

HIGH COURT FOR THE STATE OF TELANGANA

COMMERCIAL COURT APPEAL NO.21 OF 2022

Between :

M/s. Ranganath Properties Pvt. Ltd.,
Rep. by its Directors
Ramesh Chand Kalantri, S/o. Late Dhanraj Kalantri
Aged about 62 years, Occ : Business
R/o. 5-8-294, Chirag Lane, Mahesh Nagar,
Nampally, Hyderabad and 15 others

...Appellants/Petitioners

And

Phonix Tech Zone Pvt. Ltd., (formerly known as
Phonenix Embassy Tech Zone Pvt. Ltd.,)
(Developer) Rep. By its Managing Director,
P. Gopi Krishna, registered office at
Sy.No.27/1 to 27/4, Nanakramguda,
Gachibowli, Ranga Reddy District,
Telangana – 500 032. & 2 others

...Respondents

DATE OF COMMON ORDER PRONOUNCED: **02.03.2023**

SUBMITTED FOR APPROVAL:

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Lordships wish to see the fair copy of the judgment? | Yes/No |

*** HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

+ COMMERCIAL COURT APPEAL NO.21 OF 2022

% DATED 02ND DAY OF MARCH, 2023

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..Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri B. Venkat Rama Rao,

^Counsel for Respondents : Sri P. Soma Sekhar Reddy
Sri Srinivas Velagapudi.

? CASES REFERRED:

1. ILR 2021 Karanataka 3215
2. (2021) 10 SCC 210
3. (2015) 1 SCC 1
4. 2022 SCC Online SC 1028
5. Manu/PH/1545/2020
6. (2015) 3 SCC 49
7. (1995) 2 SCC 630
8. (2020) SCC 234

**HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

COMMERCIAL COURT APPEAL NO.21 OF 2022

Date: .03.2023

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Sy.No.27/1 to 27/4, Nanakramguda,
Cachibowli, Ranga Reddy District,
Telangana – 500 032 and 2 others.

.....Respondents

The Court made the following:

**HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO
COMMERCIAL COURT APPEAL NO.21 OF 2022**

JUDGMENT: {Per the Hon'ble Sri Justice J. Sreenivas Rao}

The appellants filed this appeal aggrieved by the orders dated 06.06.2022 passed by learned Special Judge for Trial and Disposal of Commercial Disputes Court, Ranga Reddy District at L.B. Nagar in C.O.P.No.3 of 2022 in C.O.P.No.7 of 2022 dismissing the application filed under Section 9 (1) of Arbitration and Conciliation Act 1996 (hereinafter referred to as 'the Act, 1996') for grant of injunction restraining the Respondents 1 & 2 or any other person(s) acting, dealing or otherwise claiming under the authority of the said respondents in any form of whatsoever by way of sale, mortgage, creating any kind of encumbrance, lease/licence or otherwise changing the nature of the development of the petition schedule property, whatsoever, pending the disposal of the arbitration proceedings.

2. For the sake of convenience, hereinafter the parties will be referred to as "petitioners" and "respondents", as they were arrayed before the trial Court.

3. Petitioners filed Arbitration Petition vide C.O.P.No.7 of 2022 under Section 9 (1) of the Act 1996 for grant of injunction restraining the Respondents 1 & 2 or any other person/s acting, dealing, (or) otherwise claiming under the authority of the said Respondents in any form of whatsoever form all that petition schedule property i.e. the petition schedule saleable/leasable built-up area/property together with proportionate undivided three-towers i.e., Tower No.1, Towner No.2 and Towner No.6 coming up in Acs.06.08 guntas in Sy.Nos.128 & 138 (larger extent) as per sanctioned master plan out of total single project (under the name and style ('Phoenix Business Hub') site admeasuring Acs.15.36 guntas covered by Sy.Nos.118 (P), 120(P), 121(P), 122 (P), & 138(P) situated at Nanakramguda Village, Serilingampally Mandal of Ranga Reddy Dist. by way of sale, more creating any kind of encumbrance, lease/ license (or) otherwise changing the nature of the development of the said schedule property other than IT/ITES office commercial space in any manner whatsoever, pending the disposal of the arbitration proceedings. In the said petition, the petitioners contended that they are owners and possessors of the land to an extent of Acs.6.08 guntas in Sy.Nos.122 and 138 situated at Nanakramguda (V) of Serilingampally (M), Ranga

Reddy Dist. The respondent No.1 represented by its Managing Director Sri P.Gopi Krishna, claiming as one of the reputed builders in the limits of GHMC, approached the petitioners in the year 2015 to develop the petitioners' properties as common projects, and the petitioners are represented by their authorized person namely Sri B. Sunil and he had common negotiations on the proposal of Respondent No.1; in pursuant to the said negotiations between the petitioners and the respondents, it was represented that they would develop the petitioners' properties together with the properties of other adjacent owners as joint property into SEZ/buildings for the purpose of IT/ITES/Commercial place and the same shall be developed to achieve more advantageous and beneficial to one and all in total as one unit on extent of Acs.15.46 cents covered by Sy.Nos.118(p), 120(p), 121(p), 122(p) and 138(p) of Nanakramguda (V).

3.1. The petitioners further stated that the Respondent No.1 through mail dt. 04.04.2015 informed that they will construct 2,00,000 Sq. fts., saleable/leasable area per acre in the large extent of project and the petitioners/land owners were to be given 25% share in the said saleable/leasable built-up area with proportionate

share in the common area/parking etc., remaining 75% is in favour of the developers. In pursuance of the negotiations the petitioners and respondents have entered into a common understanding under the preliminary agreement dt. 06.12.2015 with a nomenclature as 'Term Sheet' wherein the respondents agreed to give the land owners share at 55,000 sq.ft. per acre with proportionate car parking space undivided share in the large extent of project assuring that they will be constructing 2,00,000 sq.ft per acre.

3.2. The petitioners further stated that they came to know that in April, 2019 the respondents were constructing more built-up area than the initial plan/understanding. By way of mail the petitioners demanded to increase their share of property on additional constructed area. The petitioners further stated that respondents have mutually agreed to enhance the owners share ratio from 55,000 sq.ft. to 70,000 sq.ft per acre, saleable & leasable area and they will be constructing total built up area in the project with intention to increase the area from 2,00,000 sq.ft per acre to 2.69,000 sq.ft per acre. Accordingly, the respondents have executed addendum to the Supplemental Development Agreement in the year 2019. They further stated that the respondents made TS-I Pass for construction

of 6 towers (High Rise Towers) and the same was not intimated to the petitioners. The respondents obtained permission for the proposed construction behind back of the petitioners with an ulterior motive to deprive the legitimate share of the petitioners in total built-up area. In such circumstances, the petitioners invoked the provisions of the Arbitration and Conciliation Act, 1996. Clause 23 of Development Agreement-cum-General Power of Attorney (hereinafter referred as DAGPA) specifically says that any dispute or difference whatsoever arising under or connection with the agreement, if not settled mutually between the parties, the same shall be settled by way of arbitration in accordance with the Act, 1996.

