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**(2011) 07 AHC CK 0283**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 28690 of 2011

Kushal K. Rana

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 13-07-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2011) 7 ADJ 267

**Hon'ble Judges :** Ashok srivastava, J; Amitava Lala, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Amitava Lala, J.—The Petitioner has filed the present writ petition on 16th May, 2011 to get an order quashing the allotment order dated 26th March, 2011 of the Plot No. C-001, Sector-16, Noida, Gautam Budh Nagar, Uttar Pradesh (hereinafter in short called as the "plot/land in question") issued by the New Okhla Industrial Development Authority (in short called as "Noida") in favour of a private limited company, namely, M/s. ET Infra Developers Pvt. Ltd., the Respondent No. 4 herein, as well as lease deed dated 13th July, 2010 of the said plot executed in favour of Respondent No. 4 by Noida. The Petitioner further seeks direction for an investigation to be made regarding entire process of allotment as well as procurement of the plot in question by the Respondent No. 4 from the Noida, if necessary by the Central Bureau of Investigation (in short called as "CBI), the Respondent No. 3 herein.

2. The case of the Petitioner, according to him, is that he had booked a space/area measuring 5000 square feet with the Respondent No. 4 i.e. a private limited company, which was developing a shopping mall in the name of World Trade Tower (WTT) at Sector-16, Noida (Gautam Buddha Nagar), Uttar Pradesh. The Petitioner has already made necessary payments amounting to Rs. 10 lacs as advance by means of Cheque No. 227561 dated 21st July, 2010. However, no allotment letter was issued by the Respondent No. 4 to the Petitioner inspite of

repeated requests. On the contrary, the Petitioner was asked to pay more than half of the amount in cash and when the Petitioner refused to do so, the Respondent No. 4 stopped giving any response to the Petitioner. The Petitioner made necessary enquiries about affairs of such company and, according to him, he was shocked to find out that it is a major scam from the date of pre-allotment/tendering to allocation and getting permission etc. as well. The Respondent No. 4 cheated and bribed the Noida officials to get allotment by completely flouting the Rules and norms and conspiring with the authorities, thereby causing heavy loss to the State exchequer. Entire bidding and the allotment have been managed and masterminded by the Respondent No. 4 and it appears that Noida authorities were also involved in the entire episode.

3. In further, on the basis of the information received under the Right to Information Act, 2005 the Petitioner came to know that the plot in question initially belonged to Central Warehousing Corporation (hereinafter in short called as "CWC") and the same was to be made available to Delhi Metro Rail Corporation (in short called as "DMRC") for its requirement as per DPR provisions, as this Section of DMRC was operational and DMRC was not being provided land so far. The Petitioner contended that under the Right to Information Act he was provided with a correspondence dated 13th June, 2006 made between the Noida and CWC, which clearly reveals that the land in question was required by DMRC and, as such, the Noida authority requested the CWC to provide its land and it was further stated that the Noida authority shall provide an alternate land to CWC alongwith the super structure as existing. According to the Petitioner, CWC provided the aforesaid land to the Noida authority on the aforesaid understanding. Noida authority entered into a Memorandum of Understanding (MoU) with DMRC to make available the aforesaid land. CWC was asked to vacate the land in question in view of the requirement of DMRC. The land was subsequently vacated by CWC but the same was never handed over to DMRC and its requirement and claim towards total land measuring 22482.37 square meters still remains. The Petitioner further contended that advertisement of land in question for commercial purpose and the bidding process were not proper. Appropriate advertisement was not made to allot the land for commercial purpose. Entire bidding was fixed or managed by the Respondents. The land was managed for the Respondent No. 4 for construction of mall ignoring the requirement of DMRC. The land was allotted to the Respondent No. 4, a private company, in the name of one M/s. Electro herm Infra Developers (Consortium), another company, the Respondent No. 5 herein, vide impugned order dated 26th March, 2010. As per rule, names of all partners of consortium must be in the allotment letter but the name of any consortium partner has not been given in the allotment letter dated 26th March, 2010. There was some mistake in the allotment order in respect of the plot number, which was changed by a further letter dated 03rd August, 2010 issued to the Respondent No. 5.

