company for joint venture by open tender. The petitioner did not challenge the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 stating without making provision for laying road connecting Taramani - Velachery road, the entire land cannot be allotted for development. On the other hand, the petitioner participated in the tender process, but he was unsuccessful.

9(ii). The learned Senior Counsel appearing for the 1st respondent made submissions raising preliminary objections with regard to maintainability of the Writ Petition and contended that the Writ Petition is not maintainable as prayer in the Writ

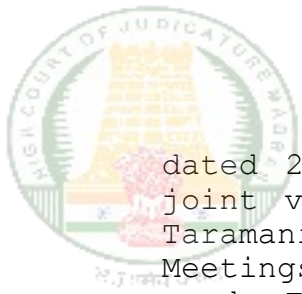


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Petition is vague, bereft of details and hence, no mandamus can be issued. Associate Sector Agreement (ASA) contains an arbitration clause and petitioner without enforcing the arbitration clause, has approached this Court by way of Writ Petition. The petitioner has taken a stand in its letter dated 18.02.2008 that issue is between the 1st respondent and petitioner. The petitioner has impleaded the respondents 2 to 5 only with a view to get over the arbitration clause. The Writ Petition is barred by limitation. The petitioner is trying to specifically enforce clause 2.2 of Associate Sector Agreement (ASA). The petitioner is not entitled to such a relief and he has to approach only a Civil Court. The learned Senior Counsel appearing for the 1st respondent further, on merits submitted that clause 2.2 of Associate Sector Agreement (ASA) dated 17.06.2003 has to be read along with clause 2.3 of the said agreement. There was no enforceable agreement in clause 2.2 of Associate Sector Agreement as said clause is vague, uncertain and hit by Section 29 of Contract Act. The said clause 2.2 did not identify any particulars for the connecting road including dimensions, cost and alignment. Though it was discussed in the Board Meetings, there was no resolution passed with regard to laying of the road.

9(iii). Clause 2.2 is an inchoate agreement. In clause 2.2, the location, breadth and length of the road were not mentioned. It is also not mentioned who has to bear the cost of laying the road. It was agreed between the petitioner and the 1st respondent, that the petitioner would develop 15 acres of land as IT Park in phased manner. The petitioner was in possession of 5 acres of land out of 15 acres and allotment of other 10 acres depend upon the completion of first phase. As per clause 2.3, the petitioner had an option to reduce the extent of development. In view of the same, clause 2.2 is only a contingent agreement. The 1st respondent has stated in clause 2.2 that it only agrees to lay the road. There is no firm commitment by the 1st respondent to lay the connecting link road from Taramani road to Velachery road. In clause 2.2 of Associate Sector Agreement (ASA), the 1st respondent did not agree to lay the road in adjoining property, now leased out to the 3rd respondent since at that time, the said land was in possession of the Government. The learned Senior Counsel submitted that by amendment of Associate Sector Agreement (ASA), clause 2.3 and Schedule I were deleted. Once clause 2.3 is deleted, the petitioner is not entitled to rely on clause 2.2 for laying the road.

9(iv). Even before Phase 2 became operational in March 2008, the Government, by G.O.Ms.No.53, Industries (IT) Department,



dated 26.02.2007 instructed the 1st respondent to enter into a joint venture for development of the IT / ITES SEZ project at Taramani. Even though laying of road was discussed in the Board Meetings, no resolution was passed with regard to laying of road. The petitioner, after 1st respondent issued advertisement dated 05.07.2007 for the joint venture, wrote a letter dated 07.03.2007 to lay the connecting road. The 1st respondent, after entering into a joint venture agreement with 3rd respondent, who was successful bidder in the tender process, by the letter dated 11.03.2008 denied any undertaking to lay the road in the land for which the 3rd respondent was successful bidder and that land was handed over to 3rd respondent. The petitioner did not challenge the denial of 1st respondent for laying the connecting Taramani Road and Velachery Road by initiating any legal proceedings. Thus, the Writ Petition filed in the year 2021 is barred by limitation.

9(v). It is the further contention of the learned Senior Counsel appearing for the 1st respondent that the petitioner cannot take a right turn from their IT Park to reach 25.19 acres of land, now in possession of 3rd respondent. The petitioner has to take two 'U' turns of Taramani road to reach 25 acres which is in the possession of 3rd respondent. The petitioner has to travel 3.72 kms. to reach Velachery road from Taramani road, while they can reach the same point on Velachery road by travelling only 2.4 kms by using OMR. Further, the petitioner has an access to its IT park from Velachery road through P.V.koil street, which connects Velachery Road and Taramani Road. The connecting distance is 500 mtrs. ($\frac{1}{2}$ km). The said road is only 200 mtrs. from petitioner's exit road.

9(vi). In addition to that, it is easy for the petitioner to use another road, i.e., the Pillaiyar koil street which is 500 mtrs. from petitioner's IT Park. The learned Senior Counsel for the 1st respondent produced a sketch showing the location of petitioner's IT Park, land allotted to the 3rd respondent and also referred to other buildings like American School, Sub Station, MRTS, etc,. In view of the location of IT Park and land in possession of the 3rd respondent and other buildings, it is not feasible to lay a road connecting Velachery Road - Taramani Road.

9(vii). Originally, OMR was only 5.5 mtrs. now it has been widened to 41 mtrs. The learned Senior Counsel referred to Para 6 of the Counter Affidavit and referring to widening of OMR to 41 mtrs., submitted that 1st respondent, by its letter dated 11.03.2008 informed the petitioner that the said OMR satisfies the requirement of a connecting road stated in Associate Sector



Agreement (ASA).

9(viii). The Government of Tamilnadu, considering the over all public interest and requirement, developed OMR into a top class highways which serves the purpose of connecting Taramani road and Velachery road. The Government, by G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 decided to develop the entire 25.19 acres as IT / ITES SEZ without making any provision for connecting Taramani road and Velachery road and prayed for dismissal of the Writ Petition.

9(ix). The learned Senior Counsel for the 1st respondent, in support of his contention, relied on the following judgments -

(a) 1975 (1) SCC 152 [P.S.Sadasivaswamy v. State of Tamil Nadu]

2. The main grievance of the appellant is that the 2nd respondent who was junior to him as Assistant Engineer was promoted as Divisional Engineer in 1957 by relaxing the relevant rules regarding the length of service necessary for promotion as Divisional Engineer and that his claim for a similar relaxation was not considered at that time. The learned Judge of the Madras High Court who heard the writ petition was of the view that the relaxation of the rules in favour of the 2nd respondent without considering the appellant's case was arbitrary. In view of the statement on behalf of the Government that such relaxation was given only in the case of overseas scholars, which statement was not controverted, it is not possible to agree with the view of the learned Judge,. Be that as it may, if the appellant was aggrieved by it he should have approached the Court even in the year 1957 after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after respondents 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when respondents 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any



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relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957 cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellants' case as if nothing had happened after 1957. Not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.

