

(2013) 04 CAL CK 0026

In the Calcutta High Court

Case No : Writ Petition No. 24542 (W) of 2010 with C.A.N. No. 7661 of 2011 with W.P. No. 11819 (W) of 2011, C.A.N. No. 7797 of 2011 with C.A.N. No. 7798 of 2011 with C.A.N. No. 7939 of 2011 with W.P. No. 23739 (W) of 2012

Arunangshu Chakraborty

APPELLANT

Vs

Bidhannagar Municipality and Others

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 9
Constitution of India, 1950 — Article 14, 21
West Bengal Municipal Act, 1993 — Section 12(3), 75, 80

Citation : (2013) 2 CALLT 700 : (2013) 4 CHN 603 : (2014) 1 WBLR 270 : (2013) 3 WBLR 824

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Arunangshu Chakraborty Party in Person W.P. 24542W of 2010, Mr. Bikash Ranjan Bhattacharyya, Mr. Sukumar Bhattacharyya in W.P. 11819W of 2011 and Mr. Amit Kumar Pan in W.P. 23739W of 2012, for the Appellant;Pradyamna Sinha and Mr. Billwadal Bhattacharyya for Bidhannagar Municipality, Mr. Sundarananda Pal, Bikash Kumar Mukherjee and Mr. Naba Kumar Das for State, Mr. Siddhartha Banerjee and Mr. Debaki Nandan Maity for Metro Railway, Mr. Asit Kr. Bhattacharjee and Mr. Somenath Gangopadhyay for respondent No. 1 (W.P. 23739(W) of 2012), Mr. Ramesh Dhora (W.P. 24542(W) of 2010) for Private respondent, for the Respondent

Final Decision : Disposed Off

Judgement

Arun Mishra, C.J.—The writ petitions being W.P No. 24542 (W) of 2010 and W.P. No. 23739 (W) of 2012 have been filed by way of public interest litigation praying for the relief to direct the respondent authorities to cancel the agreement executed on 09.10.2007 between the Bidhannagar Municipality and Institute of Education and Social Welfare. Prayer has also been made to cancel the agreement dated 17.12.2009 between Bidhannagar Municipality and Institute of

Education and Social Welfare. Prayer has been made to cancel the order of allotment of playground to Bidhannagar Municipality. Further prayer has been made to direct the respondents to demolish the illegal concrete construction and banquet hall, conference hall, bridal hall and other illegal constructions having no nexus with the development of sports activities. Prayer has been made to demolish the concrete construction and tower in the Central Park. On the other hand, Institute of Education and Social Welfare has filed another writ petition being W.P No. 11819 (W) of 2011 wherein it has been prayed that directions be issued to cancel, recall notice dated 15th July, 2011 issued by the Chairperson, Bidhannagar Municipality calling upon the Institute to remove all furniture, utensils and/or articles which were being used for commercial activities and to vacate the premises in question, failing which padlock shall be put thereon by the Municipality.

2. Pursuant to earlier direction of this Court, all the writ petitions were heard analogously.

3. It is averred in W.P 24542(W) of 2010 that there is a playground situated at Central Park, Sector-II, Salt Lake, Calcutta. On 14.03.1997 Executive Engineer, Design, Salt Lake, Recl. & Dev. Circle under Urban Development Department handed over the delivery of the playground to the Bidhannagar Municipality for exercising administrative control as well as maintenance of the said ground. On 13.04.2007 the Chairman, Bidhannagar Municipality informed the councilors that as per decision taken on 21.02.2007 in Chairman-in-Council meeting that the sports complex should be given for the purpose of running and maintenance to a private organization on public private partnership basis in equal share through tender. However, without any process of the tender the then Chairman of the Bidhannagar Municipality, Dr. Biswajiban Majumder, entered into an illegal memorandum of agreement on 09.10.2007 on behalf of Bidhannagar Municipality and Institute of Education and Social Welfare through its trustee, Arun Raolka. Later on 24.04.2009 Executive Engineer, Design, Salt Lake Recl. & Dev. Circle informed the Executive Officer, Bidhannagar Municipality that there is no mention of sports academy building or multi utility Bidhannagar Municipality Sports Academy Complex in the working map of Salt Lake City. It was further averred that on enquiry being made it came to the notice of the petitioner that on 16.06.2009 through Registrar, Forms and Societies that no such society in the name of Institute of Education & Social Welfare exists. On 17.12.2009 Chairman unauthorisedly entered into another agreement on behalf of Bidhannagar Municipality with the Institute of Education & Social Welfare for the purpose of handing over the possession of additional spaces at the ground floor and the roof to the realtor group under the guise of Institute of Education and Social Welfare. It is a further case that on 02.05.2010 an advertisement appeared in the newsletter published on behalf of Saltee Group showing that the group constructed sprawling lawn, spacious A.C. banquet halls, A.C. conference halls, A.C. hall on terrace, separate bridal rooms, automatic lift etc. in the playground situated at Central Park. It is a further case set up by the petitioner that

invitation card was issued on 21.08.2010 by which it became clear that Institute of Education and Social Welfare was not, in fact, involved in sports activities but the owners of the Saltee Infrastructure Ltd.,. Sri Arun Raolka invited his guests to the Banquet hall, A.C. Rooms etc., at the aforesaid Sports complex. Subsequently, on 06.11.2010 Deepawali greetings cards were distributed by Saltee Infrastructure Ltd. & Ors., showing that the banquet situated at Central Park Football Ground is one of many business establishments of the Saltee Group, a realtor company. Thus, it was contended that sports complex has been given to the Realtor Company in unauthorised manner by the Chairman of the Bidhannagar Municipality.