4. An allegation has been made by the Petitioner against one Sri Sushant

Agarwal, Director of Respondent No. 4, saying that he was having understanding with the Respondent No. 5 company and also one M/s. Nirmal Life Style Ltd., the Respondent No. 6 herein, to give the shape to the entire process. According to the Petitioner, on the date of application the Respondent No. 5 was not technically qualified for bidding of the plot in question, therefore, the Respondent No. 6, as its consortium partner, was taken for bidding of the plot in question. The consortium won the bidding and allotment was done as they were supposed to form a Special Purpose Company (hereinafter in short called as "SPC") for the project. Sri Sushant Agarwal is the mastermind behind the entire proceedings. As per the terms and conditions of the allotment, a memorandum of agreement was required to be executed to jointly apply for the plot. The Respondent Nos. 5 and 6 companies have submitted a memorandum of agreement dated 19th March, 2010 before the Noida authority. The stamp paper, on which the memorandum of agreement has been transcribed, was purchased on the same date and it bears name of the Respondent No. 5 company. Sri Sushant Agarwal has been shown as authorized signatory of the Respondent No. 5 company when, according to the Petitioner, there was no such authorization. In respect of the Respondent No. 6 company one Sri Rajinder Kumar Goel has been shown as authorized signatory, being closely associated with Sri Sushant Agarwal. However, the Respondent No. 6 is a Mumbai based company and has nothing to do with the present consortium. From the certificate dated 16th March, 2011 issued by the Chartered Accountants it appears that only Sri Sushant Agarwal and Sri Vaibhav Agarwal had share holding in the SPC. Sri Sushant Agarwal was aware of the fact that the plot in question, after being allotted to the consortium, would later on be leased out in the name of Respondent No. 4. On 22nd March, 2010 the bank draft of Rs. 10 crores for the tender was submitted and on the same date the Respondent No. 5 transferred the fund to Sri Sushant Agarwal and his family members/associates. The aforesaid facts can easily be investigated by scrutinizing the bank account of Respondent No. 5 company. Everything was pre-planned and in connivance with the Respondents. Sri Sushant Agarwal has given an impression that the Respondent No. 4 is a sister concern of Respondent No. 5. Sri Sushant Agarwal and his son flouted the Rules and norms. The Respondent No. 4 is a leading company, wherein the Respondent Nos. 5 and 6 have no shareholding. The Respondent No. 4 is projecting itself as a subsidiary/sister concern of the Respondent No. 5. There is no change in the authorized capital or paid-up capital of the Respondent No. 4 company. No Director/official or authorized representative of Respondent No. 5 or 6 companies has been taken as Director/Executive Director or an employee of the Respondent No. 4 company. There was no change in the shareholding of the Respondent No. 4 company. Address of the plot in question being Plot No. B-226, Sector-16, Noida, U.P. was changed to "C-001" after bid without any valid reason. As per CWC records, it is Plot No. 1A, Block "B", Sector-16, Noida and this confusion in address has been created intentionally by Noida authorities in order to mislead public and to keep all illegal activities under the wraps. Name of the Respondent No. 5 has been used to bag the project. The Respondent No. 5 also lends money to Sri Sushant Agarwal and

squares all entries before 31st March, so that it goes unnoticed. The Respondent No. 5 is a Gujarat based company and is engaged in construction of Steel Furnace, therefore, it cannot invest in real estate company. It takes loans from various banks and grants from the Government and diverts this money to real estate companies and to Sri Sushant Agarwal in particular. When the authorized share capital of Respondent No. 4 company is Rs. 5 lacs and the paid up share capital is Rs. 1 lac, how can a company deal with the project of worth crores of rupees approximately. The Respondent No. 4 has got the allotment of plot in question showing artificial tie-ups and past business experience for technical and financial expertise. The Respondent No. 4 company has no standing nor has credentials to handle such a project. Noida authorities have taken only 10% of the total money from them and rest 90% will be in easy monthly installments (EMIs) over a period of nine years. Having no credential the Respondent No. 4 will not complete the project and will walk away with the money so collected from general public. Noida authority has no means to stop them nor will they be accountable for the huge losses suffered by private individuals. On perusal of the bank statement of Respondent No. 4, it appears that large number of funds received by it was diverted to some other accounts thereby cheating general public, who have invested huge amount in the company.