3.3. The petitioners further state that on 31.08.2019 they visited the project site and found a brochure of different master plan but the respondents did not furnish any information in spite of request made by the petitioners. At that stage, the petitioner filed application under RTA on 03.03.2020 and 23.03.2020 and obtained information on 16.03.2021, wherein the concerned authorities stated that the TSIIC has granted permission to the respondents to extend building permit dated 04.02.2021 for two towers, each consists of 4 cellars

and ground floor plus 29 upper floors in the larger extent of the project.

3.4. The petitioners further averred that the respondents stated that the initial share of the petitioners as agreed at 55,000 sq.ft per acre is revised to 70,000 sq.ft per acre. The respondents unilaterally allotted the constructed area upto 70,000 sq.ft only, though the respondents were constructing high rise towers and obtained permission from the authorities without knowledge of the petitioners. The petitioners being the land owners are entitled for sharing ratio in proportionate of 1:3 in total built up area or project in the land. They further stated that the respondents violated all the terms of DAGPA and they refused to enhance the land owners share of saleable and leasable in the enhanced SFI of the project, since the respondents have already entered into agreement between “Sensation Infraction” and there is every possibility that respondents may alienate the subject property.

4. Respondent Nos. 1 and 2 filed counters denying the averments made by the petitioners *inter alia* contending that the COP filed by the petitioners is not maintainable on the ground of jurisdiction. As per clause 23 of DAGPA entered between the parties “Any disputes

that/or differences whatsoever arising under or in connection with the agreement which could not be settled by the parties through negotiations, shall be finally settled by arbitration in accordance with the Act, 1996 by an arbitral panel comprising of three arbitrators, one appointed by the owners and one by the Developer and the two arbitrators so appointed shall appoint the third arbitrator, who shall be the Chairman of the arbitral panel. The venue of arbitration shall be Hyderabad.” In pursuance of the said clause the venue of arbitration is only at Hyderabad. In view of the same, any dispute arising out of DAPGA including petition under Sections 9, 34 or Section 37 of the Act, 1996, the parties shall file petitions before the Courts at Hyderabad, which shall have exclusive jurisdiction to try and dispose such controversy between the parties. Hence the COP filed by the petitioners before the learned Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District at L.B. Nagar is not maintainable and the said Court is not having jurisdiction to adjudicate the dispute.

4.1. The respondents further contended that as per the provisions of Section 20 (A) r/w Section 41 and r/w Serial No.5 (e) of the Schedule to the Specific Relief Act, 1963, the petition filed by the

petitioners for seeking injunction is not maintainable under law. The respondents further contended that as per Sec.41 (ha) of Specific Relief Act an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project as per the said provision of law, no injunction can be granted in respect of the infrastructure project, if such orders would impede or delay the progress of such projects included in Special Economic Zones (SEZ), as such the relief claimed by the petitioners are expressly barred under the amended provisions of Specific Relief Act, 1963. The petitioners have not complied with the requirement of 'pre-institution mediation' as stipulated under the provisions and rules made under the Commercial Courts Act, 2015.

4.2. The respondents further contended that the petitioners suppressed the other material facts even though the respondents intimated latest plans which were being applied for permission before the statutory authorities, such as Telangana State Industrial Infrastructure Corporation (TSIIC) from time to time and even the status of development of SEZ project through mails dated 03.04.2019. The respondents further stated that the petitioners herein entered DAGPA with first respondent and thereafter the

petitioners entered into Supplementary Development Agreement (SDA) with respondent No.1. Finally, the petitioners entered into ASDA with the respondent No.1 increasing the petitioners' share from earlier *lump sum* area from 55,000 sq.ft per acre to 70,000 sq.ft per acre. Suppressing several facts, the petitioners approached the Court with unclean hands and the petitioners have not satisfied the ingredients as required for grant of injunction.

5. Basing on the pleadings of the respective parties, the Court below framed the following point for consideration:

(1) *Whether the petitioners are entitled for the relief as prayed for?*

6. The Court below after considering the contentions of the respective parties, material evidence on record and also after hearing both the parties was pleased to dismiss the COP by its order dated 06.06.2022 holding that the petition schedule property falls under the category of Special Economic Zone and particularly Section 20(a), 41 (ha) of Specific Relief Act, 1963 (Amended Act, 2018) is expressly bar grant of injunction and further held that the petitioners are not entitled to grant injunction under Section 9 of the Act, 1996.

7. Questioning the above said order, the petitioners filed the present appeal.

8. The learned counsel for the petitioners vehemently contended that the Court below without properly considering the pleadings, documentary evidence, dismissed the C.O.P. He further contended that the petitioners have satisfied all the essential ingredients for grant of injunction as enumerated under Order XXXIX Rules 1 and 2 of CPC i.e. *prima facie* case, balance of convenience and irreparable loss and in spite of the same, the Court below erroneously dismissed the COP.

9. The learned counsel for the petitioner further contended that the Court below dismissed the COP by applying the provisions of Sections 20 (a) and 41 (ha) of the Specific Relief Act, 1963 and Amended Act, 2018, the petition schedule property situated in the Special Economic Zone, as such the petitioners are not entitled for grant of injunction. Though the said provisions are not applicable to the petitioners' case, as the relief sought by the petitioners in COP is only to protect their legitimate share, interest over the petition schedule property, as the petitioners have not sought injunction restraining the respondents to carry out the construction activities in

the petition schedule property. The petitioners have sought equitable relief restraining the respondents not to alienate or create any third-party rights in respect of their legitimate shares only. In such circumstances, the prohibition made under Sections 20(a), 41 (ha) of the Specific Relief Act, 2018 is not applicable. He further contended that the amended provisions of Sections 20 (a), 41 (ha) of the Specific Relief Act, 1963 were inserted by Act 18 of 2018 with effect from 01.10.2018, whereas the petitioners and respondents have entered into DAGPA and SDA prior to Amended Act came into force and the said amended provisions of the Act 18 of 2018 are prospective in nature and the same are not applicable to the petitioners' case.