(b) 2008 (12) SCC 481 [K.D. Sharma v. Steel Authority of India Ltd. and others

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to



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be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

29. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.

10. The 2nd respondent filed counter affidavit.

10(i). The learned counsel appearing for the 2nd respondent submitted that on 03.03.2020, the 3rd respondent submitted an application for planning permission for the proposed construction of High Rise Group Development Building of 2 Blocks consisting of Extended Combined Basement floor (Block 1 & 2) with Block 1: Stilt floor to 3rd floor (parking) Plus 4th floor to 18th floor IT/ITES office purpose with Block 2 (Utility Block) : Ground floor Plus 2 floors. The said proposal was examined and placed before the 257th MSB panel meeting held on 06.06.2020. The recommendation of MSB panel were forwarded to the Government by letter dated 02.11.2020. The Government, by



letter (MS) No.174 (H&UD) (UD1) Department dated 27.11.2020 have accorded approval, as the 3rd respondent complied with all the conditions.

10(ii). In the meanwhile, the 3rd respondent submitted a revised plan for the proposed construction of High Rise Building (HRB) Group Development of 3 Blocks consisting of Extended Combined Basement floor consisting Block 1 & 2, Block 1 : Stilt floor to 3rd floor (parking) Plus 4th floor to 18th floor IT/ITES office purpose, Block 2 : Ground floor Plus 2 floors (Utility purpose), Block 3 : Extended triple Basement floor Plus Stilt floor Plus 1st floor (parking) Plus 2nd floor (amenity) Plus 3rd floor to 10th floor Plus 11th floor (Part) to 16th floor (Part) for IT/ITES purpose. The said proposal was examined and placed before the 260th MSB Panel meeting held on 19.02.2021. The recommendation of MSB Panel was forwarded to the Government. The Government, by letter (MS) No.56, H&UD Dept. dated 26.02.2021 granted approval.

10(iii). While so, the petitioner gave three objection letters dated 01.04.2021, 28.06.2021 & 14.07.2021. The 2nd respondent obtained report from the 1st respondent and conducted enquiry. In the enquiry, the 1st respondent informed that no specific direction has been given by this Court in the writ petition filed by the petitioner and 2nd respondent is bound to issue planning permission, if it satisfies all the planning parameters. In view of the same, the 2nd respondent, after considering the required materials and after enquiry, granted planning permission dated 08.10.2021 to the 3rd respondent and imposed a condition that the respondents 1 & 3 have to abide by the order of this Court in the present Writ Petition and prayed for passing suitable orders.

11.The 3rd respondent filed counter affidavit and denied all the averments made by the petitioner.

12.The learned counsel appearing for the 3rd respondent filed written submissions on behalf of the 3rd respondent.

13.The learned Senior Counsel appearing for the 3rd respondent contended that the relief sought for by the petitioner in the Writ Petition is not maintainable. The land and roads are owned by the 5th respondent and no remedy is sought for against the 5th respondent. The petitioner is seeking the said relief based on clause 2.2 of Associate Sector Agreement (ASA) dated 17.06.2003, entered into between the 1st respondent and petitioner. The said clause is silent in all the main aspects which are necessary for a clear binding and enforceable



contract. In the said clause, the land in which proposed road was to come up, Survey No., width, breadth and who has to bear the cost are not mentioned. There is no consensus between the parties with regard to laying of the road as mentioned above. As per clause 10.6 and 10.7 of Associate Sector Agreement (ASA) dated 17.06.2003, there is an arbitration clause to refer the dispute or difference arising at any time between the parties concerned. In view of the arbitration clause, the Writ Petition is not maintainable in law and on facts.

13(i). The land measuring 25.19 acres is a Government Poramboke land and Government is owner of the land. The 1st respondent is only an agent and has no right to agree to lay the road in the said land. The Government issued G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, proposed to develop a Special Economic Zone (SEZ) on the said land adjoining to petitioner's land. In pursuant to the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, the 1st respondent published an advertisement inviting RSQ. In response to the advertisement issued by the 1st respondent, the petitioner, the 3rd respondent and others participated in the tender process. The petitioner and others were unsuccessful and 3rd respondent was successful bidder. The said fact was suppressed by the petitioner. The petitioner was aware in the year 2007 itself that an adjoining land measuring 25.19 acres was for development of Special Economic Zone (SEZ) and having participated in the tender process, now cannot claim that Associate Sector Agreement (ASA) dated 17.06.2003 is violated. The petitioner has not approached this Court with clean hands.

13(ii). The 3rd respondent being a successful tenderer for development of Special Economic Zone (SEZ), a lease was executed on 07.08.2008 and possession was handed over to the 3rd respondent on payment of Rs.725,33,25,368/-. The 3rd respondent, after obtaining necessary permission and approval from the 2nd respondent and other authorities for construction of 20 floors, started construction and has completed 14 floors by spending a sum of Rs.400 crores. The 3rd respondent has vested right in view of the lease granted in its favour on 07.08.2008 and construction put up by 3rd respondent. In G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, as well as in the advertisement by the 1st respondent, no provision was made for a road being laid in the land allotted to the 3rd respondent connecting Taramani road and Velachery road. The petitioner has not initiated any proceedings challenging the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 seeking provisions to be made to lay the road based on clause 2.2 of Associate Sector Agreement (ASA) dated 17.06.2003. By the letter dated



11.03.2008 itself, the 1st respondent informed the petitioner that in the absence of any alignment of road between the parties, the claim of the petitioner that road was meant to be along the border of project site is not evidenced by written understanding between the parties. The 1st respondent also informed the petitioner that Rajiv Gandhi Salai (OMR IT Express) laid down by the 1st respondent satisfies the requirement stated in the Associate Sector Agreement (ASA) dated 17.06.2003, i.e., the 1st respondent agreeing to lay the connecting road by the start of third phase to both Velachery road and Taramani road. In the year 2008 itself, the petitioner was aware of joint venture of 1st respondent and 3rd respondent and the 1st respondent has informed the petitioner that there is no necessity for any link road. The petitioner did not challenge the same. The above facts clearly shows that there is no cause of action in favour of the petitioner and Writ Petition suffers from inordinate delay and laches and Writ Petition is liable to be dismissed.