5. It is further contended by the Petitioner that the Respondent No. 4 is selling the office space @ Rs. 12,000/- per square foot and is accounting for Rs. 5500-6000 per square foot on paper and rest of the amount is being accepted in cash, which is causing heavy loss running in several crores of rupees to the State exchequer. Similar projects in the vicinity are selling the office space in the rage of Rs. 13000-15000 per square foot and accounting for the entire amount when the Respondent No. 4 is accepting the floor area at such a lower rate, which clearly demonstrates that the Respondent No. 4 is generating a huge unaccounted/ black money. Sri Sushant Agarwal has a poor track record. He was jailed and booked under the COFEPOSA Act. A big scam in collusion with Noida authorities is perpetrated. The information asked by the Petitioner has been concealed by the Noida authorities. The Petitioner has also preferred an appeal dated 18th April, 2011 under the Right to Information Act against non-supply of information. The State is incurring huge loss worth several crores of rupees in view of the aforesaid circumstances. The Respondent No. 4 company is misleading the investors by allotting the said commercial land, which cannot be used as commercial land as the same was handed over by CWC to Noida for DMRC. The purpose, for which the land in question was taken from CWC, has been given a complete go-bye and instead for the personal benefit of the officers of the Noida they allotted the land in question to a company, which has no standing. The Petitioner has submitted a detailed representation dated 5th March, 2011 narrating all the aforesaid facts to the Director of CBI requesting therein to enquire into the entire scam and all concerned persons should be booked. The Petitioner further contended that at the time of executing lease deed the plot in question was mentioned as it forms part of the land acquired

under the Land Acquisition Act, 1894 and developed by the lesser for the purpose of setting up an industrial township. The said fact is absolutely incorrect, as the land was provided by CWC for DMRC and the same has not been acquired under the provisions of the Land Acquisition Act. The total land of 14000 square meters was allotted to the consortium and the maximum permissible Floor Area Ratio (in short called as "FAR") is 5. Hence, the total maximum permissible FAR was 7, 53, 200 square feet. The consortium is openly flouting the norms. The aforesaid illegality being committed by the Noida and the Respondent No. 4 is required to be taken notice by this Court. In this background, the Petitioner has filed the present writ petition.

6. Noida and the Respondent No. 4 both have filed their respective affidavits specifically denying the allegations made in the writ petition.

7. According to the Noida, the allotment of commercial plot was made on the basis of the advertisement following two bid systems i.e. technical bids and financial bids. Original area of the plot in question was 17, 580 square meters, but after redrawing of the layout plan the area was finalized as 14,000 square meters. The change in the number of the plot in question was made subsequent to issuance of the allotment letter when Planning Department of the Noida found that there was already a plot by number "B-224", therefore, there is necessity to correct the plot number renumbering it as "C-001". After mutual consultation and with the consent of CWC, the CWC was given an alternative site i.e. C-1, Sector-68, Noida and CWC building was also constructed by the Noida. The plot in question was near the Metro Station and part of it has been allotted to DMRC free of cost for its usage. Parking was also provided for the Metro users. It is also for this reason that the area of the plot in question was got reduced from 17,580 square meters to 14,000 square meters. Neither CWC nor DMRC has any right to question the allotment of the plot in question. In fact, they have never questioned the decision of the Noida authority. Thus, the allegations made in the writ petition are without any substance. As per the terms and conditions of the scheme, it is permissible to have the lease deed executed in favour of either the relevant members of the consortium or SPC. The only requirement was that the lead members of the SPC shall have to retain at least 26% shareholding as per the memorandum of understanding till the time the temporary occupancy/ completion certificate of one phase of the project was obtained. The SPC, namely, Respondent No. 4 was formed and the lease was executed in the name of said company, which is a SPC of the consortium members. As regards eligibility, it is made clear that it was not the requirement that each of the consortium members must individually fulfill each of the technical qualifications. It is enough if consortium members together as a consortium satisfied the technical qualifications. The total FAR permitted as per the sanction letter dated 30th November, 2010 is 69, 999.22 square meters. The Petitioner has given a false statement that a total of 15,55,000 square feet area has been permitted to be constructed. As per the sanctioned plan, the permissible constructed area is within the outer limit of 5 FAR. The contention of the Petitioner that against the

