SUPREME COURT OF INDIA

The Rajasthan State Industrial Development and Investment Corporation

Vs.

Diamond and Gem Development Corporation Ltd.

C.A.Nos.7252-7253 of 2003

(Dr.B.S.Chauhan and V.Gopala Gowda JJ.)

12.02.2013

JUDGMENT

Dr. B. S. CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 30.7.2002 passed by the High Court of Rajasthan (Jaipur Bench) in Civil Writ Petition Nos. 5481/1994 and 105/1997, by which the High Court has allowed the writ petitions filed by the respondent-Diamond and Gem Development Corporation Ltd. (hereinafter referred to as the 'Company'), for quashing the order of cancellation of allotment of land and directing the appellants for providing the approach/access road.

2. As these appeals have been preferred against the common impugned judgment, for the sake of convenience, Civil Appeal Nos. 7252-53/2003 are to be taken to be the leading case. The facts and circumstances giving rise to these appeals are :

> A. That a huge area of land admeasuring 607 Bighas and 5 Biswas situate in the revenue estate of villages Durgapura, Jhalan Chod, Sanganer and Dhol-ka-Bad in District Jaipur, stood notified under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as the `Act') on 18.7.1979, for a public purpose i.e. industrial development, to be executed by the appellant Rajasthan State Industrial Development and Investment Corporation (in short 'RIICO').

B. Declaration under Section 6 of the Act was made on 22.6.1982 for the land admeasuring 591 Bighas and 17 Biswas. After meeting all requisite statutory requirements contained in the Act, possession of the land, was taken over by the Government and was subsequently handed over to appellant-RIICO, on 18.10.1982 and 17.11.1983. The Land Acquisition Collector assessed the market value of the land and made an award on 14.5.1984. RIICO made allotment of land admeasuring 105 acres vide allotment letter dated 10.3.1988 to the respondent no.1 company, to facilitate the establishment of a Gem Industrial Estate for the manufacturing of Gem stones.

C. In pursuance of the aforesaid allotment letter, a lease deed was executed between the appellant and respondent-company on 22.5.1989, with a clear stipulation that the land was allotted on an "as is-where- is", and that the respondent-company must complete the said project within a period of 5 years, and further that, in the event that the terms and conditions of the lease agreement were not complied with, the appellant would be entitled to recover its possession in addition to which, various other conditions were also incorporated therein.

D. After possession was taken by the respondent-company, construction could be carried only on a portion of the land allotted to it. As the development work was being carried out at an extremely slow pace, the appellant issued various notices from time to time, reminding the respondent-company that it was under an obligation to complete the project within a specified period, owing to which, it must accelerate work. Additionally, there also arose some difficulty with respect to the respondent-company's attempts to sub-lease the said premises, or parts thereof, and in view of this, an amendment dated 4.11.1991 was inserted in Rule 11-A of the Rajasthan Land Revenue (Industrial area Allotment) Rules, 1959 (hereinafter referred to as the 'Rules 1959'), enabling the company to sub-lease the said land.

E. The appellant vide notice dated 4.7.1992, informed the respondent-company, that as per clause 2(n) of the lease deed, all construction had to be completed within a stipulated time period of 5 years. The respondent-company began asking the appellant to provide it accessibility via road, from the Jaipur Tonk main road and, as the same was not provided, the respondent-company filed Writ Petition No. 5481 of 1994 before the High

Court, seeking the issuance of a direction to the appellant to provide to it, the aforesaid road.

F. During the pendency of the aforesaid writ petition, the appellant expressing its dis-satisfaction with regard to the progress of the development of the said land by the respondent-company, filed a reply to the said writ petition before the High Court stating that it was not under any obligation to provide to the respondent-company the aforementioned approach road, as the lease deed had been executed between them, on the basis of an "as-is-where is" agreement. Further, the appellant issued a show cause notice dated 29.8.1996, to determine the lease in light of the lease agreement, in lieu of the fact that the respondent-company had not made any progress regarding the completion of the project, and even after the expiry of a period of 5 years, only 10% of the total construction stood completed. In pursuance thereof, the lease deed was cancelled vide order dated 1.10.1996, and possession of the land in dispute was taken back by the appellant on 3.10.1996.