13(iii). The 3rd respondent is in possession of the land from the year 2008 and has spent huge amount in developing the said land. The 3rd respondent obtained planning permission for putting up 20 floors measuring 3.9 million sq.ft of built up area and as on today, spent huge amount of Rs.400 crores to build up 14 floors of construction and almost 1/3rd of construction is completed. The 3rd respondent, being the highest bidder in the year 2008, by spending huge amount for the lease, had spent a sum of Rs.400 crores for putting up superstructure and acquired the vested right. The constitutional right accrued in favour of the 3rd respondent cannot be interfered by way of present Writ Petition. The petitioner is aware of possession of 3rd respondent as on 27.03.2008, but has approached this Court after a period of 14 years.

13(iv). The learned Senior Counsel appearing for the 3rd respondent further submitted that the 1st respondent by its letter dated 11.03.2008 addressed to the petitioner has informed that there is no need for link road. The reliance placed by the learned Senior Counsel appearing for the petitioner on minutes of the Internal Board Meetings of the petitioner cannot improve the case of the petitioner. The discussions in the Board Meeting in which an official of 1st respondent participated in the Board Meetings cannot bind the 1st respondent and the said discussions are not enforceable against the 3rd respondent. Clause 2.2 of the Associate Sector Agreement (ASA) dated 17.06.2003 is between the 1st respondent and petitioner and the same is not binding on the 3rd respondent as 1st respondent has no right to enter into a such agreement to lay the road on the Government land. Even in the year 2018, the petitioner was



informed by the 1st respondent that Rajiv Gandhi Salai (IT OMR Express) satisfies the requirements stated in the Associate Sector Agreement (ASA) and request of the petitioner cannot be considered as there was no agreement or understanding on the location or alignment of the said link road. The Rajiv Gandhi Salai (IT OMR Express) was expanded from 9 meters to 41 meters and as on today, the said OMR road will take care of the traffic.

13(v). The petitioner's claim that it should be provided 18 mtrs. service road through service entrance of the land of the 3rd respondent cannot be accepted as the same is not viable. The petitioner has 200 meters frontage on the northern side and they have easy access to Taramani (CSIR Road) as well as Velachery Road, but the 3rd respondent is having only a service entrance measuring about 18 meters. The petitioner cannot take a right turn from its property to get into service entrance of 3rd respondent as the said road is a two way road and it is one way traffic, practically, the claim of the petitioner is impossible and legally it is not sustainable. The 3rd respondent, at no point of time conceded to the request of the petitioner for providing access to 18 meters rear service entry (CSIR Road).

13(vi). The petitioner, by filing the present Writ Petition is seeking the specific performance of clause 2.2 of the Associate Sector Agreement (ASA), to enforce the contract of private nature between the 1st respondent and the petitioner. The petitioner is seeking a road for the benefit of the people who are working in the petitioner's premises. The road which the petitioner is seeking will not help the general public in any way. There is dispute with regard to laying of the road and the same cannot be decided in the Writ Proceedings. The petitioner's remedy is only by initiating proceedings under Civil Procedure Code or arbitration. In any event, the petitioner is seeking to enforce the contractual liability. In view of the same, the judgment of the Hon'ble Apex Court reported in 2021 (2) SCJ 19 (cited supra) relied on by the learned Senior Counsel appearing for the petitioner does not advance the case of the petitioner. In the said judgment, public interest was involved and therefore, the Hon'ble Apex Court held that Writ Petition to enforce contractual liability is maintainable. Whereas in the present case, no public interest is involved and there is only a private dispute between the 1st respondent and petitioner with regard to access of employees of the petitioner's premises through the land allotted to the 3rd respondent. The petitioner is seeking specific performance of clause 2.2 of Associate Sector Agreement (ASA). The Writ Petition for specific performance of agreement is not maintainable.



13 (vii). The learned Senior Counsel appearing for the 3rd respondent in support of his claim, relied on the following judgments:

(a) Judgment of Hon'ble Apex Court in Civil Appeal No.1538 of 2022 [Municipal Council Gondia v. Divi Works and Suppliers, HUF and Others]

"8. At the outset, it is required to be noted that by the impugned judgment and order the High Court has issued a writ of mandamus virtually granting the relief of specific performance of the contract/work order. From the impugned judgment and order passed by the High Court it appears that the High Court was made to believe that the original writ petitioners had already manufactured the goods which are customized and as per the specifications and the work order. However, it is now found that there are no manufactured goods readily available which can be supplied to the appellant - Council. There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not. Nothing was on record before the High Court that goods were in fact and actually manufactured by the original writ petitioner No.1, as per the specifications and the requirements of the Council and as per the work order. In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ petitioner No.1 and to make the payments as per the work order. Even otherwise, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition under Article 226 of the Constitution of India. The original writ petitioners ought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained."

(b) Judgment of Hon'ble Apex Court Special Leave Petition (C) No.3008 of 2022 [Surjeet Singh Sahni V. State of UP and Others]



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"6. Even otherwise on merits also, we are in complete agreement with the view taken by the High Court. The High Court has rightly refused to grant any relief which as such was in the form of specific performance of the contract. No writ under Article 226 of the Constitution of India shall be maintainable and/or entertainable for specific performance of the contract and that too after a period of 10 years by which time even the suit for specific performance would have been barred by limitation."

(c) Judgment of Hon'ble Division Bench of Bombay High Court, Goa in W.P.No.7 of 2022 in Goldwin Healthcare Pvt. Ltd. and Others v. State of Goa and Others];

"15. In Unitech Limited (supra), it was held that 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. In determining 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. Even 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.

.....

21. In Joshi Technologies (supra), the Hon'ble Supreme Court after examining a series of precedents on this issue, including the precedent in ABL International Ltd. (supra) has held that principles in the said precedents have to be understood in the context of the discussion that preceded the same. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or



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where there are disputed questions of fact, or even when a monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:

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

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

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

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

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

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

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



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

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

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

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

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and



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violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

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

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

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



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consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

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

22. In the present case, as pointed out by us earlier, no case of public law character was even attempted to be projected by the petitioners. Except for alleging arbitrariness, not even an attempt was made to prima facie make good this bald allegation. As noted earlier, the Government's version appears at least prima facie plausible. The scope and import of the clauses and the letter of relaxation or waiver raise debatable issues perhaps requiring adjudication into aspects like intention and industry practice. All this cannot be effectively adjudicated only by adverting to affidavits or interpreting the clauses of the agreement as they stand. Therefore, applying the principles set out in *Joshi Technologies (supra)*, we think that it will not be appropriate to entertain this petition.

23. As noted earlier, clause 23 of the agreement provides for the resolution of any dispute or difference through arbitration under the provisions of the Arbitration and Conciliation Act, 1996. There are disputed questions of fact involved particularly because the intention of the contractual parties and the intention, scope, and ambit of the relaxation or waivers extended by the Government are in issue. All this will require evidence. Besides ultimately, these are money claims and no exceptional circumstances have been made out by the petitioners for invoking extraordinary jurisdiction under Article 226 of the Constitution of India."