permissible constructed area of 7,53,200 square feet the authority has sanctioned 15,55,000 square feet, is factually false. The Noida has further submitted that in showing the incorrect area, the Petitioner seems to have taken into account the Chhajja, basement, which is to be used as parking, stilt area and 15% of the prescribed FAR towards the common facility area. As per the Building Bye-law No. 34.3, the aforesaid usages are not to be included while calculating the FAR. The Building Directions and Regulations are duly gazette and as on the date of sanctioning of the plan, the Building Bye-laws published in the Government Gazette of 16th December, 2006 were in force. Noida has further clarified that Building Bye-laws were subsequently amended and new Building Regulations-2010 was enacted. However, in terms of new Building Bye-laws the position regarding Chhajja, basement, stilt area and 15% of the prescribed FAR towards common areas continued to remain the same. Therefore, after excluding the aforesaid, as per the plans approved by the Noida authority, the area permitted to be constructed is within 5 FAR i.e. 70,000 square meters or 7,53,200 square feet. In spite of the same, if after the completion any deviation is found, the action as per the law would be taken.

8. So far as investigation by CBI is concerned, the Noida has contended that it has the power to acquire the land, to demarcate and change the land use and to allot the properties on such terms and conditions as the authority may deem fit. In each of the aforesaid, the authority has the sanction of the Act. It is an admitted fact in paragraph 15 of the writ petition that the plot in question alongwith other plots was advertised in daily newspapers. The details of such advertisement have been set out in paragraph-8 of the counter-affidavit of Noida. Forms were also sold through leading banks. The land in question belongs to Noida and not to either CWC or DMRC. The allotment was made on the basis of the tenders in favour of the highest tendered. In these circumstances, there is no reason whatsoever nor any justification to raise any vague and bald prayer/ contention that the matter of allotment of the plot in question is required to be investigated by CBI and that too by a person, who has obtained an allotment of the space to be constructed from the developer against the payment made by cheque. If at all there is some dispute, the same ought to be settled in between such parties without involving the other Respondents, particularly Respondent Nos. 1, 2 and 3. Moreover, the instant writ petition is not public interest litigation. The Petitioner is having a direct interest in the property to be constructed on the plot in question. The prayers made in the writ petition are wholly misconceived. The writ petition is liable to be dismissed with cost for the Noida being dragged into wholly avoidable and vexatious litigation. The writ petition has been filed with mala fide intent. It is an abuse of the process of Court. The Petitioner claims to be a customer, who has booked office space measuring 5000 square feet with the Respondent No. 4 and against which booking, the Petitioner claims to have made certain payments. It is further submitted on behalf of the Noida that from the averments contained in the writ petition, it appears that there is some dispute between the Petitioner and the

Respondent No. 4. For settling such an inter se dispute, if at all, filing of the present writ petition and that too arraying the Noida as party Respondent is misconceived in law and is an abuse of the process of Court. By first claiming booking of space making payments and thereafter challenging the allotment in favour of the developer by making wild allegations is also a clear abuse of the process of the Court. As per the available record in the office of Noida as on 22nd July, 2010, the Respondent No. 4, a SPC, was having a stake of 90% of Respondent No. 5 company and 10% stake of Respondent No. 6 company. This stake has been subsequently changed as per communication of Noida authority dated 3rd February, 2011, according to which Sri Sushant Agarwal was having 37% share, Sri Vaibhav Agarwal was having 37% and the Respondent No. 5 company was having 26% share. The communication dated 03rd February, 2011 was given on the request of the company and is as per the terms of tender since Respondent No. 5 continues to have a stake of 26%. The Noida has no concern whether each of the consortium members has the respective representatives on the Board of SPC.