G. The respondent-company filed another Writ Petition No. 105 of 1997, challenging the cancellation order dated 1.10.1996 and the taking over of possession by the appellant on 3.10.1996. The appellant contested the said writ petition on the grounds that it was entitled to restoration of possession, as the respondent-company had failed to ensure compliance with the terms and conditions incorporated in the lease deed, according to which, the company was required to complete the said project within a period of 5 years. However, presently, the extent of development completed by it stood at 10%. Therefore, in light of the aforementioned circumstances, the appellant had no choice but to cancel the lease deed and take back possession.

H. The High Court vide its impugned judgment and order, allowed both the writ petitions quashing the order of cancellation, and directed the restoration of possession of the aforesaid land to the respondent-company, and further, also directed the appellant to provide to the respondent-company, the approach/access road demanded by it.

Hence, these appeals.

3. Shri Dhruv Mehta, learned senior counsel appearing on behalf of the appellant-RIICO, and Shri Manish Singhvi, learned Additional Advocate General for the State of Rajasthan have submitted that, as the allotment of the land had been made to the respondent-company on an 'as-is-where-is" basis, there was no obligation on the part of RIICO to provide to it, the said access road. The terms of the contract must be interpreted by court, taking into consideration the intention of the parties and not on the basis of equitable grounds. Moreover, the cancellation of the deed was in accordance with the terms and conditions incorporated in the lease deed, and therefore, in light of the facts and circumstance of the case, the High Court has committed an error, by quashing the order of cancellation and, in issuing a direction for the restoration of possession and for the provision of the access road.

> The High Court has mis-interpreted the amendment to Rule 11-A of the Rules 1959, and has thus held that the appellant had no jurisdiction to cancel the said lease, as the respondent-company by virtue of the operation of the amended provision, had become a direct lessee of the State. In such a fact-situation, there was no obligation on the part of the appellant to provide the approach road as it was not the lessor of the respondent-company. In case by virtue of the amendment in Rule 11-A of the Rules 1959, the State Government became the lessor, the appellant-RIICO lost the title/interest over the property which had been acquired by it on making payment of the huge money and that too, without getting any refund. Such an interpretation leads to absurdity. Thus, the appeals deserve to be allowed.

4. Per contra, Shri P.S. Patwalia, learned senior counsel appearing for the respondent-company, has submitted that the judgment and order of the High Court does not require any interference whatsoever, for the reason that the respondent-company had been invited to establish and develop the Gem Stone industrial park at Jaipur. In view of the fact, that the amendment to Rule 11-A of the Rules 1959 was made exclusively to facilitate the respondent-company to sub-lease a part of the developed premises, the High Court has rightly held that the State Government became the lessor and that, RIICO had no concern whatsoever in relation to the said matter, owing to which, it had no competence to cancel the lease. In the light of the fact that RIICO was in possession of other lands surrounding the land in question, the High Court has directed it to provide to the respondent-company, an access road on equitable grounds, taking into consideration the fact that, in the event that the respondent-company's area remained land locked, it would be impossible for it to develop the project, and has stated that not providing the access

road was in fact, the basic reason for delay in development. Thus, the appeals lack merit and, are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

> Before proceeding further, it may be pertinent to refer to the relevant statutory provisions, and certain terms of the lease deed.
>
> Rule 11-A of the Rules 1959 read :
>
> "……
>
> xx xx xx
>
> Clause (iv) of Rule 11-A.- The Rajasthan State Industrial Development and Investment Corporation Ltd. may sub-lease the leased land or part thereof for industrial purpose; including essential welfare and supporting services. Provided that in the case of Diamond and Gem Development Corporation to whom the land has already been leased out by RIICO for 99 years, the sub-lessee i.e. DGDC may further sublet and the terms and conditions and other provisions contained in the rules in so far as they relate to RIICO shall mutatis mutandis apply to DGDC also as if the land in question has been let out to them by State Government under Rule 11-A."
>
> (Emphasis added)

6. There has been further amendment to Rule 11-A of the Rules 1959 w.e.f. 12.10.2000, and the relevant part thereof reads as under:

> "In Rule 11-A of the said rules, after condition (iv) and before condition (v), the following new condition (iv-a) shall be inserted; namely:-
>
> (iv-a) The sub lessee of the Rajasthan State Industrial Development and Investment Corporation Limited may further sub-lease the sub-leased land or part thereof on such terms and conditions as may be mutually agreed between such sub- lessee and subsequent sub-lessee. The terms and conditions applicable to sub-lessee shall also mutatis mutandis apply to such subsequent sub-lessee".