4. It is further submitted that playground was handed over by the Urban Development Department, Government of West Bengal, owner of the playground, to Bidhannagar Municipality for exercising administrative control as well as maintenance of the said ground. Thus, it was not open to the Municipality to transfer the said playground to any individual or private business house in lieu of money. No permission of occupation has been issued by the Chairman, Bidhannagar Municipality. The action of conversion of the playground by construction of banquet halls, A.C. conference hall, A.C. hall on terrace, separate bridal rooms, automatic lift etc., was illegally accepted. It was not open to the Bidhannagar Municipality being the custodian of the playground to lease out the land to the aforesaid realtor group and to allow private parties to construct hoardings for commercial advertisements. The clearance of Urban Development Department has also not been obtained by the Bidhannagar Municipality as well as by the Environment Department. Tenders were not floated before giving the land to the aforesaid realtor group. Bidhannagar Municipality had no authority to allot 550 sq. meters, land to any individual or profit making organisation. The playground could not have been put for use for wedding, birthday parties, anniversaries etc. It has been submitted that the agreements entered into are opposed to public policy in violation of Article 14 and 21 of the Constitution of India. It was not open to the Chairman of the Bidhannagar Municipality to execute any agreement with any private realtor. He was not competent to do so.

5. It is further averred in the petition that in the meeting of Chairman-in-Council of Bidhannagar Municipality, it was unanimously resolved that sports complex will be run and maintained on the basis of public private partnership. It was also decided to float tender for inviting the offers. There was no whisper to transfer the sports complex to the aforesaid process for the purpose of construction of banquet hall, conference hall etc., Copy of the minutes of meeting dated 13th April, 2007 has been filed as Annexure "P-3" to the petition. Agreement executed by the Chairman of Bidhannagar Municipality has been filed as Annexure "P-4" to the petition. It is further submitted that the Municipality illegally allowed the realtor in the guise of charitable trust to construct 0.90 meters wall all over the 275 meters boundary wall to construct four number of hoardings for commercial advertisement in the following manner:

- (a) to construct 0.90 mts. Illuminated hoarding all over the 275 mtr., long from boundary wall for commercial advertisement;
- (b) to construct four number of hoarding (size 40 x 20 feet) for commercial advertisement over the sides of the boundary wall;
- (c) to construct two number of towers (each upto 30 mtrs.) height on both corners for the commercial advertisement;
- (d) to furnish manage and run a first floor banquet hall and to construct a kitchen for a commercial purpose.
- (e) to maintain and manage lawn, passage and car parking area around the complex at the North and West side.

6. The agreement is purportedly dated 17.12.2009 though the stamp paper was purchased on 18.12.2009, the entire agreement was a malafide one and the agreement executed earlier was clearly a hoax. The Chairman of Bidhannagar Municipality transferred the entire two storeyed building to the realtor group and no place was left for any sports activities. Addition and alterations have been made in the building. Allotment of 20 cottahs of land made to the Institute of Education and Social Welfare was absolutely illegal and void and violative of the provisions of West Bengal Urban Land (Ceiling and Regulation) Act, 1976. The said land could not be distributed in a capricious manner. Municipality could not have authorised to change the use of the land as it was mere custodian. Such actions are illegal, without jurisdiction and arbitrary.

7. In the affidavit-in-opposition filed on behalf of respondent Nos. 3, 4 and 5 it is contended that new Board of Councillors have been constituted after fresh elections. In their meeting dated 17th June, 2010, it came to the notice of present Board of Councilors of Bidhannagar Municipality that several illegalities had been done with respect to the Sports Complex by the earlier Board. As such, Fact Finding Committee was constituted in the meeting dated 10th September, 2010. A report has been submitted by the Fact-Finding Committee.

8. On 3rd March, 1997, decision of the Government was communicated with regard to handover of permissive possession of the Sech Bhawan ground to the Bidhannagar Municipality for exercising administrative control as well as for maintenance. The Municipality was handed over the possession of the sports ground on 14.03.1997 for exercising administrative control as well as maintenance of said ground. Sometime in June, 2004 a plan for constructing two storied multi utility building of the Bidhannagar Municipality Sports Academy at Bidhannagar Municipal Sports Complex was considered by the then Chairman of the Bidhannagar Municipality and a plan was sanctioned and till 30th June, 2005 there was a construction of ground floor of the building and first floor was under construction and Completion Certificate thereof was not approved till 1st July, 2005.

9. The aforesaid respondents have also contended that from the record of the

Municipality it is reflected that on 7th February, 2007 Institute of Education and Social Welfare applied to the Chairman, Bidhannagar Municipality for lease of building along with an open area of the sports complex in Sector-II proposing certain terms and conditions. Identities and activities of respondent No. 6 and Executive Engineer are not clear. The Chairman-in-Council on 21st February, 2007 held a meeting and considered the proposal for handing over the part of the building situated at Bidhannagar Municipal Sports Complex to a non-government organisation. In the meeting, no name of the non-government organisation was mentioned. It was decided to hand over 7,000 sq. ft. area of the first floor to a private agency. In the meeting of the Board of Councilors on 7th March, 2007 and 14th March, 2007 no such matter came for discussion though it was an important matter but it was not placed for consideration of the Board of Councilors. On 21st March, 2007 another resolution was passed by the Chairman-in-Council to find out whether there is any possibility to construct another floor in the existing building of the sports complex. Again no name of non-government organisation was mentioned. On 13th April, 2004 a meeting was held of the Board of Councilors of Bidhannagar Municipality and it was decided that there should be no lack of transparency and tender should be floated on 50:50 basis to the private public partnership for handing over the area to non-government organisation and again the name of any non government was not mentioned in the resolution of the Board of Councilors of Bidhannagar Municipality. However, Dr. Biswajiban Majumder, Chairman of Bidhannagar Municipality on 10.05.2007 addressed a memo to the Trustee of Institute of Education and Social Welfare that Municipality has decided to lease out the first floor of Bidhannagar Municipal Sports Complex of the said Institute in accordance with the resolution made in the meeting of the Chairman-in-Council held on 21.02.2007 and subsequent ratification of the same in the meeting of the Board of Councilors held on 07.03.2007. The then Chairman had taken a decision on his own to lease out the building without floating any tender. Again matter was placed on 19.09.2007 to the Chairman-in-Council of Bidhannagar Municipality where it was decided that the first floor of the sports complex will be rented to the Institute of Education and Social Welfare and the final agreement will be signed soon as reflected from the annexure "R-14" which has been filed.