9. Respondent No. 4 has submitted that the Petitioner has not invoked the writ jurisdiction with clean hands. He is virtually an extortionist and blackmailer and it is his modus operandi to initiate false and frivolous litigations with the sole objective of extorting money. The writ petition has been moved with the sole object to cause harassment and financial loss to the Respondent No. 4. The Respondent No. 4 is not the first victim of his malicious agenda. The Petitioner is engaged in litigation with large number of business entities and few are as follows:

(I) A first information report has been lodged against the Petitioner by M/s Welkin Marketing Private Limited in the Economic Offence Wing, Crime Branch of Delhi Police at New Delhi.

(II) A first information report has been lodged against the Petitioner by Heera Jewelers, a unit of M/s Shristi Gems & Jeweler Private Limited, in the Economic Offence Wing, Crime Branch of Delhi Police at New Delhi.

(III) Legal notice has been served upon the Petitioners by M/s Brijwasi Jewelers Private Limited, New Delhi.

(IV) Legal proceedings have been initiated by Mr. Iqbal Kishan Channa against the Petitioner in Himachal Pradesh.

10. The Respondent No. 4 further contended that the Petitioner should not be permitted to invoke the extraordinary writ jurisdiction of the writ Court. The writ petition is outcome of an afterthought and premeditated design. The Petitioner seeks to challenge the allotment dated 23rd March, 2010 and lease deed dated 13th July, 2010 in favour of the Respondent No. 4 after lapse of period of more than one year from the date of allotment. The delay gives a clear indication of the mind of the Petitioner. Contractual rights, particularly in such type of cases, cannot be adjudicated in the form of writ petition having efficacious alternative

remedy. The whole writ petition is based on complex factual matrix, for which the Petitioner is entitled to go before the appropriate Civil Court for the purpose of getting relief. Presently, approximately 200 parties have stake in the project as "sub-lessees" and their interest will be jeopardized due to the present writ petition. The Petitioner has not made the sub-lessees as party Respondents. That apart, more than 400 construction workers, Engineers, Supervisors, laborers etc. are working at the site day and night. This writ petition has been filed by the Petitioner after having failed with the following complaints made to the several authorities:

- (i) Complaint to the Reserve Bank of India against M/s Electro herm India Limited for alleged diversion of funds.
- (ii) Complaint to the Ministry of Steel against M/s Electro herm India Limited to withhold grant from Steel Development Fund.
- (iii) Complaint to Ministry of Coal against allocation of coal blocks to the Joint Venture of M/s Electro herm India Limited and M/s Grasim Industries Limited.
- (iv) More than 100 applications under Right to Information Act, 2005 to New Okhla Industrial Development Authority against the Answering Respondent.
- (v) Application under Right to Information Act, 2005 to Registrar of Companies qua the affairs of Answering Respondent.
- (vi) Complaint to Investigation Directorate of Income Tax Department, Delhi Circle.
- (vii) Complaint to the Central Bureau of Investigation as admitted by the Petitioner.

11. All the concerned departments have conducted investigation on the basis of said complaints and application and finding the same frivolous and unsubstantiated allegations, they have refrained from taking action. In spite of the same making the CBI as party Respondent is mis-joinder of necessary parties. The Petitioner in his perverse pursuit mentioned all the Respondents as criminals without there being any iota of evidence to support his scandalous and defamatory allegations. The Petitioner has deliberately tried to play fraud upon the Court and hence, is liable for perjury for stating blatant lies in this Court by way of the captioned writ petition. The Petitioner has deposited Rs. 10 lacs by way of cheque for advance booking of unit but he has not booked any unit as yet. A brochure and application form was sent to the Petitioner for finalizing the unit, however, the Petitioner has not filed and submitted the same till date. Allegations of cash payment are false and bogus. The Respondent No. 4 has challenged the Petitioner to show a single request sent for the purpose of payment by way of cash. Application form numbers of the Respondent No. 4 were 3 and 4. Therefore, it is preposterous to say that only two forms were printed and sold by the Noida. The consortium represented by the Respondent No. 4 has bid for two plots but became successful in getting only one plot. Had