7. Rajasthan State Industrial Investment Corporation Limited (Disposal of Land) Rules, 1979 (hereinafter referred to as `Rules 1979'), deals with the allotment of land by RIICO to entrepreneurs. Relevant rules thereof read as under:

> "16. The allottee shall not except with the written consent of the Corporation, be allowed to sublet the constructed premises for industrial purpose only which can be considered on following conditions:
>
> > i) The sub-letting of vacant and/or unutilized land in the industrial areas of the Corporation shall not be allowed.
> >
> > ii) That consent of the Managing Director be given to the allottee of the plot (owner) to sublet the whole or part of the constructed premises after the allottee has cleared all the outstanding dues of the Corporation and started the production at the allotted plot on the following conditions:
> >
> > iii) xx xx xx
> >
> > iv) Permission for transfer of surplus/unutilized land with the units which have come into commercial production shall be granted on payment of premium as may be decided by the Corporation from time to time which is presently equal to 50% rate of development charges at the time of such transfer of difference amount between the prevailing rates of development charges and the rates of development charges on which the allotment was made whichever is higher.
>
> 24. Cancellation- The Corporation shall have the right to cancel the allotment after issuing 30 days show cause notice to the allottee by the concerned Senior Regional Manager/Regional Manager on any breach of any of these rules, condition of allotment letter and terms of lease agreement."

8. It may also be pertinent to refer the relevant terms and conditions of lease deed dated 22.5.1989, which read as under:

"AND WHEREAS the lessor has agreed to demise and the lessor has agreed to take on lease, the piece of land known as plot no. SP- 1 Indusrial Area, Sanganer, Phase-II on "as is where is basis":

xx xx xx

2(b) That the lessee will bear, pay and discharge all service charges as may be decided by the lessor from time to time which for the present would be @ Rs.10.10 (Ten paisa per sq.mtrs.) per year from the date, the lessor provided as pucca links road in this area.

xx xx xx

d) That the lessee will erect on the demised premises …..and will commence such construction within the period of 6 months and will completely finish the same fit for use and start production within the period of 60 months from the date of these presents or within such the case of these presents, or within such the date of these presents or within such extended period of time as may be allowed by the lessor in writing at its discretion.

xx xx xx

g) That the lessee will provide and maintain in good repair a properly constructed approached road or path alongwith the event across drain to the satisfaction of the lessor/local Municipal Authority leading from the public/cooperation road to the building to be erected on the demises premises.

xx xx xx

(i) The lessee will not without the general prior consent in writing of the lessor transfer, sublet, relinquish, mortgage or assign his interest in the demised premises……..

xx xx xx

m) ……That lessee shall construct and complete the said building and put the demised premises with the buildings constructed thereon to use hereinabove mentioned within 54 calendar months from the date of

possession of the said land is handed over to him and in any case within 60 calendar months from the date of this agreement provided that the lessor may at his discretion extend the time hereinbefore provided if in his opinion the delay is caused for reasons beyond the control of the lessee. Provided that utilized land of the allotted plot of land shall revert to the Corporation on the expiry of the prescribed/extended period for starting production/ expansion of the unit.

xx xx xx

r) The lessee will in each year within 2 months from the expiry of the account in year supply to the lessor a copy of his profit and loss account pertaining to the accounting year and the business run by him in the demised premises.

3(a) Notwithstanding anything hereinbefore contained if there shall have been in opinion of the lessor any breach by the lessor…. or if the lessee fails to commence and complete the buildings in time and manner it shall be lawful for the lessor ….to reenter without taking recourse to the Court of law up on the demised premises or any part there of his name of whole and there on this demise shall absolutely cease and determine and the money paid by the Lessee by virtue of these preset shall stand forfeited to the lessor without prejudice to rights of the lessor here under with interest thereon at @19% per annum and the Lessee shall not be entitled to any compensation whatsoever.

xx xx xx

3(h) Every dispute, difference or question touching or arising out or in respect of this agreement to the subject matter shall be referred to the sole arbitrator, the Collector of the District wherein the leased plot is situated or a, person appointed by him. The decision of such arbitrator shall be final and binding on the parties."