10. On 26.09.2007 a meeting was held by the Board of Councilors of the Municipality and in the said meeting one Councilor raised an issue about the decision relating to rent of first floor of the building of Bidhannagar Municipality Sports Complex and wanted detailed information about the same. It was stated that there should have been an open tender over which the then Chairman, Dr. Biswajiban Majumder informed that there was no lack of transparency and respondent No. 6 will pay Rs. 35 lacs per year to the Municipal Councilor and assured the house that there should be no damage to the said Sports Complex.

11. On 15.02.2008 Chairman informed the Trustee, respondent No. 6 to start work for addition and alteration and building is to be taken up as per sanctioned plan.

12. It is further mentioned that agreement dated 18th December, 2009 was executed by the Chairman for the private use of the third party. No such agreement dated 18.10.2009 was available in the office record of the Municipality and employee of Municipality was present at the time of registration and such registration was made in presence of the Chairman of the Municipality.

13. On 17.2.2011, Executive Officer of Bidhannagar Municipality lodged First Information Report with the Bidhannagar Police Station, Bidhannagar against Dr. Biswajiban Majumdar for commission of cognizable offences in connection with execution of agreement relating to Sports Complex, Central Park, Salt Lake. It is evident from the record of the Municipality that there is gross irregularities and illegalities in the matter of entering into agreements in relation to Sports Complex at Central Park, Salt Lake. No transparency was maintained. There was no proper and valid sanction of the Government and/or Municipality. The then Chairman had acted in colourable exercise of power not vested in him in law and had acted in abuse of his power and authority as a Chairman of the Municipality. His actions are mala fide, arbitrary, whimsical and actuated by malice in fact and in law, which are punishable under the provisions of Indian Penal Code and Prevention of Corruption Act.

14. In the additional affidavit filed by respondent Nos. 3, 4 and 5, the following illegalities have been pointed out:

(a) That no tender was floated for awarding the contract for Municipality Sports Complex;

(b) That no publication was made for the said project so far;

(c) The contract for Sports Complex was awarded in most illegal and arbitrary manner;

(d) The agreement between the Bidhannagar Municipality and the Institute of Education and Social Welfare was executed on 17th December, 2009 on a stamp paper which was issued on 18th December, 2009;

(e) The agreement was executed by and between Bidhannagar Municipality and Institute of Social Welfare on 9th October, 2007 and the Institute was allotted an area of Sports Complex of 20.60 cottah at a payment of non-refundable sum of Rs. 20 lakhs.

(f) The agreement executed by and between Bidhannagar Municipality and Institute of Education of Social Welfare on 17th December, 2009 the area allotted in favour of the Institute was increased to 40.00 cottahs and the amount concerned of Rs. 20 lakhs became adjusted security deposit;

(g) The agreement dated December, 2009 in fact a substitution agreement to the agreement dated 9th October, 2007;

(h) The agreement dated 09.10.2007 was executed before the joining the present Executive Officer;

- (i) The agreement dated 17.12.2009 was executed without a knowledge of present Executive Officer, who has not signed the same;
- (j) The agreement dated 9th October, 2007 and 17th December, 2009 was signed by the then Chairman, Bidhannagar Municipality in the capacity of licensor without having any jurisdiction to do the same;
- (k) Sri Surya Prakash Bagla illegally constructed amongst other construction, a Banquet Hall in the football ground by the name of "Vedas";
- (l) Sri Surya Prakash Bagla is the actual beneficiary of the Institute of Education and Social Welfare;
- (m) The Institute of Education and Social Welfare is a substitute of SALTEE Group represented the said Mr. Bagla;
- (n) That the illegal commercial activities in the football ground by Surya Prakash Bagla is under the veil of the Institute of Education and Social Welfare;
- (o) The Urban Development Department, Government of West Bengal handed over the site in question to the Bidhannagar Municipality only for the purpose of administrative control and maintenance over the same and the action undertaken by the then Chairman, Bidhannagar Municipality which are in excess of his jurisdiction;
- (p) No Completion Certificate has ever been issued by the Bidhannagar Municipality for the construction raised in the subject Sports Complex.

15. It is further contended in the additional affidavit that on 28.12.2010, it was decided to stop all the activities of the said Sports Complex Building immediately. A notice was issued to the respondent Nos. 6, 7 and 9 about their illegal and unauthorized activities acts and actions in Sports Complex at Central Park, Salt Lake which was duly received by them.

16. In the affidavit-in-opposition filed by the State Government, it is contended that the area was handed over to Municipality permitting permissive possession of the ground for exercising administrative control as well as for maintenance after due observance of necessary facilities. The area was given for maintenance and for conducting sports activity to the Municipality. Executive Engineer (Design) submitted a report by a memo dated 28th February, 2011 to the Joint Secretary, Government of West Bengal, Urban Development Department and informed that there is a two storied building in the Sports Complex in the ground floor of the building as has been constructed and there is big wedding hall at the first floor and a large banquet hall with kitchen and toilet for ceremonial programme. The aforesaid activities were undertaken by the Bidhannagar Municipality without taking prior permission from the Urban Development Department. In view of the permissive possession granted to the Bidhannagar Municipality, the Municipality had no right to perform these activities. Accordingly, a memo dated 24th March, 2011 was issued by the Joint Secretary,

Government of West Bengal to the Executive Officer, Bidhannagar Municipality requiring the Municipality to restore the land to its original condition, failing which they would take the possession of the land. The copy of the communication dated 24th March, 2011 has been filed as Annexure R-5 to the affidavit-in-opposition and the Municipality was asked to hand over the possession back to the State Government, failing which the State Government would take back the possession of the land.

17. On 15.7.2011, order was passed by the Bidhannagar Municipality, which reflects that commercial activities were still carried on. The respondent No. 6 was asked to stop the commercial activities. There is no clearance certificate issued.