10. The learned counsel further contended that the Court below failed to appreciate the fact that the contract between the land owners and developers for development of property by way of construction of built up area or within the (saleable and leasable rights) in the project in terms of the development agreement coming up in Economic Zone does not fall within the definition of infrastructure project as specified in Category 5-e of the schedule under the caption of Commercial Project and Infrastructure Special

Sector. He further submits that the petitioners had sought for an injunction not to alienate the petition schedule property which is subject matter of arbitration and did not ask for an injunction not to proceed with the construction or any other activities and the reasons assigned by the Court below that if injunction is granted it will hamper progress of the project by relying upon the clause 4.2 and clause 9 of DAGPA to the effect that the said recitals show that owner shall not in any way obstruct the implementation of the project. The petitioners have sought only relief to protect their share in the schedule of property and the petitioners have not sought the relief restraining the respondents carrying out the construction or any other activity. In such circumstances, the Court below ought to have granted injunction as sought in the COP.

11. In support of his contentions, the learned counsel for the petitioners relied upon the following judgments:

- (1) **Smt. Katta Sujatha Reddy & Another Versus Siddamsetty Infra Projects Pvt. Ltd., & Others** in Civil Appeal No.5822 of 2022 (arising out of SLP © No.13565 of 2021), dated 25-08-2022;
- (2) **M.Suresh Vs. Smt. Mahadevamma & Others**¹;
- (3) **Asst. Excise Commissioner, Kottayam and Others Vs. Esthappan Cheriyan and another**²;

¹ ILR 2021 Karnataka 3215

² (2021) 10 SCC 210

- (4) **Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Pvt. Ltd.**³;
- (5) **Patil Automation Pvt. Ltd., & Others Vs. Rakheja Engineers Pvt. Ltd.**,⁴;
- (6) **Landmark Apartments Pvt. Limited Vs. Advance India Projects Limited**⁵ ;
- (7) **Associate Builders Vs. Delhi Development Authority**⁶

12. On the other hand, the learned Senior Counsel Sri V. Ravinder Rao representing the respondent Nos.1 and 2 strongly contended that as per the provisions of Section 42 (2) of the Special Economic Zone, 2005, Section 41 (ha) of Specific Relief Act 1963 as amended by Act 18 of 2018 appendix schedule (e) there is specific prohibition prohibiting grant of injunction on the properties situated in Special Economic Zone. The learned Senior Counsel further contended that as on today no arbitral proceedings were commenced. Unless and until the arbitral proceedings commence and the petitioners proved/established their entitlement of share of more than 77,000 sq.ft per acre in the constructed area as claimed in the C.O.P, the petitioners are not entitle to seek injunction. He further submits that Section 41 of Specific Relief Act came into force on 01.10.2018

³ (2015) 1 SCC 1

⁴2022 SCC Online SC 1028

⁵ MANU/PH/1545/2020

⁶(2015) 3 SCC 49

and the provisions of the amended acts are applicable to the present case and the Court below after considering the pleadings, documentary evidence on record and after hearing the parties and also after examining the provisions of Special Economic Zones Act, Specific Relief Act, 1963 and Amended Act 18 of 2018, Contract Act, 1872 and the law laid down by the Hon'ble Apex Court as well as High Courts dismissed the COP by giving cogent reasons and there are no grounds in the appeal filed by the petitioners to interfere with the impugned order passed by the Commercial Courts and the same is liable to be dismissed.

13. In support of his contentions, the learned Senior Counsel relied upon the following judgments.

- (1) **R. Rajagopal Reddy (dead) by LRs and Others Versus Padmini Chandrasekharan (dead) by L.Rs⁷;**
- (2) **BGS SGS Soma JV Vs. NHPC Limited⁸**

14. Sri Velagapudi Srinivas, learned counsel for the respondent No.3 contended that the petitioners and respondents have entered into DAGPA and SDA and terms and conditions of the contract are binding between the parties and the petitioners filed COP claiming

⁷(1995) 2 SCC 630

⁸(2020) SCC 234

relief contrary to the terms and conditions of the contract. He further contended that the land owners surrender their rights over the property to the developers and they are not entitled to the relief claimed in COP. He also contended that the dispute between the parties is about sharing ratio and the said dispute has to be raised by the petitioners before the Arbitral Tribunal and they have to prove/establish by producing necessary evidence. In the event, if they succeeded then only, they are entitled to claim the particular share in the petition schedule property.

15. He relied upon the Clauses 8 and 11 of DAGPA which read as follows:

“8. Commencement of Developmental work:

8.1. The Developer shall commence the developmental work on the Schedule Property within six (6) months from the date of receiving the sanctioned plan from the concerned authority and also all statutory permissions required to start construction, including but not limited to obtaining the required NoC/ approvals from the competent authority for the proposed development of the Schedule Property/Joint Property.

8.2. The Developer shall have the sole discretion in selection of construction materials, method of construction, equipment to be used for construction and other related techniques of construction etc., and that the Owners shall not interfere with the same.

8.3. The Owners shall extend full co-operation to the Developer to complete the development and construction of the Project. The Owners shall not create any impediments or obstruction in the way of the Developer in developing or constructing the Project.

8.4 The Developer may, at its sole discretion, agree to execute additional items of work as required by the Owners on a separate and mutually agreed terms and/ or rates or that the Owners shall be at liberty

to get any additional items of work done by their own agency only after possession of the Owners' share is handed over to the Owners by the Developer. The time taken for undertaking such additional work shall be added to the time stipulated for completion of construction of the "Owners' share" stipulated in the scheme.

11. Borrowings:

11.1 The Parties are entitled to obtain loans and advances from the banks or financial Institutions and/or other persons to the extent of their respective shares in the Schedule Property ss may be required by them. To further clarify, the Developer is entitled to obtain loans, v mortgaging, creating charge, lien, giving collateral security of undivided interest in the Schedule Property to the extent of its share and obtain sums from Financial Institutions, Banks, etc., for the purpose of construction of the Project.

Supplementary Development Agreement

A. The Owners entered in the Development Agreement with General Power of Attorney dated 06.04.2016 registered as Document No. 3626/2016 in the Office of the Sub Register of Balanagar ("DAGPA") with the Developer for development of their land admeasuring 8460 yards (Acs. 1-29.98 Gts) in Survey No. 138/part of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, more fully described in the Schedules A, B, and C thereto, hereinafter referred to the "Schedule Property", together with neighboring, adjacent and abutting properties ("Joint Property"), for the purpose of joint development of the total land into an SEZ or Buildings for IT/ITES office space as proposed by the Developer with amenities and facilities, more fully described in Annexure-1 thereto (Project), so as to achieve more advantages and benefits to one and all, such as elegance of the complex, a good marketable extent of developed area and market the same. The Schedule Property and the Joint Property are hereinafter together referred to as the "Larger Land".

....

....