the consortium been capable of managing the auction, it would have bagged both the plots. The draft in question and Pay Order No. 006312 dated 22nd March, 2010 of Rs. 10 crores was issued from the corporate bank account of Respondent No. 5 from the Bank of India, Ahmedabad, Gujarat and was delivered by the Corporate Banking Branch of Bank of India at New Delhi. The construction is made as per the approved plan. The allotment letter was issued in the name of Respondent No. 5. The process of forming consortium and bidding for the plot in question was in consonance with the present business practices and in accordance with the law and the Rules and Regulations of Noida. On 13th April, 2010 SPC was formed after allotment of the plot in question and before registration of the same in accordance with the stipulated rules, Regulations, terms and conditions of Noida. According to the Petitioner, concept of "lead member" of a consortium means it should have at least 30% share therein, to which this Respondent has stated that actual condition is that "lead member" is required to have 26% share and not 30%. The Respondent No. 5 was the lead member having 90% share and subsequently other members were inducted in compliance with the stipulations and due approval of Noida. Purchasing of stamp paper on the same date, on which it was used for preparing memorandum of agreement, is neither an offence nor improper or illegal. Respondent No. 7 was duly authorized as the signatory of Respondent No. 5 company vide Board resolution dated 11th February, 2010. The Petitioner cannot dictate the Respondent No. 4 as to how it will conduct its business. As aforesaid, previously the Respondent No. 5 was having 90% share whereas the Respondent No. 6 was having 10% share, but the shareholding pattern was changed from December, 2010, wherein-the Respondent Nos. 7 and 8 were holding 37% each and the Respondent No. 5 was holding 26% share. Shareholding pattern was changed in the financial year 2010-2011. As per the Companies Act, 1956, the Respondent No. 4 is required to conduct its annual general meeting within six months of closing of the financial year and to intimate the change in the shareholding to the Registrar of Companies within one month thereafter. The Respondent No. 6 is no longer shareholder of the Respondent No. 4 or the consortium. Renumbering of the plot was made due to exigencies. There is no legal bar for a company engaged in construction of Steel Furnace to invest in real estate. Allegation as to the figure of Rs. 1500 corers, as made in the paragraph 38 of the writ petition, is only a figment of imagination. It is true that it is a landmark project of Respondent No. 4. The Respondent No. 4 has made payments of more than Rs. 40 corers to Noida within the stipulated period without any default. Respondent No. 4 has further submitted that in view of the aforesaid facts the writ petition is liable to be dismissed with cost.

12. Mr. Anurag Khanna, Learned Counsel appearing for the CBI, upon being present, contended that CBI has nothing to say in respect of the dispute between the parties but if it is called upon to interfere with the matter by the Court then only it will proceed.

13. Mr. U.N. Sharma, learned Senior Counsel appearing for the Petitioner, Mr.

Ravindra Kumar, Learned Counsel appearing for the Noida, and Mr. Ranjit Saxena, Learned Counsel appearing for the Respondent No. 4, wanted to make their written notes of arguments and cite the respective judgments, on which they are relying upon. Such prayer was allowed.