(d) Judgment of Hon'ble Apex Court in Civil Appeal No.4912 of 2008 [Pimpri Chinchwad Municipal Corporation and Others v. M/s.Gayatri Construction Company and another]



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"7. In matters relating to maintainability of writ petitions in contractual matters there are catena of decisions dealing with the issue.

8. In National Highways Authority of India v. Ganga Enterprises (2003 (7) SCC 410), it was inter alia held as follows:

"6. The respondent then filed a writ petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz.: (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter. The High Court instead considered Question (a) and then chose not to answer Question (b). In our view, the answer to Question (b) is clear. It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil (2000 (6) SCC 293), State of U.P. v. Bridge & Roof Co. (India) Ltd. (1996 (6) SCC 22) and Bareilly Development Authority v. Ajai Pal Singh 1989 (2) SCC 116. This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however, relied upon the cases of Veriganto Naveen v. Govt. of A.P. (2001 (8) SCC 344) and Harminder Singh Arora v. Union of India (1986 (3) SCC 247). These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed."

9. In Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors. (2000 (6) SCC 293), this Court dealt with the question of maintainability of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and



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availability of alternative remedies, as also difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was noted as follows:

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

Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or



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deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

10. Reference can also be made to State of Gujarat and Ors.v. Meghji Pethraji Shah Charitable Trust and Ors. (1994 (3) SCC 552). In para 22 it was observed as follows:

"22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (*audi alteram partem*) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was -- as has been repeatedly urged by Shri Ramaswamy -- a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."

11. Again in State of U.P. and Ors. v. Bridge & Roof Company (India) Ltd. (1996 (6) SCC 22), this Court dealt with the issue in paras 15 and 16 in the following manner:



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"15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, maybe, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer."

12. At para 11 of *India Thermal Power Ltd. v. State of M.P. and Ors.* (2000 (3) SCC 379), it was observed as follows:

"11. It was contended by Mr. Cooper, learned Senior Counsel appearing for appellant GBL and also by some counsel appearing for other appellants that the appellant/IPPs had entered into PPAs under Sections 43 and 43-A of the Electricity Supply Act and as such they are statutory contracts and,



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therefore, MPEB had no power or authority to alter their terms and conditions. This contention has been upheld by the High Court. In our opinion the said contention is not correct and the High Court was wrong in accepting the same. Section 43 empowers the Electricity Board to enter into an arrangement for purchase of electricity on such terms as may be agreed.

Section 43-A(1) provides that a generating company may enter into a contract for the sale of electricity generated by it with the Electricity Board. As regards the determination of tariff for the sale of electricity by a generating company to the Board, Section 43(1)(2) provides that the tariff shall be determined in accordance with the norms regarding operation and plant-load factor as may be laid down by the authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined from time to time by the Central Government by a notification in the Official Gazette. These provisions clearly indicate that the agreement can be on such terms as may be agreed by the parties except that the tariff is to be determined in accordance with the provision contained in Section 43-A(2) and notifications issued thereunder. Merely because a contract is entered into in exercise of an enabling power conferred by a statute that by itself cannot render the contract a statutory contract. If entering into a contract containing the prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of mutual agreement between the parties. Therefore, the PPAs can be regarded as statutory only to the extent that they contain provisions regarding



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determination of tariff and other statutory requirements of Section 43-A(2). Opening and maintaining of an escrow account or an escrow agreement are not the statutory requirements and, therefore, merely because PPAs contemplate maintaining escrow accounts that obligation cannot be regarded as statutory".

13. Therefore, the High Court ought not to have entertained the writ petition. Additionally, it appears that by order dated 17.1.2007 interim stay of the impugned order was granted and was continued by order dated 12.2.2007. It is pointed out by learned counsel for the appellants that since the order of the High Court was stayed and there was urgency in the matter fresh tenders were called for. Three persons submitted the bids and the work has already been allotted and a considerable portion of the work has already been completed.

In view of aforesaid, we set aside the impugned order of the High Court and direct dismissal of the writ petition. It is however open to the respondents-writ petitioners to seek such remedy, if so advised, as is available in law. We do not express any opinion in that regard.

14. The appeal is allowed. There shall be no order as to costs."

14. The 4th respondent filed status report dated 25.10.2021 stating that on receipt of request from the 2nd respondent for no objection for granting planning permission for proposed construction of High Rise Building IT/ITES of Thiruvanmiyur and Kottivakkam Village, the Additional Commissioner of Police (Traffic), Greater Chennai Police, by letter dated 10.11.2020 has recommended NOC for issuing of planning permission for the proposed construction, subject to the condition that parking space provided by the 3rd respondent should be maintained properly and on completion of the construction, the management should deploy sufficient manpower to manage the movement of vehicles at the entry and exit gates. The 4th respondent also filed additional status report dated 08.04.2022 stating the status of vehicle movements as on 31.03.2022. In the said report, the 4th respondent has stated that in Old Mahabalipuram Road (OMR), the incoming road is having 15.3



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mtrs. width and outgoing road is having 15.6 mtrs. width. In CSIR Road, the incoming road is having 15.7 mtrs width and outgoing road is having 16 mtrs. width. In Taramani 100 feet road, the incoming road is having 12.4 mtrs. width and outgoing road is having 12.7 mtrs. Width.

15. The learned Senior Counsel appearing for the petitioner, in reply to the arguments of the learned Senior Counsel appearing for the 1st respondent and 3rd respondent, submitted that the respondents 2 & 4 have certain responsibilities in laying the road. The petitioner filed the Writ Petition while the application of 3rd respondent for planning permission was pending before the 2nd respondent and the petitioner prayed for injunction against the 2nd respondent. Further, the 4th respondent is an authority for granting No Objection Certificate for granting approval for multi-storied building with regard to traffic in that area. Hence, the respondents 2 & 4 were made as parties. The contention of the learned Senior Counsel appearing for the 1st respondent that on the date of Associate Sector Agreement (ASA), the 1st respondent was not the owner of the land and hence the said clause cannot be enforced, is not correct. The 1st respondent incorporated the said clause in anticipation of assigning of adjoining land. By G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, the 1st respondent has become holder of adjoining land. The petitioner did not challenge the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 as the 1st respondent has become the holder of adjoining land and petitioner can enforce the clause 2.2 of the Associate Sector Agreement (ASA).