D. Originally, some of the land owners of the land in Survey No. 118, 120, 121 and 122 of Nanakramguda Village ("the said land"), had entered into an arrangement with the Third-Party Developer in the year 2014 for development of the said land, which is now part of the same Project, of which the Schedule Property is a part. The Developer has agreed to settle the claims and demands of the Third-Party Developer vide separate document towards their time and efforts in developing the said land, in confirmation of which the Third-Party Developer has joined this SDA. Subject to their rights under the DAGPA, the Owners have agreed for the same.

Now this SDA witnesseth as under:

- 1)...
- 2)...
- 3)...

4)...

5) THAT the Owners do hereby release, renounce and relinquish all their rights, title, interests, claims and demands in the Leasable / Chargeable Areas and proportionate undivided share of land allotted to the share of the other owners of the Larger Land and the Developer. Similarly, the Developer does hereby release, renounce and relinquish all its rights, interests, claims and demands in the Leasable Chargeable Area and proportionate undivided share of land allotted to the share of the Owners.

In Addendum to Supplementary Development Agreement

C. Subsequently, the Owners have renegotiated with the Developer for revision in their share. The Parties, after due deliberations, have mutually agreed on-

- 1) revision of the Building Plans of the building/s, in which the Owners' share is allotted,
- 2) revision in the efficiency factor in the definition assigned to "Saleable /Leasable/Chargeable Area" under Clause 2.2 (e) of the DAGPA from "0.78 (+/- 0.02)" to "0.75".
- 3) revision in the entitlement of the Owners provided in Annexure-3 appended to the DAGPA from "55,000 sft of Leasable/Saleable Area per acre" to "70,000sft of Leasable/Saleable Area per acre" with "0.75" efficiency towards the entire share of the Owners;
- 4) revision in the allocation/demarcation of the Owners' share made under the SDA and
- 5) delivery of Owners' shares as per terms of the Development Agreement on or before 18.01.2021.

In view of the above, the parties have felt to expedient to amend the demarcation and allocation of Leasable/Chargeable Area falling to the share of the respective owners in the Project.

Now this Addendum wtinesseth that

- 1)...
- 2)...
- 3)...
- 4)...

5) The entitlement of the Owners in Annexure-3 appended to the DAGPA is hereby revised from "55,000 sft of Leasable / Saleable Area per acre" to "70,000 sft of Leasable/Saleable Area per acre" with an efficiency of "0.75" with proportionate undivided share in the Project Land and one (1) car parking lot for every 800 sft of Leasable Area.

9). The Developer is hereby authorized and empowered to (a) represent before concerned departments, authorities, etc., in all matters affecting the Project Land, including the Schedule Property, for road widening or otherwise; (b) claim any benefit or compensation, including but not limited to relaxation of setbacks, TDR or other benefits; and (c) use such benefit or compensation for the sole use and benefit of the Developer at its sole discretion.

14). The Development Agreement shall remain in force as amended by this Addendum. In case of any conflict between the Development Agreement and this Addendum, this Addendum shall prevail. Unless defined in this Addendum, all defined terms will have the meanings ascribed to such terms in the DAGPA or SDA.”

15.1. Learned counsel relied on the following decision:

State of Rajasthan Vs. Nav Bharat Construction Co.⁹

16. Having heard the learned counsels for respective parties, now the points that arise for consideration in this appeal are as follows:

(1) Whether the Petitioner is entitled for grant of injunction as claimed in C.O.P. No.7 of 2022 under law?

(2) Whether the impugned order passed by the Court below in C.O.P. No.7 of 2022, dated 06.06.2022 is sustainable under law?

(3) To what relief?

POINT NOS.1 AND 2:

17. As per the contentions of the respective parties, evidence on record, it shows that the respondents have approached the petitioners in the year 2015 to develop the petitioners properties as common project together with the properties of other adjacent

⁹(2006) 1 SCC 86

owners as joint property into SEZ/buildings for the purpose of IT/ITES/Commercial place and the same shall be developed to achieve more advantageous and beneficial to one and all in total one unit on an extent of Acs.15.46 cents covered by Sy.No.118(p), 120(p), 121(p), 122(p) and 138(p) of Nanakramguda (V). The petitioners contended that the Respondent No.1 through Mail dt.04.04.2015 informed that they will construct 2,00,000 Sq. fts., saleable/leasable area per acre in the large extent of project and the petitioners/land owners were to be given 25% sale in the said saleable/leasable built-up area with proportionate share in the common area/parking etc., remaining 75% is in favour of the developers. Accordingly, the petitioners and respondents have entered into a common understanding under the preliminary agreement dt. 06.12.2015 with a nomenclature as 'Term Sheet' wherein the respondents agreed to give the land owners share at 55,000 sq.ft. per acre with proportionate car parking space undivided share in the large extent of project assuring that they will be constructing 2,00,000 sq.ft per acre.

17.1. According to the petitioners as the respondents were making the construction of the built-up area more than the initial

plan/understanding, by way of mail, the petitioners demanded to increase their share of property on additional constructed area and the respondents have agreed to enhance the owners share from 55,000 sq.ft. to 70,000 sq, ft per acre, saleable & leasable area and they would be constructing total built up area in the project with intention to increase the area from 2,00,000 sq.ft per acre to 2.69,000 sq.ft per acre. Accordingly, the respondents have executed addendum to the Supplemental Development Agreement in the year 2019. They further contended that the respondents made TS-I Pass for construction of 6 towers (High Rise Towers) and the same was not intimated to the petitioners, the respondents obtained permission for the proposed construction behind their back with an ulterior motive to deprive their legitimate share in total built-up area.

17.2. The petitioners further contended that they obtained information under RTA Act, on 16.03.2021, wherein they came to know that TSIIC has granted permission to the respondents for extension of building permission dated 04.02.2021 for two towers each 4 cellars and ground floor plus 29 upper floors in the large extent project.

17.3. The petitioners further stated that the respondents stated that the initial share of the petitioners as agreed at 55,000 sq.ft per acre is revised to 70,000 sq.ft per acre. The respondents unilaterally allotted the constructed are upto 70,000 sq.ft only though the respondents constructed high rise towers and obtained permission from the authorities without knowledge of the petitioners. The petitioners being the land owners are entitled for sharing ratio in proportionate to 1:3 in the total built up area or project in the land. They further stated that the respondents violated all the terms of DAGPA and they refused to enhance the land owners share of saleable and leasable or in the enhanced SFI of the project, since the respondents have already entered into agreement between “Sensation Infraction” and there is every possibility that respondents may alienate the subject property. Hence, the petitioners filed COP for seeking grant of injunction.