18. Affidavit-in-opposition has been filed by respondent No. 6 wherein it has been averred that no portion of the playground has been transferred under any of the agreements in question. It has been stated that the building was sanctioned by Bidhannagar Municipality and the same stands in the name of the Municipality and it was the duty of the Municipality to issue the completion certificate. It was denied that any portion of the football ground was converted into banquet hall. It was stated that the subject matter of dispute is amenable to arbitration and the respondent No. 6 has also initiated proceeding u/s 9 of the Arbitration and Conciliation Act, 1996 before a competent Court of law and an order of status quo has been passed by the said Court. It was denied that the proceeding u/s 9 of the Arbitration and Conciliation Act, 1996 was instituted in a mala fide manner or that the ex-parte order of status quo was obtained unfairly and in an illegal manner.

19. In the affidavit-in-opposition filed by respondent No. 6 to the supplementary affidavit filed by the petitioner it has been averred that only right of use has been granted in favour of respondent No. 6 as the respondent Municipality was unable to maintain the sport complex. It has been stated that no illegal activities were carried on in the sports complex and Rupees 70 lakhs have been paid to the Bidhannagar Municipality in terms of the aforesaid agreements. It has been denied that W.P. No. 11819 (W) of 2011 was filed suppressing material facts or that any order was obtained by practicing fraud on the floor.

20. In W.P. No. 11819 (W) of 2011, Institute of Education and Social Welfare has averred that it is a charitable trust and that Bidhannagar Municipality granted license to it to occupy the first floor of sports complex building in the land in question for valuable consideration in terms of the agreement dated 9.10.2007. Subsequently by another agreement dated 18.12.2009, area in the ground floor and the roof of the said building was also settled in favour of respondent No. 6. The Municipality also granted permission to make further construction in the sports complex. Respondent No. 6 applied for trade license and as the same not being granted, Institute had initiated proceeding against the Municipality. W.P. No. 24542 (W) of 2010 and W.P. No. 23739 (W) of 2012 were instituted as public interest litigations challenging the aforesaid lease agreements. Notice was issued by the Municipality to stop all construction activities at the complex. Respondent

No. 6 took out application u/s 9 of the Arbitration and Reconciliation Act, 1996 before the learned District Judge, Barasat and obtained an ex parte order of status quo. Request for arbitration was sent to the Municipality.

21. As impugned notice dated 15.7.2011 directing respondent No. 6 to remove all furniture, utensils, etc. relating to commercial activities and to vacate the premises was issued, respondent No. 6 instituted the instant writ petition.

22. The Municipality filed affidavit-in-opposition in the said writ petition opposing the reliefs sought for therein.

23. It was submitted by the petitioner in person and the learned Counsels appearing on behalf of the petitioners in the other writ petitions that the action of the Chairman was wholly unauthorised, illegal and the agreements which have been executed may be cancelled. The Chairman had no authority to execute the leases on behalf of the Municipality. The Municipality had no authority to lease out the land to the respondent No. 6. In fact, the respondent No. 6 is not carrying on any educational or social activity but is a realtor as apparent from the documents on record. The Sports Complex could not have been used for the purpose of marriage ceremony, conference hall, banquet hall etc. putting up the hoardings are entirely illegal and all such constructions ought to be ordered to be dismantled. No permission from the Urban Development Department, Government of West Bengal has been obtained. Thus, it was not open to the Municipality to hand over possession of the land to the respondent No. 6. The transaction is illegal and mala fide and the criminal cases have been lodged against the Chairman of the Municipality under the provisions of the Indian Penal Code and Prevention of Corruption Act. Thus, the writ petitions may be allowed.

24. It was submitted by Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel appearing for the respondent No. 6, Institute of Education and Social Welfare that the respondent No. 6 has acted bonafide. He has applied for grant of lease which was accorded by the various resolutions passed by the Chairman of the Municipality and the Municipality has also ratified the action of the Chairman. It was also submitted that entire land vested in the Municipality under the provision of section 75 of the West Bengal Municipal Act, 1993, (hereinafter referred to as the Act of 1993). No notification has been issued so as to indicate that land had remained with the Urban Development Department. Section 80 of the Act, 1993 has also been referred to by the learned Senior Counsel. The play ground is being substantially maintained. The activities do not cause any hindrance to the Sports Complex.

25. It is apparent from the various documents on record that the area in question as Sports Complex was earlier owned by Urban Development Department, Government of West Bengal. It was handed over on 3rd March, 2007 by the Urban Development Department, Government of West Bengal to the Bidhannagar Municipality to enjoy permissive possession of the play ground in front of Bikash Bhawan for exercising administrative control as well as

maintenance. It was, therefore, directed that the ground may be handed over to the Bidhannagar Municipality. The relevant portion of the communication dated 3rd March, 2007 is quoted below;

Government of West Bengal Urban Development Department 18, Rabindra Sarani, Calcutta-700 001.

No. 917-UD/0/M/SL(Admn)/45-6/97

dated 3rd March, 1997

From: The Deputy Secretary to the Government of West Bengal

To: The Executive Engineer, Design, Salt Lake Reclamation & Development Circle, Sech Bhawan, Calcutta-700 091.

Subject: Handing of Sech Bhawan ground in front of Bikash Bhawan to Bidhannagar Municipality.

The undersigned is directed to state that it has been decided to handover the permissive possession of the Sech Bhawan ground in front of Bikash Bhawan to Bidhannagar Municipality for exercising administrative control as well as for maintenance.

The undersigned is further directed to state that the aforesaid ground may accordingly be handed over to the Bidhannagar Municipality for exercising administrative control as well as for maintenance after due observance of necessary formalities.

This cancels this Department order No. 583- UD/O/M/SL(Admn)/45-6/97 dated 10.2.97.

Sd/- Deputy Secretary, Government of West Bengal.