15(i). There is no vagueness in clause 2.2 of Associate Sector Agreement (ASA). The 1st respondent, having invited Singapore based company for International IT project and having incorporated clause 2.2 in Associate Sector Agreement (ASA), now cannot say that the said clause is vague. The 1st respondent agreed to lay the road and only the land where the said road can be laid is in the adjoining land. The 1st respondent having agreed to lay the road, has to bear the cost. Only when the issue was raised with regard to width of 18 meters road, the 1st respondent raised the issue who has to bear the cost. The Managing Director of 1st respondent, which is a statutory Corporation, attended the Board Meetings and gave assurance to the petitioner that they will look into the issue of laying the connecting road. The 1st respondent now cannot say that assurance given by its representatives in the Board Meetings are not binding on the 1st respondent. The 1st respondent has mentioned that two roads viz., V.V Koil Street and Pillaiyar Koil Street are available for connecting Velachery road and Taramani road



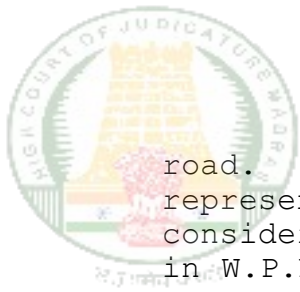
for use by the employees of petitioner's premises. The said roads are very narrow roads running through slums and cannot be used by two wheelers and four wheelers. The learned Senior Counsel appearing for the petitioner referred to minutes of Board Meetings and produced photographs with regard to said roads mentioned by the 1st respondent.

15(ii). The 1st respondent was keeping on informing the petitioner that connecting road will be laid and Tamil Nadu Road Development Company (TNRDC) wanted the road to be widened from 9 meters to 18 meters in the Board Meetings of 1st respondent dated 06.09.2004, 15.12.2004 and 16.02.2005. Hence, the 1st respondent cannot state that the location, width and alignment of the road was vague and therefore cannot be implemented.

15(iii). There is no latches on the part of the petitioner, since even after granting lease to the 3rd respondent, the 1st respondent in the Board Meetings discussed about the connecting road and arranged a meeting with Ascendas / petitioner and 3rd respondent to discuss the connecting road proposed under clause 2.2 in Associate Sector Agreement (ASA). The connecting road which was required in the year 2003 cannot suddenly become not required in 2008 or in 2021. Due to assurance given by the 1st respondent in the Board Meetings, there was no reason for the petitioner to initiate proceedings for not providing the road. Only when the 3rd respondent started construction in the year 2021 without leaving road space, the petitioner filed the present Writ Petition. Hence, there is no delay on the part of the petitioner and the Writ Petition is maintainable. The respondents cannot say that Writ Petition is liable to be dismissed due to latches.

15(iv). The Writ Petition cannot be dismissed on the ground of arbitration clause when Writ Petition is filed specifically to enforce the contract, when the ultimate beneficiaries are going to be the users of IT parks put up by the petitioner and 3rd respondent. The Hon'ble Apex Court held that contractual obligation in disputed facts can be entertained by the Court in Writ proceedings under Article 226 of the Constitution of India and relied on the judgment reported in 2021 (2) SCJ 19 [UNITECH Limited & Ors. vs. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors] cited supra.

15(v). The letter dated 11.03.2008 of 1st respondent informing the petitioner that there is no necessity for connecting road has not attained finality. After the said letter, the petitioner was insisting for connecting road and the 1st respondent was promising to consider laying of the connecting



road. Even after 11.03.2008, in all the Board Meetings, the representatives of 1st respondent was stating that issue will be considered by them. The Writ Petition filed by the 3rd respondent in W.P.No.5533 of 2011 was dismissed as withdrawn on 20.04.2018. Even after the said dismissal of Writ Petition, the representatives of the 1st respondent in the Board Meetings were stating that in view of the pendency of the Writ Petition, the issue cannot be decided. The petitioner, in its letter has informed the 1st respondent and 5th respondent that they will stop the construction of third phase. The 1st respondent arranged a tri-parti meeting with 3rd respondent in February 2021 with regard to laying of road, but no progress was made. Hence, the petitioner has approached this Court in the year 2021 and there is no delay on the part of the petitioner. In any event, there is no limitation in filing the Writ Petition under Article 226 of the Constitution of India. Under Article 226 of the Constitution of India, a party can approach the Court invoking Article 226 within a reasonable time.

16. Heard the learned Senior Counsel appearing for the petitioner, learned Senior Counsel appearing for the 1st respondent, learned counsel appearing for the 2nd respondent as well as learned Senior Counsel appearing for the 3rd respondent and the learned Additional Government Pleader appearing for the respondents 4 and 5 and perused the entire materials available on record.

17. The case of the petitioner is that it was allotted 15 acres of land at CSIR Road, Taramani, Chennai - 600 113 by 5th respondent on various dates in terms of Associate Sector Agreement (ASA) dated 17.06.2003 for developing Information Technology Parks (IT Park) and "built to suit" solutions. Ascendas India Private Limited, in pursuant to an initiative by the Government of Tamil Nadu to create IT parks/hubs in Chennai, entered into a Memorandum of Understanding dated 04.07.2002 with the 1st respondent. As per clause 2.2 of Associate Sector Agreement (ASA) dated 17.06.2003, the 1st respondent agreed to lay a connecting road by start of third phase, both at Velachery road and Taramani road. According to petitioner, the 1st respondent agreed to lay the said connecting road on the adjoining land measuring 25.19 acres belonging to 1st respondent. On the other hand, it is the case of the respondents 1 & 3 that clause 2.2 of Associate Sector Agreement (ASA) is vague. It does not contain the location, width and breadth of the road and there is no agreement as to who has to bear the cost of the said road. The 1st respondent did not agree to lay the said road in the adjoining land measuring 25.19 acres. At the time of Associate Sector Agreement (ASA) dated 17.06.2003, the



possession of the said land was with 5th respondent and 1st respondent had no right to lay the connecting road in the said land.

17(a). To decide the said rival contention, clause 2.2 of Associate Sector Agreement (ASA) has to be considered. Clause 2.2 of Associate Sector Agreement (ASA) reads as follows:

"2.2. The Company will use the current access of Taramani road for the Project and First party agrees to lay a connecting road by start of the third phase to both the Velacherry and Taramani roads"

17 (b). A reading of the above said clause reveals that the petitioner has to use the current access of Taramani road for the project. The 1st respondent agreed to lay a connecting road to both Velacherry road and Taramani road by start of third phase. As rightly pointed out by the learned Senior Counsel appearing for the 1st respondent and 3rd respondent, in the above said clause, there is no mention about the location of said connecting road. The contention of the learned Senior Counsel appearing for the petitioner that the 1st respondent agreed to lay the connecting road in the adjoining land is not supported by any materials on record.