18. Respondent Nos.1 and 2 filed counters denying the averments made by the petitioners *inter alia* contending that the COP filed by the petitioners is not maintainable on the ground of jurisdiction. As per the clause 23 of DAGPA entered between the parties “Any disputes that/or differences whatsoever arising under or in

connection with the agreement which could not be settled by the parties through negotiations, shall be finally settled by arbitration in accordance with the Act, 1996 by an arbitral panel comprising of three arbitrators, one appointed by the owners and one by the Developer and the two arbitrators so appointed shall appoint the third arbitrator, who shall be the Chairman of the arbitral panel. The venue of arbitration shall be Hyderabad. In pursuance of the said clause the venue of arbitration is only at Hyderabad. In view of the same, any dispute arising DAPGA including petition under Sections 9, 34 or Section 37 of the Act, 1996. Such parties shall be filed before the Courts at Hyderabad, which shall have exclusive jurisdiction to try and dispose the controversy between the parties. Hence the COP filed by the petitioners before the learned Special Judge, for Trial and Disposal of Commercial Disputes Court, Ranga Reddy District at L.B. Nagar is not maintainable and this Court is not having jurisdiction to adjudicate the dispute.

18.1. The respondents further contended that as per Section 20 (A) r/w Section 41 and r/w. Serial No.5 (e) of the Schedule to the "Specific Relief Act, 1963"- As per Sec.20 (a) Special Provisions for Contract relating to infrastructure project - No injunction shall be

granted by a Court in a suit under this Act. The respondents further contended that as per Sec.41 (ha) of Specific Relief Act an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project. Such project including Special Economic Zones (SEZ), as such the relief claimed by the petitioners are expressly barred under the amended provisions of Specific Relief Act, 1963. The petitioners have not complied with the requirement of 'pre-institution mediation' as stipulated under the provisions and rules made under the Commercial Courts Act, 2015.

18.2. The respondents further contended that the petitioners suppressed the other material facts even though the respondents intimated latest plans which were being applied for permission before the statutory authorities, such as Telangana State Industrial Infrastructure Corporation (TSIIC) from time to time and even the status of development of SEZ projection through mails dated 03.04.2019. The respondents further stated that the petitioners herein entered DAGPA with first respondent and thereafter the petitioners entered into Supplementary Development Agreement (SDA) with respondent No.1. Finally, the petitioners entered into ASDA with the respondent No.1 increasing the petitioners share from

earlier *lump sum* area from 55,000 sq. ft per acre to 70,000 sq. ft per acre. The petitioners suppressing several facts approached the Court with unclean hands and the petitioners have not satisfied the ingredients as required for grant of injunction.

19. The Court below after considering the contentions of the parties, evidence on record and also examining the provisions of Special Economic Zone Act, 2005 and Specific Relief Act, Contract Act, and the decisions relied on by the parties, dismissed the COP by giving specific reasons holding as under:

“25. Hence, the contention of the petitioners for grant of interim relief or injunction, is rejected as it is clearly appeared to this Court that after obtaining ad interim order there is impede or delay in the progress of the infrastructure project of the respondents by raising huge funds, which is also contrary to the infrastructure projects covered under Special Economic Zones. Accordingly, this point is answered in favour of respondents and against the petitioners.

26. It is the specific contention of the learned counsel for respondent that as per Development Agreement with General Power of Attorney dated 06.04.2016, more particularly as per clause 4.2 and clause 9 - The land 'owners shall not made any obstruction in any manner in implementation of the project and the petitioners contrary to the terms of the agreement approached this Court and obtained ad interim Injunction order by misrepresenting the facts including terms of the DAGPA.

27. On this aspect this Court has carefully gone through the prime agreement i.a., DAGPA dt. 06.04.2016 in particular, Clause 4.2 which contemplates that:- "The Developer shall, from the date of execution of this Agreement enter upon the schedule property as contemplated in this agreement in implementing the project on the schedule property and the developers right carry out construction and development works shall be continuous and absolute and the Owners shall not in any manner. whatsoever, destruct implementation of the Project."

Clause 9 of the DAGPA also contemplates OBSTURCTION TO FREE DEVELOPMENT:

"The developer shall from the date of being put in physical possession of the schedule property, be deemed to have an absolute and invocable license to implement the project on the schedule property and the developers right to carry out the construction and development works shall be continuous, absolute and irrevocable and the owners shall not in any manner whatsoever obstruct implementation of the project. Further, any impediments arising due to defective title or possessory rights of the owners shall be cleared by the owners at their own cost and expense and the timeline for completion of the project shall be deemed to be proportionately extended by the time the project of development/ construction of the project is adversely affected by such impediments.

On careful consideration of the above-mentioned clauses the petitioners approached this Court by suppressing the material facts including Clause 4.2 and Clause 9 of the DAGPA, wherein the petitioners categorically agreed that they shall not obstruct implementation of the project in any manner, as such, this Court is of the considered view that the petitioners have approached this Court by suppressing the terms of agreement and sought for interim measures U/Sec.9 of Arbitration Act. On this ground also the petitioners are not entitled for any interim relief.

29. In the present case, as discussed above, though there are clauses under 4.2 and 9 of DAGPA, suppressing the said clauses and without invoking the provisions of Section 12-A of the Act, for pre-institution mediation and settlement efforts, the petitioners straight away approached this Court by seeking interim relief and also failed to explain any urgency in granting the interim relief. As such this Court is of the considered view that the petitioners failed to comply with the requirements of pre-institution and mediation as required under Section 12-A of the Commercial Court Act, 2015.

30. But, as per Sec.20A and Sec.41 (ha) and Serial No 5 of Schedule of Specific Relief (Amended Act) Act, 1963 (Act 18 of 2018) which expressly bars for grant of injunction in respect of the infrastructure projects, as it would impede or delay the progress or completion of the said project. Admittedly the respondent clearly established that the partition schedule property is notified as Special Economic Zone under Sub Sec. 1 of Sec. 4 of SEZ Act, 2005, R/W, Rule 8 of SEZ Rules, 2005 vide Government of India and Ministry of Commerce and Industry's notification SO No.687(E), dt.22-07-2017 and Notification No.8.0.2179(E), dt.04-07-2017 and even on the considering the subsequent de-notification the substantial portion of the project is covered under Special Economic Zone, and even the petitioners in their petition at Para No.2.2 and also Para No.4 pleaded that the property is being developed as SEZ property and even otherwise the documents such as DAGPA, SDA clearly establish that the petition schedule property is being developed as SEZ and more particularly the petition schedule property squarely falls under the extent as mentioned in the notification dt.04-07-2017 notifying the said project as SEZ.