Before entering into merits of the case, it is required to deal with the legal issues involved herein:

I. Approbate and Reprobate

9. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. (Vide: Nagubai Ammal Ors. v. B. Shama Rao Ors., AIR 1956 SC 593; C.I.T. Madras v. Mr. P. Firm Muar, AIR 1965 SC 1216; Ramesh Chandra Sankla etc. v. Vikram Cement etc., AIR 2009 SC 713; Anr., AIR 2011 SC 1869; Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited, (2011) 10 SCC 420; and V. Chandrasekaran Anr. v. The Administrative Officer Ors., JT 2012 (9) SC 260).

10. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.

II. Mutatis Mutandis - means

11. In M/s. Ashok Service Centre Anr. etc. v. State of Orissa, AIR 1983 SC 394, this court held as under:

> “Earl Jowitt's 'The Dictionary of English Law 1959)' defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn.1968) defines 'mutatis mutandis' as 'with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like…’Extension of an earlier Act mutatis mutandis to a later Act, brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the things changed, subject of course to express provisions made in the later Act….In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that, it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which

is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act…"

Similarly, in Ors., (2004) 4 SCC 113, the phrase 'mutatis mutandis' has been explained as under: "The expression "mutatis mutandis" itself implies applicability of any provision with necessary changes in points of detail…."

(See also: Mariyappa Ors. v. State of Karnataka Ors., AIR 1998 SC 1334; and Janba (dead) thr. Lrs. v. Gopikabai (Smt.), AIR 2000 SC 1771).

Thus, the phrase "mutatis mutandis" implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail.

III. Contractual disputes and writ jurisdiction

12. There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties. (Vide: Bareilly Development Authority Anr. v. Ajay Pal Singh Ors., AIR 1989 SC 1076; and State of U.P. Ors. v. Bridge Roof Co. (India) Ltd., AIR 1996 SC 3515).

13. In Kerala State Electricity Board Anr. v. Kurien E. Kalathil Ors., AIR 2000 SC 2573, this Court held that a writ cannot lie to resolve a disputed question of fact, particularly to interpret the disputed terms of a contract observing as under:

"The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. ….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…..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…. The contractor should have relegated to other remedies."

14. It is evident from the above, that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justiceiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

15. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

IV. Interpretation of terms of contract

16. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract.

Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. (Vide: United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, AIR 2004 SC 4794; Polymat India P. Ltd. Anr. v. National Insurance Co. Ltd. Ors., AIR 2005 SC 286).

17. In DLF Universal Ltd. Anr. v. Director, T. and C. Planning Department Haryana Ors., AIR 2011 SC 1463, this court held:

> "It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. ?It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation. As is stated in Anson's Law of Contract, a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept...Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large. The Court assumes that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency...In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly."

V. "As-is-where-is" – means

18. The phrase, "as is-where-is", has been explained by this Court in Punjab Urban Planning Development Authority Ors. v. Raghu Nath Gupta Ors., (2012) 8 SCC 197, holding as under: "We notice that the respondents had accepted the commercial plots with open eyes, subject to the abovementioned conditions. Evidently, the commercial plots were allotted on "as-is-where-is" basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on "as-is- where-is" basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage, etc. If the allottees were not interested in taking the commercial plots on "as-is-where- is" basis, they should not have accepted the allotment and after having accepted the allotment on "as-is-where-is" basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage, etc. were not provided by PUDA when the plots were allotted…"

(See also: UT Chandigarh Admn. Anr. v. Amarjeet Singh Ors., (2009) 4 SCC 660).