17(c). The petitioner has filed typed set and additional typed set of papers containing documents. In the said typed set of papers, there is no document to show that the 1st respondent agreed to lay the connecting road in the adjoining property. The said contention of the learned Senior Counsel appearing for the petitioner is not acceptable in view of G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007. In the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, the 5th respondent approved the proposal for development of the IT/ITES SEZ project at Taramani by 1st respondent through joint venture of land measuring 25.19 acres lying behind TICEL Bio Park. The 1st respondent was permitted to select a joint venture partner through open competitive bidding process. By this G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, entire land adjoining to the land allotted to the petitioner was sought to be developed without leaving any land for laying any connecting road. The petitioner was aware of the said G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, even at that time, as a copy was sent to the petitioner by 5th respondent. The petitioner did not take any steps at that time requesting either the 5th respondent or 1st respondent to make provision for laying the connecting road in the said land. Even though it is the



contention of the petitioner that the 1st respondent agreed to lay the connecting road in the said land, the petitioner did not take any action or steps calling upon the 1st respondent or 5th respondent to make provision for laying the connecting road. On the other hand, the petitioner along with 3rd respondent and others participated in the tender process, but was unsuccessful. This fact clearly shows that 1st respondent did not agree to lay the connecting road in the adjoining property leased out to the 3rd respondent. As per clause 2.2 of Associate Sector Agreement (ASA), the connecting road has to be laid at the start of third phase. After the 3rd respondent became successful bidder, after lease deed was executed on 07.08.2008 in favour of the 3rd respondent and possession was handed over to the 3rd respondent, 3rd respondent prevented the contractor of the petitioner from using the land. Even though the petitioner protested for the said action of the 3rd respondent, did not approach the 1st respondent to comply with the alleged agreement to lay the connecting road or initiate any legal proceedings. The petitioner proceeded with construction of third phase and completed the same in the year 2010.

17 (d). It is pertinent to note that the 1st respondent, by the letter dated 11.03.2008 informed the petitioner that connecting road is not necessary as Rajiv Gandhi Salai (OMR) satisfies the requirements stated in the agreement. For better appreciation, the relevant portion of the said letter is extracted hereunder -

"The Associate Sector Agreement (ASA) between TIDCO and Ascendas (India) Private Limited executed on 17th June 2003 inter-alia reads as follows (clause 2.2):

"The company will use the current access of Taramani road for the Project and First Party agrees to lay a connecting road by start of the third phase to both the Velachery and Taramani roads"

The agreement does not specify any alignment for the above said road.

In the absence of any agreed alignment of the road between the parties, the claim that the road was meant to be along the border of project site, running through the adjoining plot is not backed by any Written understanding between the parties.

As already informed to you the Rajiv Gandhi Salai (OMR-IT Expressway) laid by TIDCO through



The claim in your letter dated 27th February 2008 that your understanding that the link roads has to be a road that is adjoining to AITPCL and not any other road which AITPCL has not direct access to cannot be conceded, since both parties never had a clear agreement or understanding on the location or alignment of the said link road. In any case, the OMR is just 187 metres from the Project Site and there is a direct access to this link road from the project site i.e through the Taramani road.

17(e). In the above said letter, the 1st respondent has categorically stated that no connecting road is necessary. The petitioner, by letter dated 27.03.2008 protested for the stand taken by the 1st respondent. The petitioner has not taken any steps before the 3rd respondent started construction of building for the purpose of development of IT/ITES SEZ project. The 3rd respondent had obtained planning permission from the 2nd respondent and other authorities for construction of 20 floors measuring 3.9 million sq.ft of built up area. The 3rd respondent has not made any provision for laying any connecting road by 1st respondent. The 1st respondent, by its letter dated 11.03.2008 itself has stated that there is no agreement for alignment of connecting road on the border of petitioner's project running through adjoining plot. A reading of clause 2.2, G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007 and letter of the 1st respondent dated 11.03.2008, it is clear that the 1st



respondent did not agree to lay the connecting road in the land adjoining to the petitioner's project, which is now leased out to the 3rd respondent.

17(f). It is the contention of the learned Senior Counsels appearing for the 1st respondent as well as 3rd respondent that clause 2.2 is vague and there is no consensus between the 1st respondent and petitioner with regard to location, width and length of the alleged connecting road. In reply to the said contention, the learned Senior Counsel appearing for the petitioner contended that there is no vagueness in clause 2.2 of Associate Sector Agreement (ASA) dated 17.06.2003. The learned Senior Counsel appearing for the petitioner submitted that having invited the Company from Singapore for development of IT Parks, it is not open to the 1st respondent to now allege that clause 2.2 is vague and no connecting road is necessary. When the 1st respondent in clause 2.2 has agreed to lay the connecting road, it was done in anticipation of adjoining land being allotted to the 1st respondent. When by G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, the 1st respondent was permitted to develop the adjoining land, clause 2.2 of Associate Sector Agreement (ASA) dated 17.06.2003 comes into play and 1st respondent is bound to lay the connecting road in the adjoining land. The learned Senior Counsel appearing for the petitioner referred to minutes of the Board Meetings, wherein the representatives of the 1st respondent participated and assured that connecting road will be laid. Only when Tamil Nadu Road Development Company (TNRDC) suggested laying of 18 meters breadth road, the 1st respondent raised the question of bearing the cost of laying the said road.

17(g).The petitioner is seeking the relief in view of clause 2.2 of Associate Sector Agreement (ASA). In such a case, it has to be seen whether in clause 2.2, details of connecting road to be laid is mentioned. In clause 2.2, it has been mentioned that the 1st respondent agrees to lay the connecting road by start of the third phase to both the Velachery road and Taramani road. Apart from that, no detail has been mentioned in the said clause. As rightly pointed out by the learned Senior Counsels appearing for the respondents 1 and 3, clause 2.2 of Associate Sector Agreement (ASA) lacks particular with regard to length, breadth and location of the connecting road to be laid. The petitioner has not produced any document to show the agreement between the 1st respondent and petitioner with regard to location, breadth and length of the connecting road. Further, even in the Board Meeting, the representatives of the 1st respondent has raised the issue of cost of road and who has to bear the said cost. There is no conclusion in the Board Meeting



with regard to who has to bear the cost of connecting road and there is no discussion as to where the road is to be laid and other particulars. Similarly, when Tamil Nadu Road Development Company (TNRDC) suggested laying the 18 meters breadth road, the 1st respondent did not agree for the same and did not agree to bear the cost of laying such road. The facts found in the documents filed in the typed set of papers reveal that clause 2.2 is vague and there is no agreement between the 1st respondent and petitioner with regard to location, breadth and length and who has to bear the cost of the connecting road.

17(h). Considering the above materials, this Court is of the view that clause 2.2 is vague and there is no agreement to lay the connecting road in the adjoining land, now leased out to the 3rd respondent and the contention of the learned Senior Counsel appearing for the petitioner is not acceptable.