31. Therefore, considering the entire case facts and lengthy arguments of both counsels this court is of the considered opinion that the petition

schedule property falls under the category of Special Economic Zone and particularly the Sec.20A, 41(ha) including schedule 5 of the Specific Relief Act Amended in 2018 are squarely applicable to the case of respondent, as such the petitioners are not entitled to grant interim measures/injunction under Section 9 of Arbitration and Conciliation Act by applying the principles of Order-XXXIX, Rule-1 and 2 of CPC. Accordingly, this point is answered against the petitioners.”

20. At this stage, it is expedient to consider the decisions relied by learned counsel.

21. The decisions cited by learned counsel for petitioner and the ratio laid down therein are as under:

21.1. In **Smt. Katta Sujatha Reddy** (supra) in Civil Appeal No.5822 of 2022 (arising out of SLP © No.13565 of 2021), dated 25-08-2022, (SCC Para Nos.26, 47, 48,53, & 54) read as under:

“26. Before dealing with Issue A, we would like to highlight certain facts which may be relevant. On 26-3-1997 and 27-3-1997 two agreements to sell were executed between the vendors and purchaser for two separate parcels of land in Survey Nos. 301 (part), 302, 303, 304 (part). The sale considerations for the aforesaid land were Rs 38,37,500 and Rs 1,82,500 respectively. Out of the above sale considerations, the vendors received an advance of Rs 34,70,000 and Rs 10,850 in furtherance of the performance of the aforesaid agreement.

47. The High Court, in the impugned order, has taken a different approach in categorising the Specific Relief Act, 1963 as procedural and holding that the 2018 Amendment is also a procedural provision which requires to be given retrospective effect. The High Court places reliance on an old case of *Radheshyam Kamila v. Kiran BalaDasi* [*Radheshyam Kamila v. Kiran BalaDasi*, 1971 SCC OnLine Cal 15 : AIR 1971 Cal 341] , wherein the High Court, while relying upon the commentary of *Pollock & Mulla on Indian Contract Act and Specific Relief Act* (4th Edn.) specifically observed that “specific relief, as a form of judicial process, belongs to the law of procedure”. In this context, the Court came to a conclusion that such procedural amendment ought to be given retrospective effect.

48. We do not subscribe to the aforesaid reasoning provided by the High Court for the simple reason that after the 2018 Amendment, specific performance, which stood as a discretionary remedy, is not (*sic* now) codified as an enforceable right which is not dependent anymore on equitable principles expounded by Judges, rather it is founded on satisfaction of the requisite ingredients as provided under the Specific Relief Act. For determination of whether a substituted law is procedural or substantive, reference to the nature of the parent enactment may not be material. Instead, it is the nature of the amendments which determine whether they are in the realm of procedural or substantive law.

53. Under the pre-amended Specific Relief Act, one of the major considerations for grant of specific performance was the adequacy of damages under Section 14(1)(a). However, this consideration has now been completely done away with, in order to provide better compensation to the aggrieved party in the form of specific performance.

54. Having come to the conclusion that the 2018 Amendment was not a mere procedural enactment, rather it had substantive principles built into its working, this Court cannot hold that such amendments would apply retrospectively.”

21.2. In **M.Suresh** (supra), paragraph-33 reads as under:

“33. In the light of the aforesaid judgments, it is clear that ordinarily, the effect of amendment by 'substitution' is that, the substituted provision stands repealed and the amended provision is substituted in the place of earlier provision from the date of inception of the enactment, but it is not absolutely applicable in all circumstances. If the amendment Act expressly specifies that the substituted provision shall come into force from a particular date subsequent to the date of amendment/the date the amendment come into force, the said amendment is prospective in nature notwithstanding such amendment is by way of 'substitution'. The intention of the legislature being clear, no retrospective effect could be given from the date of inception of the statute. There may not be any cavil on this legal proposition relating to substantial law. It is well settled that the interpretation of provisions must depend on the text and context. The real intention of the legislature has to be gathered from the text and context. The amendment Act contemplates that the said amendment by way of 'substitution' would come into force on such day the Central Government may, by Notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act, 1st October 2018 is the date appointed for the amended provisions to come into effect. As such, amendment to each provision whether it is procedural or substantial has to be examined de horse the Act in general is construed to be procedural.”

21.3. In **Asst. Excise Commissioner, Kottayam** (supra), paragraphs-15 and 16 read as under:

“15. In this case, it is evident that when the state-initiated recovery proceedings it did not give credit of the amounts collected under the head of department management fee -as was required under pre-existing Rule 13. Its main contention before this court is that amounts collected as departmental management fee were not adjustable. In view of the decision in Lucka, there cannot be any dispute that contracts entered into before amendment of Rule 13-as in this case-were not to be treated as those transactions for which amounts were non- adjustable. There is no indication that Rule 13 applied retrospectively.

16. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In Commissioner of Income Tax v Vatika Township this court, speaking through a Constitution Bench, observed as follows:

“28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not f.no. 1 (2015) 1 SCC 1 tomorrow’s backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in Phillips vs. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of ‘fairness’, which must be the basis of every legal rule as was observed in the decision reported in L’ Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.”

21.4. In **Commissioner of Income Tax (Central)-I, New Delhi** (supra), paragraph-27 reads as under:

“General Principles concerning retrospectivity:

27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of ‘Interpretation of Statutes’. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.”

21.5. In **Patil Automation Pvt. Ltd.**, (supra), paragraphs-30, 91, 99, 105 and 113 read as under:

“30. It is, accordingly, by the Amending Act that Section 12-A came to be inserted. We may notice the Rules which came to be published in the Gazette and thereby came into force on 3-7-2018. Rule 3 reads as follows:

“3. Initiation of mediation process.—(1) A party to a commercial dispute may make an application to the Authority as per Form 1 specified in Schedule I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;

(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form 2 specified in Schedule I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.

(3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).

(4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule I and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a mediator and fix a date for their appearance before the said mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party.”

91. Section 12-A of the Commercial Courts Act provides for mediation. This is a provision, which was inserted as per the Amending Act (Act 28 of 2018) enacted in the year 2018 and it came into force with effect from 3-5-2018. By the said amendment, in fact, Chapter III-A was inserted and Section 12-A is the sole section in the said chapter. A plain reading of Section 12-A makes the following position clear:

91.1. The lawgiver has declared that if a suit under the Act does not “contemplate” any urgent interim relief, then, it cannot be instituted unless the plaintiff seeks pre-litigation mediation. The pre-institution mediation is to be done in the manner, procedure, which is to be prescribed by the Central Government. The pre-litigation mediation is to be completed within a period of three months from the date of the application made by the plaintiff under sub-section (1) [see Section 12-A sub-section (3)].