26. It is also apparent from the return filed by the State of West Bengal that no permission of the Urban Development Department, Government of West Bengal had been obtained by the Bidhannagar Municipality for letting out the land and the Municipality itself was holding the possession for mere administrative control and maintenance only. It was not open to the Municipality to enter into the agreements dated 9.10.2007 and 17.12.2009. The first agreement was entered into on 9th October, 2007 in which it has been mentioned that the licensor i.e. Bidhannagar Municipality has also constructed two storied building to facilitate the sports activities and has incurred huge cost towards the same. The licence agreement indicate that the area is 20.60 cottahs of the land was given and in second schedule the entire first floor of two storied building was erected on the said sports complex together with further extension and/or construction as per the proposed plan and in third schedule, provision was made with respect to construction of hoarding and towers, banquet hall etc. In the further agreement dated 17.12.2009 executed by the Chairman on behalf of the Municipality and Institute of Education, Social Welfare, 45.00 cottahs of land was additionally

given of sports complex. In Schedule "A" ground floor measuring about 214.75 sq. mt. was given. Schedule "B" deals with the sports complex building and Schedule "C" deals with the demised part. The said schedule deals with the other licenced facilities and privileges whereas schedule "D" contained the provisions with respect of licence of additional area granted by the aforesaid Deed. Schedule "E" contained licenced premises and other licenced facilities and privileges such as banquet hall etc.

27. It is apparent that the action of the Bidhannagar Municipality was wholly unauthorized while permitting the unauthorized construction of the premises. It was not open to the Bidhannagar Municipality to enter into the aforesaid agreement with the respondent No. 6.

28. Particularly, when the property like sports complex was handed over to the Bidhannagar Municipality and the land was held in public trust for a particular purpose but was handed over to respondent No. 6 for unauthorised commercial exploitation, there was palpable breach of trust committed by the Bidhannagar Municipality and the same was thus clearly impermissible. Such land was held for the public purpose of sports activity and it was the duty of the Bidhannagar Municipality to maintain it for the purpose it was handed over to it. The conversion of the sports complex into banquet hall or ceremonial purposes etc. was wholly impermissible and illegal, unauthorised and was clearly arbitrary and against the provisions contained in the Act of 1993. As a matter of fact, it appears that the Chairman himself has acted as a law unto himself and had entered into various agreements personally when he was not supposed to even sign the agreements on behalf of the Bidhannagar Municipality.

29. In M.C. Mehta Vs. Kamal Nath and Others, it has been laid down that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. In our opinion, the doctrine enjoins upon the Government to protect the resources for the enjoyment of general public rather than to permit the use for private ownership or commercial purposes. The Government is bound to act as per public interest. Firstly, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public and secondly, the property may not be sold, even for a fair cash equivalent.

30. In the case of Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, , the Apex Court considered the aspect of Public Trust Doctrine. The public property must be maintained for particular types of use; either traditional uses or some uses particular to that form of resources. The principle of Inter-General Equity has also been taken into consideration. The Apex Court has laid down thus:

67. The responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave

rise to the principle of "state responsibility" for pollution emanating within one's own territories (corfu channel case, ICJ Reports (1949) 4). This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.

Sustainable Development

68. The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate between the developmental and economic needs and that of the environment is an enduring one, since if environment is destroyed for any purpose without a compelling developmental cause. It will most probably run foul of the executive and judicial safeguards. However, this Court has often faced situations where the needs of environmental protection have been pitched against the demands of economic development. In response to this difficulty, policy makers and Judicial bodies across the world have produced the concept of "sustainable development". This concept, as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) defines it as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". Returning to the Stockholm Convention, a support of such a notion can be found in paragraph 13, which states.

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

74. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman Times, was enunciated in its modern form by the US Supreme Court in *Illinois Central Railroad Company v. People of State of Illinois*, (1892) 146 US 537 where the Court held:

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.

(....) the state holds the title to the bed of navigable waters upon a public trust,

and no alienation or disposition of such property by the State. Which does not recognize and is not in execution of this trust is permissible.

What this doctrine says therefore is that natural resources, which includes lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape where by it encompasses the entire spectrum of the environment.

76. The Supreme Court of California, in the case of *National Audubon Society v. Superior Court of Alpine Country* 33 Cal. 419 also known as the Mono Lake case summed up the substance of the doctrine. The Court said:

Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a nugatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of Judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, [Joseph L. Sax "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention". *Michigan Law Review*, Vol. 68 No. 3 (Jan. 1970) PP 471-566)]. According to Prof. Sax, whose article on this subject is considered to be a authority, three types of restrictions on governmental authority are often thought to imposed by the public trust doctrine [ibid]:

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. the property may not be sold, even for fair cash equivalent;
3. the property must be maintained for particular types of use. (I) either traditional uses, or (ii) some uses particular to that form of resources.

77. In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.

79. Further the principle of "Inter-Generational equity" has also been adopted while determining cases involving environmental issues. This Court in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others, held as under:

The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1 - Man has the fundamental right to freedom equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2 - The natural resources of the earth, including the air, water, hinds, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning of management, as appropriate.

89. The set of facts in the present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya. The Great, 1500 A.D., where the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division Bench of the High Court of Andhra Pradesh despite there being overwhelming evidence of the tanks being in existence and where being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. The Division Bench of the High Court, in the pugned order, has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources.

91. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the community and alienate the property to any other person or body.

(emphasis added)

31. In the case of Jagpal Singh & Ors. v. State of Punjab & Ors. (Civil Appeal No. 1132/2011 decided on 28.1.2011) the question arose for reservation of pond. Direction was given to preserve the land for common use of the villagers of the village. In the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, the Apex Court ordered restoration of a park after demolition of shopping complex constructed at the cost of over Rs. 100 crores.

32. In the case of Friends Colony Development Committee Vs. State of Orissa and Others, , the Apex Court held that principle that there should not be

compounding of unsanctioned construction applies with greater force in cases of encroachment of village common land. Even if the Government orders has been issued permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money, such government orders are illegal and should be ignored.