17(i). The contention of the learned Senior Counsel appearing for the 1st respondent and 3rd respondent that Writ Petition is liable to be dismissed on the ground of delay and laches and limitation has considerable force and is acceptable. From the materials on record, it is seen that in the year 2007 itself, the 5th respondent, by G.O.Ms.No.53 Industries (IT) Department, dated 26.02.2007, permitted the 1st respondent to select the joint venture partner to develop the said adjoining land, by open competitive bidding process. As per the said instruction of 5th respondent, tender was floated by effecting publication. The petitioner, 3rd respondent and others participated in the said tender process. The 3rd respondent was successful bidder in the tender process while the petitioner was unsuccessful. The contention of the learned Senior Counsel for the 3rd respondent that lease in favour of 3rd respondent was granted on 07.08.2008 and possession was handed over to the 3rd respondent was not denied by the petitioner. Further, by letter dated 11.03.2008, the 1st respondent has categorically stated that there is no need for connecting road. The petitioner did not initiate any proceedings challenging the said stand taken by the 1st respondent or decision of the 5th respondent to develop 25.19 acres of IT / ITES SEZ project without leaving any space for connecting road. The contention of the learned Senior Counsel for the petitioner is that by G.O.Ms.No.53 Industries (IT) Department, dated 26.02.2007, the 1st respondent has become owner of adjoining land and therefore the 1st respondent is bound to lay the connecting road in the said land. When the 1st respondent has become owner of adjoining land, the petitioner ought to have enforced clause 2.2 of Associate Sector Agreement (ASA) and the petitioner ought to have challenged the said G.O. Hence, the said contention is not acceptable. In the



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G.O.Ms.No.53 Industries (IT) Department dated 26.02.2007, the 5th respondent permitted the 1st respondent to select the joint venture partner through open competitive bidding process to develop the entire 25.19 acres. When according to the petitioner, by the said G.O., the petitioner is entitled to enforce clause 2.2 of Associate Sector Agreement (ASA) for laying the road in the said land, the petitioner did not take any steps for enforcing its right that alleged to have accrued for laying the connecting road in the said land. As already pointed out, the petitioner has not challenged the stand taken by the 1st respondent in its letter dated 11.03.2008. It is no doubt true that there is no limitation for initiating proceedings under Article 226 of the Constitution of India. But it is well settled that aggrieved party should approach the court within a reasonable time. The contention of the learned Senior Counsel appearing for the petitioner that petitioner did not take any proceedings in view of the assurance given by the representative of the 1st respondent in all the Board Meetings and the steps taken by the 1st respondent with tri-partie meeting with 3rd respondent for laying connecting road, is not acceptable. Once 1st respondent has taken a specific stand that there is no need for connecting road, the petitioner ought to have initiated proceedings within a reasonable time. In the judgment reported in 1975 (1) SCC 152 [P.S.Sadasivaswamy Vs. State of Tamil Nadu] relied on by the learned Senior Counsel for the 1st respondent, the Hon'ble Apex Court held that even though there is no limitation fixed for invoking Article 226 of the Constitution of India, the aggrieved person must approach the Court within six (6) months or from utmost of a year of such event and in that case, from the date of promotion of juniors of petitioners therein. The Hon'ble Apex Court also held that a person cannot approach the Court belatedly and try to unsettle the settled matters.

17(j).In the present case, as per G.O.Ms.No.53, Industries (IT) Department, dated 26.02.2007, by open tender, the 3rd respondent became the lessee in the year 2008 and started construction after obtaining approval and completed 1/3rd of project. Hence, the petitioner cannot unsettle the settled position after a period of 13 years. The petitioner slept over its right for such a long time and the present writ petition filed after a long time is liable to be dismissed on the ground of delay and laches and limitation.



17(k). The contention of the learned Senior Counsel appearing for the petitioner that the petitioner is entitled to the relief based on the principles of promissory estoppel is not acceptable on the facts and circumstances of the present case and the judgments relied on by the learned Senior Counsel appearing for the petitioner do not advance his case. A party is entitled to invoke principle of promissory estoppel only when other party promises to do certain things and subsequently in an arbitrary manner goes back of his promise in violation of Article 14 of the Constitution of India. In the present case, according to the learned Senior Counsel appearing for the petitioner, the 1st respondent agreed to lay a connecting road in the adjoining land now in the possession of the 3rd respondent and has gone back on the said agreement. In the earlier paragraph, clause 2.2 of Associate Sector Agreement (ASA) is discussed in detail and this court held that Clause 2.2 is vague. In clause 2.2, the 1st respondent did not agree to lay a connecting road in the adjoining land. In the said clause, there is no mention about the location in which the connecting road will be laid, length and breadth of the said road and the person who has to bear the cost. According to said clause, the 1st respondent agreed to lay the road when the petitioner started the construction of third phase. The 1st respondent did not lay the road when the petitioner started construction of third phase and even after completion of third phase in the year 2010, the 1st respondent did not lay the connecting road. Whether violation / refusal of 1st respondent to lay the road is arbitrary decision in violation of Article 14 of the Constitution of India has to be seen from the letter dated 11.03.2008, when the 1st respondent informed its decision not to lay the connecting road. In the said letter, the 1st respondent has stated that there is no need to lay the connecting road in view of OMR being expanded from 9 meters to 41 meters. The petitioner has not denied that OMR was expanded as stated by the 1st respondent. The minutes of the Board Meetings filed in the typed set of papers do not reveal the promise made by the 1st respondent to lay a connecting road. There were oral discussions in the Board Meetings with regard to laying of connecting road and no decision was taken in the Board Meeting and the petitioner has not taken any action based on the said discussion insisting the 1st respondent to lay the connecting road. When the decision of the 1st respondent that there is no need for connecting road is just and reasonable and is not arbitrary and the alleged agreement in clause 2.2 is vague and inchoate, the principles of promissory estoppel does not arise and no cause of action has arisen on the ground of promissory estoppel.



17(1). It is the contention of the learned Senior Counsel for the 3rd respondent that the relief sought for by the petitioner in the present writ petition is in fact claiming specific performance of clause 2.2 of Associate Sector Agreement (ASA) and the claim by the petitioner in the Writ Petition which is in the nature of specific performance of agreement cannot be entertained by this court. The said contention is acceptable. The said principles had been laid down by the Hon'ble Apex Court in the judgment in SLP (C) 3008 of 2022 [Surjeet Singh Sahni V. State of UP and Others]. In Para 6 of the said judgment referred to above, the Hon'ble Apex Court categorically held that no Writ Petition under Article 226 of the Constitution of India shall be maintainable and/or enforceable for specific performance of contract, especially after a period of 10 years. The Hon'ble Apex Court has held in the said paragraph that, by that time the Writ Petition was filed, the suit for specific performance should have been barred by limitation. A similar principle was laid down in the judgment of Hon'ble Apex Court in Civil Appeal No.1538 of 2022 [Municipal Council Gondia v. Divi Works and Suppliers, HUF and Others]. A reading of the prayer in the present Writ Petition reveals that the relief sought for is in the nature of specific performance of contract of clause 2.2 and has been filed after a period of 13 years, after the 1st respondent informed the petitioner that there is no need for laying any connecting road. Applying the ratio in the above two judgments of the Hon'ble Apex Court, this Court is of the considered view that the Writ Petition is not maintainable as the petitioner is seeking to specifically enforce clause 2.2. of Associate Sector Agreement (ASA).