91.2. The period of three months can, however, be extended for a period of two months provided there is consent to the same by the parties [see the first proviso to Section 12-A sub-section (3)]. By the second proviso, the Legislature has taken care to provide that the period, during which the parties remained occupied with the pre-

litigation mediation, is not to be reckoned for the purpose of computing the period of limitation under the Limitation Act, 1963.

91.3. As to what would happen, if the parties arrive at the settlement, is provided for in Section 12-A sub-section (4). The settlement is to be reduced into writing and signed by the parties to the dispute and the mediator. The effectiveness of a settlement arrived at in the course of the pre-institution mediation contemplated in Section 12-A, has been dealt with in Section 12-A sub-section (5). Parliament has accorded the settlement, the same status and effect as if it is an arbitral award, on agreed terms under sub-section (4) of Section 30 of the Arbitration and Conciliation Act, 1996.

91.4. Spread over five sub-sections, this standalone section in Chapter III-A, no doubt, supported by the Rules, in our view, substantially manifests a definite scheme to effectively deal with the perceived urgent problem of acute clogging of the justice delivery system, which had to be de-congested. Section 12-A cannot be perceived as merely intended to reach quicker justice, and what is more, on terms, which are mutually acceptable to the parties concerned. Even, more importantly, it was to produce a vital and significant effect on the very interest of the nation. We have perused the Statement of Objects and Reasons. To attract foreign capital by enhancing its rather low standard in the ease of doing business, it was and is still necessary to showcase an efficient and quick justice delivery system in commercial matters. In fact, India, which was ranked at 142 out of 189 countries, in the Ease of Doing Business Index, in 2015, climbed up to only 130 in the year 2016. By 2020, India stood at the 63rd position.

99. We may sum-up our reasoning as follows:

99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.

99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point,

which amply illustrate this principle, are Section 80CPC and Section 69 of the Partnership Act.

99.3. The language used in Section 12-A, which includes the word “shall”, certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.

99.4. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties.

105. There is a plea by Shri Saket Sikri, that if this Court holds that Section 12-A is mandatory it may be done with only prospective effect. He drew support of the judgment of this Court in, *Jarnail Singh v. LachhmiNarain Gupta* [*Jarnail Singh v. LachhmiNarain Gupta*, (2022) 10 SCC 595] : (SCC paras 48-49)

“48. ... While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions.

49. The power of this Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition. [*Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] In *Orissa Cement Ltd. v. State of Orissa* [*Orissa Cement Ltd. v. State of Orissa*, 1991 Supp (1) SCC 430] , this Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case, as has been held in *Somaiya Organics (India) Ltd. v. State of U.P.* [*Somaiya Organics (India) Ltd. v. State of U.P.*, (2001) 5 SCC 519 : AIR 2001 SC 1723] It was further clarified that while in *Golak*

Nath [Golak Nath v. State of Punjab, AIR 1967 SC 1643 : (1967) 2 SCR 762], “prospective overruling” implied an earlier judicial decision on the same issue which was otherwise final, this Court had used the power even when deciding on an issue for the first time. There is no need to refer to other judgments of this Court which have approved and applied the principle of prospective overruling or prospective operation of judgments. There cannot be any manner of doubt that this Court can apply its decision prospectively i.e. from the date of its judgment to save past transactions.”

113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.

113.2. Still further, we however direct that in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

21.6. In **Associate Builders** (supra), paragraphs – 27 and 29 read as under:

“27. Coming to each of the heads contained in *Saw Pipes* [(2003) 5 SCC 705 : AIR 2003 SC 2629] judgment, we will first deal with the head “fundamental policy of Indian law”. It has already been seen from *Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644]* judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law.

XXX

29. It is clear that the juristic principle of a “judicial approach” demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.”

22. The decision relied by Learned Senior Counsel Sri V.Ravinder and the ratio of the decisions is as under:

22.1. In **R. Rajagopal Reddy** (supra), paragraphs – 10, 11 and 15 read as under:

“10. It is thereafter that the Act came to be passed by both the Houses of Parliament and came into force as stated above. It might be appreciated that though the Law Commission recommended retrospective applicability of the proposed legislation, Parliament did not make the Act or any of its sections expressly retrospective in its wisdom. A bird's-eye view of the Act clearly establishes this position. The Act being Act No. 45 of 1988 in its preamble states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Section 3 which is the heart of the Act imposes the required prohibition of benami transactions. It reads as under:

“3. *Prohibition of benami transactions.* — (1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.”

A mere look at the above provisions shows that the prohibition under Section 3(1) is against persons who are to enter into benami transactions and it has laid down that no person shall enter into any benami transaction which obviously means from the date on which this prohibition comes into operation i.e. with effect from 5-9-1988. That takes care of future benami transactions. We are not

concerned with sub-section (2) but sub-section (3) of Section 3 also throws light on this aspect. As seen above, it states that whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Therefore, the provision creates a new offence of entering into such benami transactions. It is made non-cognizable and bailable as laid down under sub-section (4). It is obvious that when a statutory provision creates new liability and new offence, it would naturally have prospective operation and would cover only those offences which take place after Section 3(1) comes into operation. In fact Saikia, J. speaking for the Court in *Mithilesh Kumari case* [(1989) 2 SCC 95 : (1989) 1 SCR 621] has in terms observed at page 635 of the report (SCC p. 107, para 22) that Section 3 obviously cannot have retrospective operation. We respectfully concur with this part of the learned Judge's view. The real problem centres round the effect of Section 4(1) on pending proceedings wherein claim to any property on account of it being held benami by other side is on the anvil and such proceeding had not been finally disposed of by the time Section 4(1) came into operation, namely, on 19-5-1988. Saikia, J. speaking for the Division Bench in the case of *Mithilesh Kumari* [(1989) 2 SCC 95 : (1989) 1 SCR 621] gave the following reasons for taking the view that though Section 3 is prospective and though Section 4(1) is also not expressly made retrospective, by the legislature, by necessary implication, it appears to be retrospective and would apply to all pending proceedings wherein right to property allegedly held benami is in dispute between parties and that Section 4(1) will apply at whatever stage the litigation might be pending in the hierarchy of the proceedings:

(1) Section 4 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be real owner of such property. This naturally relates to past transaction as well. The expression "any property held benami" is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim, or action to enforce any right in respect thereof shall lie.

(2) Similarly sub-section (2) of Section 4 nullifies the defences based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. It means that once a property is found to have been held benami the real owner is deprived of such defence against the person in whose name the property is held or any other person. In other words, in its sweep Section 4(2) engulfs past benami transactions also.

(3) When an Act is declaratory in nature, the presumption against retrospectivity is not applicable. A statute declaring the benami

transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case inasmuch as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. *Ubi jus ibi remedium*. Where the remedy is barred, the right is rendered unenforceable.