14. Mr. U.N. Sharma has relied upon various judgments. Reference to M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, is only with regard to judicial review in respect of arbitrariness, if any, regarding tender process, but the same is restricted between a company and governmental authority. Therefore, it has no manner of application in the present case. So far as W.B. State Electricity Board v. Patel Engineering Company Ltd. and Ors. 2001 (2) SCC 451 is concerned, the same is with regard to government contracts between the State body and a company. Protection of public interest and scope of judicial review in government contracts are considerations in the said judgment, which has also no manner of application in the present case. Reference to the Division Bench judgment of Delhi High Court as in Aadhar Stumbh Township Pvt. Ltd. v. Delhi Development Authority 2010 (2) RAJ 453 : 2009 (112) DRJ 438 is also with regard to tender conditions between a private company and the governmental authority and has no manner of application in the present case. A similar inference can also be drawn in connection with B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, which relates to terms and conditions of tender and relaxation thereto. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, as cited by Mr. Sharma, has no manner of application in the present case since in the referred case without submitting any tender when the Petitioner (therein) wanted to file a writ petition against a governmental authority, the question of maintainability of the same arose and the Court passed an order considering the pros and cons. By citing a Division Bench judgment of the Andhra Pradesh High Court in Ratanchand Hirachand Vs. Askar Nawaz Jung and Others, Mr. Sharma wanted to say that contracts affected by corruption are to be void, but we find that such judgment is arising out of civil suit and appeal in connection thereto and, as such, is not applicable in the present case. In Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), the dispute was between a company and the Railway Board arising out of a decision of the Railway Rates Tribunal, which is not the case herein. Relying upon paragraph 36 of Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, Mr. Sharma made his submission that though the Petitioner (therein) invoked the writ jurisdiction of the Court for his own private interest, but inquiry into the conduct of examiners of a premier university in one of the highest medical degrees was matter of public interest and, therefore, the Court interfered with the matter of public interest and inquired into the State of affairs, but the same does not per se have any impact over the present scenario and, as such, cannot be accepted. In Indian Sank v. Godhara Nagrik Cooperative Credit Society Limited and Anr. 2008 (12) SCC 541 again similar type of dispute arose in the writ jurisdiction between a bank and the cooperative society, where the private interest litigation was converted to

public interest litigation. The Court gave an emphasis over the role of the Judge in public law litigation saying that the Judge is not passive, his function limited to analysis and statement of governing legal rules; he is active, with responsibility not only for credible fact evaluation but for organizing and shaping the litigation to ensure a just and viable outcome. We are of the view that there the question arose when the Petitioners were not parties to the fraud, subject to any other or further orders that may be passed in the criminal case. The dispute can be resolved between the parties by the writ Court. The Court held that some cases may start on a private interest but if the Court finds involvement of a public law element therein concerning a large number of people, it may proceed on the basis as if it was public interest litigation and appoint a Committee and then grant relief in favour of the writ Petitioners. Public interest litigation procedures may be adopted in a case where initially the writ petition was filed as private interest litigation. This ratio, however, has no manner of application in the present case. So far as Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, is concerned, a public interest litigation in respect of management of the temple governed by the provisions of statutory enactment was the question involved in the appeals. In considering such public interest litigation the Court held that although the Petitioner might have moved a Court in his private interest and for redresses of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. In holding so, the Supreme Court followed the ratio of Shivajirao Nilongekar Patil (supra). The Supreme Court further held that the Court steps in by mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. It steps in by way of a judicial review over the orders passed. Existence of an alternative remedy albeit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily, it will not do so unless it is found that an order has been passed wholly without jurisdiction or contradictory to the constitutional and statutory provisions or where an order has been passed without complying with the principles of natural justice. The principle as laid down in such judgment is generally applicable but the dispute therein was arising out of public interest litigation initiated by a devotee having personal interest. Therefore, the ratio of that case has no application in this case.

15. Mr. Ravindra Kumar, Learned Counsel appearing for the Noida, has cited the judgment in Tata Cellular Vs. Union of India, which is a well known judgment of three Judges' Bench of the Supreme Court. where under the question was whether the judicial review in respect of the government contracts/ tenders can be made by the writ Court or not. However, from the said judgment we find the deducible principles from the following sentences:

1. The modern trend points to judicial restraint in administrative action.
2. The Court does not sit as a Court of appeal but merely reviews the manner in

which the decision was made.

3. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

4. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

5. The Government must have freedom of contract. In other words, a fair-play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Eynsbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

6. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

16. In Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, again it was held by the Supreme Court that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The Government must have a free hand in setting the terms of the tender. It is for the authority to set the terms of tender. The Court would not interfere with the terms of tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. In Anil Kumar Srivastava Vs. State of U.P. and Another, the Supreme Court has held that an invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. The sale has to commence at the higher price and in the absence of bidders, the price will have to be progressively brought down till it reaches the upset price. In a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. Factually, it was found therein that the tender invitation was given wide publicity; that although nine bidders bought the tender documents, and only one candidate offered its bid and the financial committee has recommended its acceptance keeping in mind the prior experience and the terms and conditions of the resolution in the matter of fixation of sector price and reserve price. Hence, there is no merit in the contentions of the Petitioner.