33. In the case of Hinch Lal Tiwari Vs. Kamala Devi and Others, the Apex Court has held that land recorded as "pond" should be used for that purpose and such property should not be frittered away in collusion with the authorities or officials. In the case of M.C. Mehta Vs. Union of India (UOI) and Others, "precautionary principle" has taken into consideration by the Hon"ble Supreme Court and construction activity in the close vicinity came up for consideration. It was ordered to be stopped.

34. In the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, , the Apex Court considering the preservation of the open space reserved for public park in development scheme duly approved and published under the Act, and held that the same could not be converted into a civic amenity site for the purpose of hospital, nursing home and allotted to a private person or body of persons for that purpose. Such action would be invalid and ultra vires being contrary to the object and purpose of the Bangalore Development Authority Act, 1976. It was further held that space reserved for public park under the development scheme cannot be converted into hospital or nursing home and to allot the site in favour of a private body by the development authority at the instance of the Chief Minister of the State. It was also held that the entire proceeding before the State Government suffered from absence of jurisdiction. Even the exercise of power was vitiated and ultra vires. Therefore, the order of the Government held to be null and void and without jurisdiction. It was also observed that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for its action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Public interest or general good or social betterment has no doubt priority over private or individual interest.

35. In the case of Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, the land reserved for park or school including nursery school as indicated in the original plan and as allotted by Delhi Development Authority to respondent No. 2 for nursery school was considered and it was held by the Apex Court that the same amounted to misuse of power and illegal and was ordered to be cancelled. Some construction had been raised on the land by the respondent was held to be irrelevant consideration and allotment being illegal, construction was held to be unauthorised and ordered to be dismantled.

36. In the case of Virender Gaur and Others Vs. State of Haryana and Others, it has been observed that play ground etc. had to be preserved. The Apex Court observed thus:

11. It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the Municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli the touchstone of prospective operation of our order.

37. In the case of Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, the Municipality illegally gave sanction to construct a cinema building in contravention of Town Planning Scheme. The resolution was quashed and it was held that illegal construction materially affects the right to or enjoyment of the property by persons residing in the residential area.

38. In Krishan Lal Gera Vs. State of Haryana and Others, sport stadium at prime locality meant for sports and public benefits had been leased out for 99 years by District Administration without inviting tender and private club misusing stadium and used it for commercial purposes like marriage functions/parties and recreational activities like bar, restaurant etc. It was held that PIL was maintainable in such cases. The Apex Court has further held that whenever nepotism, favouritism and unwarranted misuse of government largesse by private interests frustrates schemes for public benefit, it is the duty of the High Courts to strike at such action. It is necessary for creation of a sports ground, encouraging sports, which is a part of human resource development. High Court is bound to interfere in such matter to protect the public interest when blatant misuse is brought to its notice. High Court was directed to entertain PIL, monitor the use of stadium concerned and pass appropriate directions addressing detailed issues framed by the Hon'ble Supreme Court. The Apex Court held thus:

22. Creating a sports ground, encouraging sports is a part of human resource development which is the Junction of the State. No part of the stadium or sports grounds can be carved out for non-sport or commercial activities to be run by recreational clubs or by private entrepreneurs. Recreational clubs are not sports clubs.

Nothing prevents the Municipal Corporation or District Administration from running these sports facilities either directly or through registered associations without any restriction as to membership. After all human resource development and the health and welfare of the citizens is one of the main functions and responsibility of the Governments.

26. A sports complex cannot be converted into a recreation club. Recreational clubs usually have provisions for recreation with swimming pool, tennis, badminton, table tennis (indoor and outdoor sports), restaurant with bar, and lounges and areas for gathering, interaction and functions. Merely because a recreational club has provisions for some, sports activity like badminton or tennis, it does not become a sports club. Nor can a sports stadium belonging to the Government with special infrastructure created for sports, athletes and sports-persons can be converted into a recreational club. Nor can a stadium complex be used for non-sporting recreational activities or for holding marriages and other functions, unless it had been planned in a manner providing for a recreational club. Persons experienced in sports administration and sports-persons should manage the stadiums and not the Managing Committee of the recreational clubs.

28. If a chunk of a government stadium, being prime land in the heart of the city meant for developing sports and athletics is misused or illegally allowed to go into private hands, it cannot be said that no public interest is involved. While the High Courts are not expected to take policy decisions in regard to sports administration and infrastructure, nor expected to supervise the running of the sports stadiums, they are bound to interfere and protect public interest when blatant misuse is brought to their notice. The High Courts should direct the authorities concerned to perform their duties and take action in regard to the irregularities, omissions and negligence, so that the interest of the public, particularly human resources development, could be protected.

39. In the case of *J. Jayalalitha Vs. Government of Tamil Nadu and Others*, the question came up before Their Lordships for use of stadiums for non-sports purposes. Special permission granted for non-sports purpose of sports stadium despite ban was questioned. It was held that any taxpayer in the State has a right to challenge misuse or improper use of any public property by anyone, including the political party. Certain directions were issued by the Hon'ble Supreme Court even for examination for temporary use for preservation of the stadium.

40. In the case of *Vellore Citizens Welfare Forum Vs. Union of India and others*, the Apex Court considered the question of sustainable development and precautionary principle of the Court. In the case of *Machavarapu Srinivasa Rao and Another Vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others*, the Apex Court considered the question of granting permission for construction of temple in land earmarked for park in development plan. The action was set aside and permission to construction temple was

quashed. The Apex Court has laid down thus:

20. An analysis of the above noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed u/s 12(3).

22. The view taken by us on the legality of the order dated 30.3.2010 finds support from the Judgment of this Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, In that case, allotment of land, which was shown as open space in the sanctioned development plan, for construction of a nursing home was challenged on the ground that the State Government and the Bangalore Development Authority did not have the jurisdiction to make such allotment. The learned Single Judge negatived the challenge but the Division Bench allowed the appeal and quashed the allotment. The judgment of the Division Bench was approved by this Court. R.M. Sahai, J., who delivered the main judgment highlighted the importance of reservation of land for the public park in a development plan and adversely commented upon use thereof for construction of nursing home in the following words: (Bangalore Medical Trust case, SCC p.80, para 36)

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a "gift from people to themselves". Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the ED Act itself provided for reservation of not less than 15 percent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is

prohibited u/s 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low-lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

41. Applying the aforesaid principle we are of the considered opinion that sports complex and sports ground could not have been permitted to be used by Bidhannagar Municipality for which agreements have been entered into. Thus, agreements are illegal and contrary to the Public Trust Doctrine and liable to be quashed only on this ground.