(4) When the law nullifies the defences available to the real owners in recovering the benami property from the benamidar, the law must apply irrespective of the time of the benami transactions. The expression “shall lie” under Section 4(1) and “shall be allowed” in Section 4(2) are prospective and shall apply to present (future stages) and future suits, claims or action only.

(5) The word ‘suits’ would include appeals and further appeals as appeals are in continuation of the suits. This is an aspect of procedural law and, therefore, when procedure is changed for deciding any such proceedings between the parties the provisions of such procedural law can be applied to such pending proceedings by necessary implication.

(6) Repelling the contention that rights of the parties to a suit would be determined on the basis of rights available to them on the date of filing of the suit and distinguishing the judgment of this Court in *Nand Kishore Marwah v. Samundri Devi* [(1987) 4 SCC 382] , it was observed that the aforesaid case was for eviction where the rights of the parties on the date of suit were material unlike in this case where subsequent legislation has nullified the defences of benami-holders.

11. Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they were pending at different stages in the hierarchy of the proceedings even up to this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an Act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus, it was enacted to efface the then existing right of the real owners of properties held by others benami. Such an Act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that sub-section (1) of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiff's right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of

Section 4(1) that is 19-5-1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words “no such claim, suit or action shall lie”, meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1). In *Collins English Dictionary*, 1979 Edition as reprinted subsequently, the word ‘lie’ has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with Topic No. 9 under the definition of term ‘lie’ it is stated as under:

“For an action, claim appeal etc. to subsist; be maintainable or admissible.”

The word ‘lie’ in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the defendant concerned in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive. To highlight this aspect, we may take an illustration. If a benami transaction has taken place in 1980 and a suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him, then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

15. In the case of *GarikapatiVeeraya v. N. Subbiah Choudhry* [AIR 1957 SC 540 : 1957 SCR 488] (AIR p. 553, para 25) Chief Justice S.R. Das speaking for this Court has made the following pertinent observations in this connection:

“The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.”

22.2. In **State of Rajasthan** (supra), paragraph – 27 reads as under:

“**27.** There can be no dispute to the well-established principle set out in these cases. However, these cases do not detract from the law laid down in *Bharat Coking Coal Ltd. case* [(2001) 4 SCC 86] or *Continental Construction Co. Ltd. case* [(1988) 3 SCC 82] . An arbitrator cannot go beyond the terms of the contract between the parties. In the guise of doing justice, he cannot award contrary to the terms of the contract. If he does so, he will have misconducted himself. Of course, if an interpretation of a term of the contract is involved then the interpretation of the arbitrator must be accepted unless it is one which could not be reasonably possible. However, where the term of the contract is clear and unambiguous the arbitrator cannot ignore it.”

22.3. In **BGS SGS Soma JV** (supra), Hon’ble Supreme Court held in Para Nos. 59, 61 and 82 as under:

“**59.** Equally incorrect is the finding in *AntrixCorpn. Ltd. [AntrixCorpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338]* that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the section begins with a *non obstante* clause, and then goes on to state “...where with respect to an arbitration agreement any application under this part has been made in a court...” It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in

which part of the cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

61. It will thus be seen that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

23. We have carefully analyzed the ratio laid down in the above decisions and the contentions of the appellants. With respect to the contention of the appellants, that the Specific Relief (Amendment) Act, 2018, is not applicable in the present case, as it is prospective in nature,

and would not be applicable to the DAGPA entered between the parties on 06.12.2015, the lower Court was right in observing that upon the executing of the agreement, the parties had, in fact entered into subsequent Supplemental Developmental Agreement (SDA) and Addendum to the Supplemental Developmental Agreement (ASDA) in 2019. These Agreements were with respect to change in share of the saleable/leasable area allotted to the appellants. Therefore, these agreements would prevail over the DAGPA and since these agreements were entered in the year 2019 i.e. after coming into force of the Specific Relief (Amendment) Act, 2018.

24. Therefore, the contention raised by the learned counsel for the appellants and the judgments relied upon would not have any application to the present case, as the amended provisions of the Specific Relief Act, 2018 would be rightly applicable to the present case.

25. Moreover, the judgments relied upon by the petitioners are not applicable to the facts and circumstances of the case on the ground that the petition schedule property comes within the Special Economic Zone. Section 42 (ha) of the Specific Relief Act, 1963 as amended by the Amended Act, 2018 specifically imposes bar to grant injunction.

26. As per the pleadings and submissions of the respective parties, the Court below rightly finds that the main dispute between the

parties is about the sharing ratio. As per the terms and conditions of the DAGPA and SDA, the respondents have agreed to allot built up area of 70,000 sq. ft per acre to the petitioners. The specific contention of the respondents is that they are complying with the terms and conditions of the agreement. The contention of the petitioners that as the respondents are making extra construction than what was earlier proposed, they are entitled to additional built-up area in the same proportion is an issue to be considered in arbitral proceedings/civil proceedings. The contention of the petitioners that the respondents obtained permission contrary to the terms and conditions of the DAGPA, SDA behind their back and the respondents violated the terms and conditions of the agreement, is again a matter requires consideration in arbitral proceedings/civil proceedings. As per the averments and submissions of the respective parties as of now arbitration proceedings are not yet commenced.

27. As already observed *supra*, the petitioners have to establish the claim of entitlement of additional constructed area in the extra construction portion by initiating proceedings before appropriate Court of law or before Arbitral Tribunal. However, with regard to prayer sought by petitioners, in view of the specific provision in

Section 41 (ha) of the Specific Relief Act, 1963, as amended by the Amended Act, 2018 the petitioners are not entitled for grant of injunction, as sought in the COP.

28. This Court do not find any illegality, irregularity, error in the impugned order passed by the Court below and there are no grounds in the appeal. Accordingly, Point Nos.1 and 2 are answered.

POINT NO.3:

29. In view of reasons assigned on Point Nos.1 and 2, the petitioners are not entitled for grant of injunction, as prayed for.

30. Accordingly, Appeal is dismissed without costs. However, it is made clear that all issues are left open to be urged in Arbitral proceedings or in any civil proceedings. Pending miscellaneous applications if any shall stand closed.

JUSTICE P. NAVEEN RAO

JUSTICE J. SREENIVAS RAO

Date: 02.03.2023

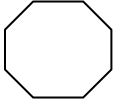
Note

L.R. Copy to be marked : **Yes**

B/o.

Skj

**HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO**



COMMERCIAL COURT APPEAL NO.21 OF 2022

Date: .03.2023

Note

L.R. Copy to be marked : **Yes**

*B/o.
Skj*