17. Mr. Ranjit Saxena, Learned Counsel appearing for the Respondent No. 4, has relied upon various judgments in support of his contentions. He has Prestige Lights Ltd. Vs. State Bank of India, to show that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, therefore, a writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss

the action without adjudicating the matter. The Rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ Courts would become impossible. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of law is also a Court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter. By citing *Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others*, Mr. Saxena wanted to establish that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used as suspicious products of mischief. It should be aimed at redresses of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. The Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms that monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs. In *Mukesh Kumar Agrawal Vs. State of U.P. and Others*, relying upon the judgment in *Swaran Singh Chand Vs. Punjab State Electricity Board and Others*, the Supreme Court has held that there is a distinction between a malice in fact and malice in law. If malice in law is established, it may lead to an inference that the statutory authorities had acted without jurisdiction when malice in fact must be pleaded and proved. In *Himachal Pradesh Housing and Urban Development Authority Vs. Universal Estate and Another*, it has been held by the Supreme Court that no party shall challenge decisions of the authorities during commercial transactions between them, unless arbitrary and unreasonable. Relying upon *Tamil Nadu Housing Board, Chennai Vs. M. Meiyappan and Others*, Mr. Saxena wanted to establish that delay and laches on the part of the writ Petitioner in filing the writ petition are to be taken care of by the writ Court. In *Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others*, the Supreme Court has held that it is true that no limitation has been

prescribed for filing a petition under Article 226 of the Constitution but one of the several Rules of self-imposed restraint evolved by the superior Courts is that the High Court will not entertain petitions filed after long lapse of time because they may adversely affect the settled/crystallized rights of the parties. *Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others*, has been cited by Mr. Saxena to establish that relying upon various earlier judgments the Supreme Court has held that filing a totally misconceived petition amounts to abuse of the process of the Court. Such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. A litigant is bound to make full and true disclosure of facts. When the process of the Court is abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This Rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. In *Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others*, it has been held by the Supreme Court that non-joinder of necessary party is fatal, particularly if a person who is likely to suffer from the order, not impeded as a party, principles of natural justice are violated.

18. We have no quarrel with the proposition of law but each and every case is to be evaluated from the facts and circumstances of that case only. The writ Petitioner was not inclined to take any step before but was enjoying the fruit of the sub-lease under the leasehold interest of the private Respondents. But when his leasehold interest was affected, instead of going to the Civil Court/forum for adjudication of his grievance, adopted a novel method to invoke writ jurisdiction alleging government agencies but attacking private Respondents. No public law element is available before us to adjudicate at the instance of the Petitioner, who is an interested person. A dispute arising out of privacy between the Petitioner and the lessee-Respondent/s cannot be converted to a dispute regarding public interest. Historical background of getting land by the private Respondents cannot be the cause of action at the instance of the Petitioner, whose private right as sub-lessee had been affected. The Petitioner has not come with clean hands. The Petitioner has nothing to do with regard to the agreement and/or arrangement between the Noida, CWC and DMRC. CWC or DMRC have not invoked any jurisdiction of the Court with regard to any purported illegality on the part of the Noida in granting lease of the land to the private Respondent/s because they must have satisfied with regard to the terms and conditions regarding change of land from one place to another. CWC has already obtained the alternative land when DMRC is already running the metro rail. Against this background, it seems that litigation of the Petitioner is premeditated to harass the private persons making governmental authorities as party Respondents only to get attraction of the writ Court. The writ petition is absolutely frivolous in nature.

19. Hence, the writ petition cannot be held to be sustainable and as such, it is dismissed. Although no cost has been imposed for making such type of litigation but it is warned hereunder that if the Petitioner wastes the Court's valuable time

repeatedly, the Court will be compelled to impose exorbitant costs in such occasions.

Ashok Srivastava, J.

20. I agree.