17 (m). The contention of the learned Senior Counsel appearing for the 3rd respondent that Writ Petition is not maintainable to enforce a private contract has considerable force and is acceptable. The learned Senior Counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court reported in 2021 (2) SCJ 19 [Unitech Limited & Others v. Telangana State Industrial Infrastructure Corporation (TSIIC) & Others]. The said judgment is not applicable to the facts of the present case as in the said judgment, public interest was involved whereas in the present case, no public interest is involved and the petitioner is seeking to enforce a private contract obligation.

17(n). The issue whether the Writ Petition is maintainable in contractual matters or where there a disputed questions of fact or even when monetary claim is raised was considered by the Hon'ble Apex Court in the judgment reported in 2015 (7) SCC 728 [Joshi Technologies International Inc. v. Union of India and



others] and in the judgment reported in 2022 SCC Online SC 664 [Karnataka Power Corporation Limited v. Emta Coal Limited & Another]. The Hon'ble Apex Court held that a writ of mandamus is the public duty and other conditions must be satisfied for issue of writ of mandamus. If writs are purely of private character, no mandamus can be issued. At the same time, the Hon'ble Apex Court held that there is no absolute bar to the maintainability of the writ petition even in contractual matters or disputed question of fact and when mandatory claim is made. But the discretion lies with the High Court under certain circumstances. The relevant portion of the said judgment reads as follows -

56. Significantly, in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R.Rudani as well, this Court made it clear that if the rights are purely of private character, no mandamus can be issued. Thus, even if the respondent is "State", the other condition which has to be satisfied for issuance of a writ of mandamus is the public duty. In a matter of private character or purely contractual field, no such public duty element is involved and, thus, mandamus will not lie.

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

The Hon'ble Apex Court, in the very same judgment referred to above, in Paragraphs 69.1 to 69.4 enumerated circumstances due to which normally the court would not exercise the discretion. Paragraphs 69.1 and 69.2 are relevant to the facts of the present case. In paragraphs 70.4, 70.6 and 70.8 also, the Hon'ble Apex Court has enumerated the circumstances under which the Court cannot entertain a writ petition. Paragraphs 69.1 to 69.4 and 70.1 to 70.11 are extracted supra at Page Nos.45 to 48 of this order, as referred to in the judgment of



Division Bench of Bombay High Court, Goa in Goldwin Healthcare Pvt. Ltd. And Others v. State of Goa and others in W.P.No.7 of 2022.

17(o). In the judgment reported in 2022 SCC Online SC 664 [Karnataka Power Corporation Limited v. Emta Coal Limited & Another] cited supra, the Hon'ble Apex Court held that it is the discretion of the High Court to entertain the writ petition in a contractual matter. Para 12 of the said judgment reads as follows -

12. It is worth noting that this Court has already held that in matters pertaining to a State instrumentality, a writ may be maintainable in matters concerning contractual dispute in certain circumstances. While there is no bar on the maintainability of such writ petitions, the discretion lies with the High Courts as to whether to exercise the said jurisdiction or not. This Court has elaborately discuss the principles that must guide the High Courts while deciding whether to exercise their writ jurisdiction in contractual dispute between a State and a private party in a catena of judgments."

17(p). In the judgment of the Hon'ble Apex Court dated 06.08.2008 in Civil Appeal No.4912 of 2008 [Pimpri Chinchwad Municipal Corporation and Others v. M/s.Gayatri Construction Company and another], extracted at Page No.49 of this order, the Hon'ble Apex Court, in Para 8, referred to Para 6 of the judgment reported in 2003 (7) SCC 410 [National Highways Authority of India v. Ganga Enterprises wherein it has been held that disputes relating to contract cannot be agitated under Article 226 of the Constitution of India. In that case, the dispute was with regard to terms of contract. The Hon'ble Apex Court held that contractual disputes in respect of which a writ court was not the proper forum. Applying the said ratio in the said judgment, this Court is of the view that the writ petition is not maintainable and there is no reason to exercise discretion of this Court to entertain the writ petition.

17(q). The judgments relied on by the learned Senior Counsel appearing for the petitioner are not applicable to the facts of the present case and do not advance the case of the petitioner in view of above judgments relied on by the learned Senior Counsel appearing for the 1st respondent and 3rd respondent and judgment referred to above.



17(r). Both the learned Senior Counsel appearing for the 1st respondent as well as 3rd respondent have contended that the writ petition is not maintainable in view of the alternate remedy of arbitration available to the petitioner as per clauses 10.6 and 10.7 of Associate Sector Agreement (ASA). This Court and the Hon'ble Apex Court have held that in all the cases, Writ Petition cannot be rejected on the ground of availability of alternate remedy. Each case has to be considered based on the facts and circumstances of that case and court has to decide whether the writ petition is maintainable when alternate remedy is available. This issue whether the writ petition is not maintainable on the ground of alternate remedy is not decided on merits in this case, in view of the fact that this writ petition is liable to be dismissed on the other grounds raised by the respondents.

18. The Writ Petition is liable to be dismissed as -

(i) Clause 2.2 of Associate Sector Agreement is inchoate agreement, bereft of particulars and no consensus between the petitioner and 1st respondent.

(ii) Barred by limitation ;

(iii) Due to delay and latches

(iv) The contractual liability of private nature cannot be entertained

(v) The relief in the nature of specific performance of Clause 2.2 of Associate Sector Agreement cannot be entertained in a writ petition.

19. For all the above reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rgr/krk



To

1. The Chairman & Managing Director,
Tamil Nadu Industrial Development
Corporation Limited (TIDCO),
19 A, Rukmini Lakshmipathy Road,
Chennai 600 008.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
3. The Commissioner of Police (Traffic)
6th Floor, No.132, EVK Sampath Road,
Periyampet, Chennai 600 007.
4. The Secretary,
State of Tamil Nadu,
Industries Department,
Fort St. George,
Chennai 600 003.

+2cc to Mr.A.R.Karunakaran , Advocate, S.R.No.35988
+1cc to M/s.King & Partridge, Advocate, S.R.No.36101
+1cc to M/s.P.Veena Suresh, Advocate, S.R.No.35488
+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.36051

W.P.No.13949 of 2021

NR(CO)
CT/29/06/2022