VI. "As if" – means

19. The expression "as if", is used to make one applicable in respect of the other. The words as if create a legal fiction. By it, when a person is deemed to be something, the only meaning possible is that, while in reality he is not that something, but for the purposes of the Act of legislature he is required to be treated that something, and not otherwise. It is a well settled rule of interpretation that, in construing the scope of a legal fiction, it would be proper and even necessary, to assume all those facts on the basis of which alone, such fiction can operate. The words "as if", in fact show the distinction between two things and, such words must be used only for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created. (Vide: Radhakissen Chamria Ors. v. Durga Prasad Chamria Anr., AIR 1940 PC 167; Commr. of Income-tax, Delhi v. S. Teja Singh, AIR 1959 SC 352; Ram Kishore Sen Ors. v. Union of India Ors., AIR 1966 SC 644; Ors., AIR 1984 SC 200; Ors, AIR 2000 SC 937; Paramjeet Singh Patheja v. ICDS Ltd. AIR 2006 SC 168; and Ors. (2008) 2 SCC 202).

20. In East End Dwelling Co. Ltd. v. Finsbury Borough Council, 1952 AC 109, this Court approved the approach which stood adopted and followed persistently. It set out as under:

> "The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

21. In Industrial Supplies Pvt. Ltd. Anr. v. Union of India Ors., AIR 1980 SC 1858, this Court observed as follows:-

> It is now axiomatic that when a legal fiction is incorporated in a statute, the court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The legal effect of the words 'as if he were' in the definition of owner in Section 3(n) of the Nationalisation Act read with Section 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mine in question, were to be treated as such though, in fact, they were not so. (Emphasis added)

22. The instant case is required to be decided in the light of the aforesaid settled legal propositions.

> The terms and conditions incorporated in the lease deed reveal that, the allotment was made on "as-is- where-is" basis. The same was accepted by the respondent-company without any protest, whatsoever. The lease deed further enabled the appellant to collect charges, in case it decided to provide the approach road. Otherwise, it would be the responsibility of the respondent-company to use its own means to develop such road, and there was absolutely no obligation placed upon the appellant to provide to the respondent the access road. As the respondent-company was responsible for the creation of its own infrastructure, it has no legal right to maintain the writ petition, and courts cannot grant relief on the basis of an implied obligation. The order of the High Court is in contravention of clause 2(g) of the lease deed.

23. The State of Rajasthan had acquired the land in exercise of its eminent domain and transferred the same to the appellant-RIICO after receiving the consideration amount and executed the lease deed in its favour. The State exercised its power in

transferring the land to RIICO under the Rules 1959. However, further allotment by RIICO to the respondent-company was under the Rules 1979. Therefore, the High Court committed an error treating that the whole case was governed only under the Rules 1959, and that Rules 1979 had no application at all.

24. The High Court recorded a finding, as regards the submission made on behalf of the appellant-RIICO, stating that the audit conducted by it showing various irregularities and pointing out the mis-appropriation of public funds by the respondent-company, was a matter entirely unrelated to the allotment and development of the said land. Rule 11-A of the Rules 1959, as amended created a legal fiction by which the respondent-company had become a lessee and the State of Rajasthan, the lessor and therefore the order passed by the appellant- RIICO, was wholly without jurisdiction, as after 4.11.1991, RIICO had no authority whatsoever, to cancel the allotment of land made in favour of the respondent-company, since it was only the State of Rajasthan that had the authority to cancel the said allotment; by not providing for an access road, the purpose for which allotment was made by RIICO stood defeated, and this was what had resulted in the delay of the development of the said land, and in such a fact-situation, cancellation of land was not permissible; there was a constructive obligation on the part of the appellant-RIICO to provide an approach road with respect to the land which was allotted; and that RIICO had failed to co-operate with the respondent-company to accomplish the task it had undertaken, and that the order of cancellation was liable to be set aside for lack of jurisdiction and for want of competence.

25. The aforesaid reasons given by the High Court are mutually inconsistent. When the High Court came to the conclusion that the appellant-RIICO had no competence to deal with the land and to cancel the allotment made in favour of the respondent-company, there was no justification to hold RIICO responsible for providing the approach road. Such a finding could be permissible only if the appellant-RIICO had competence to deal with the land in dispute.

26. The High Court also erred in holding that the provision of providing the access road was an obligation on the part of the appellant-RIICO, deciding this on equitable grounds. The terms of the lease deed clearly stipulated that in case the appellant-RIICO provides the access road, it will be vested with the right to collect the charges incurred by it from the respondent-company, therein, and in the alternative, it would be the obligation of the respondent- company to develop its own infrastructure, and the same would include development of the access road.