42. Coming to the various other illegalities galore in the transactions in question, it is apparent that the State Government has not been consulted and the State Government has also issued a letter for taking over the possession for breach of conditions on which possession had been handed over to the Municipality. The Municipality has acted in serious breach of trust for which the land was handed over to it. It is also apparent that initially it was decided that tender should be floated. No N.I.T. was issued nor tenders were invited and in the facts and circumstances of the case it is apparent that Chairman has advanced undue favour to the respondent No. 6 for the reasons best known to him which was obviously arbitrary and impermissible. As no tender was floated for awarding the contract for the sports complex. Thus, action was clearly illegal and arbitrary. Even otherwise it was arbitrary, land was held in public trust could not have been given for the purposes raising questions and in the method and manner in which it has been done.

43. The method and manner in which the agreements dated 9th October, 2007 and 17th December, 2009 entered into by the Chairman of Bidhannagar Municipality was clearly impermissible and illegal. The Chairman had no authority to execute the aforesaid agreements as per the provisions contained in the Act of 1993. There was no authorisation issued in favour of the Chairman or Chairman-in-Council or Board of Councillors to execute the aforesaid agreements. Such documents were executed before joining of the present Executive Officer and signed by the then Chairman.

44. Agreement dated 17th December, 2009 was entered into by signing by the Chairman in the house of a third party. The stamp was purchased on 18th December, 2009, whereas the agreement was signed on 17th December, 2009 and the copy of the agreement was not available in the record of the Municipality as stated in the affidavit-in-opposition filed on behalf of the respondents No. 3, 4 and 5. Thus, it is apparent that the Chairman had acted illegally, arbitrarily and mala fide and in wholly unauthorised manner in the facts of the case while

executing the agreement himself in excess of his authority. The agreement dated 17th December, 2009 was not signed by the Executive Officer of the Municipality.

45. It is also apparent that the respondent No. 6 illegally constructed Banquet Hall in the football ground by the name of "Vedas". It also appears that the respondent No. 6 Institute of Education and Social Welfare, is an alter ego of a realtor group namely Saltee Group as apparent from the documents filed by the petitioner being newsletter and greeting cards issued by it. It appears that Surya Prakash Bagla is the actual beneficiary of the Institute of Social Welfare and respondent No. 6 is a facade of Saltee Group represented by Mr. Bagla.

46. Illegal commercial activities in the football ground made by the respondent No. 6 are wholly impermissible and unauthorised and against the concept of the Public Trust Doctrine. Such area has to be exclusively used only for the purpose for which it has been held and was required to be maintained for this purpose only by the Municipal Council. Thus, the Chairman/Municipality has exceeded the authority and jurisdiction and the same is against Public Trust Doctrine.

47. It is apparent that the State Government as well as Municipal Council had ultimately taken action and had issued order of stoppage of the work. The Municipality had issued communication dated 29th December, 2010. The State Government had also issued communication on 24th March, 2011 as there was serious breach of trust committed by the Municipal Council.

48. Reliance was placed by Mr. Bhattacharya, learned Senior Counsel appearing on behalf of the respondent No. 6, on the provisions contained in section 75 of the Act of 1993. Section 75 provides that moveable and immovable properties of the categories enumerated in the section within the limits of the Municipal area shall vest in the Municipality unless the State Government otherwise directs by a notification in the official gazette. Clause (a) of the section 75 of the Act of 1993 provides all vested public lands not "belonging to any Government department or statutory body or corporation" shall vest in the Municipality. There are other vesting also in the Municipal Council as provided in the various other clauses. However, the sports complex was with the Urban Development Department and its ownership with the Urban Development Authority had not been questioned before us. Reliance on section 75 of the Act of 1993 is misplaced as Municipality itself was not the owner, could not have leased out the property, even otherwise when the respondent No. 6 is claiming through the Municipality and the latter had been handed over the land for administration and management only for the sports complex, it does not lie in the mouth of the respondent No. 6 to urge that the land is held by the Municipality in any different capacity. Being privy it cannot question the right of the licensor or enjoy higher right than the grantor.

49. Reliance has also been placed on section 80 of the Act of 1993. Section 80 deals with disposal of property belonging to a Municipality. Clause (a) thereof contains that the Chairman-in-Council may sell or grant lease of or otherwise dispose of by public auction any movable property belonging to the Municipality.

In the instant case, as the property itself did not belong to the Bidhannagar Municipality, the Chairman-in-Council had no authority to do so. As provided in Clause (b) of section 80 of the Act of 1993, the Board of Councillors with the prior approval of the State Government may for valuable consideration let out on hire, grant lease of or sell or otherwise transfer any immovable property belonging to the Municipality but not required for carrying out the purposes of this Act. Prior approval of the State Government is also necessary for letting out on hire, sell when decision is taken by the Board of Councillors. When the property itself did not belong to the Municipality and even otherwise had it been permissible without permission of the State Government, it could not have ventured to enter into the agreements in question and it was not open to dispose of the property. The provisions contained in section 80 of the Act of 1993 are not attractive even otherwise. There was no compliance of the provisions of section 80 of the Act of 1993.

50. It was further submitted on behalf of the respondent No. 6 by Mr. Bhattacharyya, learned senior counsel that an interim injunction has been granted maintaining status quo in the proceeding u/s 9 of the Arbitration and Conciliation Act, 1996 by the learned District Judge. The order was passed on 18.02.2011. However, it has been admitted by the learned counsel appearing on behalf of respondent No. 6 that so far application u/s 11 of the Arbitration and Conciliation Act, 1996 has not been filed.