Therefore, the appellant-RIICO was not under any obligation to provide the said access road.

27. The interpretation given to the amended Rule 11-A of the Rules 1959 by the High Court, takes away the vested right of the appellant- RIICO in the title as well as in the interest that it had acquired in the property, as it had paid the entire amount for the land to the State when possession of land was handed over to it.

> Rule 11-A of the Rules 1959 was amended only to facilitate the respondent-company to grant further sub-lease and not to divest RIICO from its rights and title. It was found necessary in wake of difficulties faced by the respondent-company as it was not permissible for it to grant further sub-lease. Thus, the rule provided a deeming clause/fiction that for the purpose of sub-lease by the respondent- company to further allottees, it would be deemed that the State Government had executed the lease in favour of the respondent-company. The terms "mutatis mutandis", and "as if", used in the amended provisions of Rule 11-A of the Rules 1959 simply facilitated the sub- letting of a part of the premises by the respondent-company, and did not take away the title and rights that the appellant-RIICO had over the land.
>
> The Rule 11-A of the Rules 1959 has further been amended on 12.10.2000 enabling all the allottees of RIICO to sub-lease further. Thus, if the interpretation given by the High Court is accepted, the appellant RIICO looses all its lands and properties and rendered the development authority existing on papers only, without any status/authority.

28. The ultra activist view articulated by the High Court on the basis of supposed intention and imaginative purpose to the amendment act, is uncalled for and ought to have been avoided. It rendered the appellant-RIICO totally insignificant and irrelevant without realising that the appellant-RIICO had autonomous functioning, and the interpretation given by the High Court has devastating effect underlying its status, authority and autonomous functioning. In fact, by interpretation the High Court had conferred an authoritarian role to the State, taking away the right of appellant-RIICO on its property without realising that the amendment to Rule 11-A of the Rules 1959 had specifically been engrafted therein only, for the purpose of facilitating the respondent-company to grant further sub-lease. Thus, it is evident that the High Court decided the case on speculative and hypothetical reasons.

29. The terms incorporated in the lease deed itself provide for timely completion of construction and also for the commencement of production within a stipulated period. Records however, reveal that only 10% of total construction work stood completed by the respondent- company. No proper application was ever filed for seeking extension of time by the respondent-company, as per the Rules. We have been taken through the record.

> While providing justification for the non-completion of construction and commencement of production, in very vague terms, it was submitted by the respondent-company that extension of time was sought from statutory authorities. However, the said application did not specify how much more time the company was seeking, and that too, without meeting any requirements provided in the statutory rules.

30. According to clause 2(d) of the lease deed the entire project was to be completed within a period of five years i.e. by 25.5.1994. But it is evident from the material on record that construction was just made on the fraction of the entire land. Clause 2 (i) contemplated that, the lessee will not transfer nor sub-let nor relinquish rights without prior permission from the appellant-RIICO. However, it is evident from the record that the respondent-company had negotiated with a third party for development of the land.

31. The cancellation of allotment was made by appellant- RIICO in exercise of its power under Rule 24 of the Rules 1979 read with the terms of the lease agreement. Such an order of cancellation could have been challenged by filing a review application before the competent authority under Rule 24 (aa) and, in the alternative, the respondent- company could have preferred an appeal under Rule 24(bb)(ii) before Infrastructure Development Committee of the Board. The respondent- company ought to have resorted to the arbitration clause provided in the lease deed in the event of a dispute, and the District Collector, Jaipur would have then, decided the case. However, the respondent- company did not resort to either of the statutory remedy, rather preferred a writ petition which could not have been entertained by the High Court. It is a settled law that writ does not lie merely because it is lawful to do so. A person may be asked to exhaust the statutory/alternative remedy available to him in law.

32. In view of the above, the appeals deserve to be allowed. Thus, the appeals are allowed. Judgment and order impugned are set aside and the order of cancellation of allotment in favour of the respondent- company by the appellant is restored.

However, in the facts and circumstances of the case, there shall be no order as to costs.