51. In the instant case we have found on merits that after hearing the parties and Respondent No. 6 the transaction was not only illegal, it was wholly unauthorised and in contravention of the provisions contained in Bengal Municipal Act, 1993.

52. We find that during pendency of the aforesaid public interest litigations being W.P. No. 24542 (W) of 2010 and W.P. No. 23739 (W) of 2012, respondent No. 6 had invoked section 9 of the Arbitration and Conciliation Act, 1996 and had obtained ex parte order of status quo against respondent municipality in contemplation of initiation of arbitration proceedings. Such order was passed on 18.02.2011. Till date, no steps have been taken by respondent No. 6 by taking out an application u/s 11 of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator and/or initiate any arbitration.

53. It is settled law that an order of injunction u/s 9 of the Arbitration and Conciliation Act, 1996 is in contemplation or in aid of an arbitration proceeding. The conduct of respondent No. 6 in not taking steps in appointing an arbitrator through the statutory mechanism u/s 11 of the aforesaid Act on the one hand, and the institution of the writ proceeding being W.P. No. 11819(W) of 2011 after obtaining the interim order of status quo clearly shows that such interim relief was procured as an abuse of process of the Court and not as a genuine effort to protect the interest of respondent No. 6 in contemplation or in aid of any future arbitration proceeding. A feeble attempt has been made to justify that no steps were taken in view of the pendency of the public interest litigation. Such

explanation is patently absurd inasmuch as the pendency of such litigation did not deter respondent No. 6 in seeking interim relief of status quo and therefor, in the peculiar facts of the instant case, it is evident that the interim order of status quo procured by respondent No. 6 is a patent abuse of the judicial process to hinder the process of judicial review by this Court. Court cannot remain idle when such patent abuse of the judicial process is brought to its notice. The continuation of the order of status quo in the proceeding u/s 9 of the Arbitration and Conciliation Act, 1996 is manifestly an obstruction to the process of administration of justice and hinders the process of judicial review of public action.

54. Furthermore, the prayer in the public interest litigation is to adjudicate the action of Bidhannagar Municipality in settling the land in question in favour of respondent No. 6 when they had no authority to do so. Such arbitrary, unauthorized and partisan exercise of power in the public law realm in utter disregard to the public trust doctrine vested in such authorities cannot be the scope of adjudication of any arbitration proceedings.

55. Moreso, the owner of the land in question, namely, State of West Bengal is not a party to such arbitration agreement. We, therefore, have proceeded to adjudicate the impugned action of Bidhananagar Municipality to grant lease agreements to respondent No. 6 to carry on commercial activities in a playground and to make further construction thereon in utter disregard to the purpose for which permissive possession of such land had been given to the municipality, that is, sporting activities. The scope of those proceedings are therefore much wider and are in the public law realm to inquire into the unauthorized and illegal activities Bidhannagar Municipality in making such illegal, and unauthorized grant to respondent No. 6. The initiation of proceedings under the Arbitration and Conciliation Act, 1996 and/or interim order of status quo therefore cannot in our considered view be construed to restrain on our powers under the writ jurisdiction to adjudicate illegal, unauthorized action in public law domain by the aforesaid municipality.

56. Once we have adjudicated the matter on merits after hearing the parties and recourse had not been taken by the respondent No. 6 to the arbitration proceedings u/s 11 of the Act, no further exercise of arbitration can be permitted in the matter. Once we have adjudicated after hearing the parties that transaction is illegal and cannot be allowed to sustain and there was no such authority with the Municipal Councilors to enter into such agreements and the agreements are in serious breach of public trust as the playground could not have been permitted to be converted into banquet hall etc., as has been done, we find that there is absolutely no justification to continue with the order passed by the learned District Judge directing maintenance of status quo cannot be permitted to prevail, the same is hereby set aside in exercise of our power of judicial superintendence. No further reference is called for in the arbitration proceedings due to the decision of the case on merits in the present matter. The

order passed by the learned District Judge dated 18.02.2011 is hereby vacated. It is made clear that the same shall not be used in any proceedings by the respondent No. 6 for protecting the possession or for continuing the activities being undertaken under the guise of the agreement any further.

57. We direct the Municipal Council to take back the possession within a period of three weeks from today and to dismantle the structure in accordance with law and there shall be no activity as contained in the agreement dated 09.10.2007 by the respondent No. 6. The advertisements, hoardings etc., which have been put up are ordered to be removed forthwith and no more the sports ground shall be used by the respondent No. 6. Under the agreement it shall be used only under the order of the State Government for the purpose of sports ground only. No other activity shall be permissible in the premises and the ground in question, which are not connected with the sports.

58. We quash and set aside the agreements dated 09.10.2007 and 17.12.2009 directing restoration of the possession. It is to be maintained by the Municipal Council. It is also open to the State Government to take steps and in case so desires to take back the land from the Municipal Council as it has committed serious process of breach of trust by entering into the transaction in question.

59. It is submitted by the learned counsel appearing on behalf of the added respondent, the then Chairman of the Bidhannagar Municipality, that criminal case already pending consideration before the competent Court and observation made in the matter should not influence the decision. Suffice it to say that criminal case is to be decided on the evidence to be adduced before the Court with respect to the criminal liability.

60. The writ applications being W.P 24542(W) of 2010 and W.P 23739(W) of 2012 are allowed with the aforesaid directions.

61. In view of our aforesaid findings, W.P No. 11819(W) of 2011 stands dismissed. Cost of Rs. 50,000/- (Rupees fifty thousand) is made payable by respondent No. 6 to be deposited with the Legal Aid Services Authority, High Court, Calcutta, within a period of one month from date.

Urgent xerox certified copy of this order be supplied to the applicants.

Joymalya Bagchi, J.

I agree.