(2009) 01 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Appeal No''s. 526 and 847 of 2008

M/s SITCO (Swarnandhra JMII Integrated Township Development Company) Pvt. Ltd. — APPELLANT

Vs

A.P. Housing Board
 A.P. Housing Board Vs M/s SITCO (Swarnandhra JMII Integrated Township Development Company) Pvt. Ltd. — RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 2.9, 2.9.1, 4.2, 68, 7.1.1
Constitution of India, 1950 — Article 14, 226, 298
Specific Relief Act, 1963 — Section 14

Citation : (2009) 5 ALD 273 : (2009) 6 ALT 295

Hon'ble Judges : T. Meena Kumari, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : V. Venkataramana, in W.A. No. 526 of 2008 and J. Prabhakar, SC for S.R. Ashok in W.A. No. 847 of 2008, for the Appellant; J. Prabhakar, SC for S.R. Ashok in W.A. No. 526 of 2008 and V. Venkataramana in W.A. No. 847 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—I have had the privilege of perusing the judgment prepared by my learned Sister Smt. Justice T. Meenakumari. While I agree that W.A. No. 847 of 2008 filed by the A.P. Housing Board is liable to be dismissed, I am unable to concur either with the analysis or the conclusion that W.A. No. 526 of 2008 should be allowed in its entirety and regretfully, therefore, venture to write a separate judgment.

2. Both the petitioner, and the respondent-Board, in the writ petition have filed Writ Appeal Nos. 526 and 847 of 2008 respectively aggrieved by the order of the learned Single Judge in W.P. No. 2085 of 2007 dated 01.05.2008. Parties shall hereinafter be referred to as they are arrayed in the Writ Petition. Since the learned Single Judge has dealt with it elaborately, the facts of the case, except to

the extent relevant, do not bear repetition herein. Suffice to note that the learned Single Judge, relying on the judgment of the Supreme Court in Noble Resources Ltd. Vs. State of Orissa and Another, , and ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , rejected the contention of the respondent-Board that the proper forum for alleged breach of a non-statutory contract, more so, when it involved disputed questions of fact, was the Civil Court of competent jurisdiction and that the writ petition was not maintainable. The learned Single Judge held that a suit notice, issued u/s 68 of the Andhra Pradesh Housing Board Act, 1956 (for short - ''the Act'') would not deprive the petitioner of the remedy which they were otherwise entitled to and, if more than one remedy was available, it was for the party to select the one which was more appropriate and beneficial, having regard to the facts and circumstances of the case.

3. While setting aside the order dated 02.02.2007 terminating the agreement dated 08.02.2006, upon holding that the action of the respondent-Board was illegal, arbitrary and in violation of Article 14 of the Constitution of India, the learned Single Judge, however, held that the petitioner was not entitled to have the benefit of the contract pursuant to the agreement dated 08.02.2006 so as to proceed further in accordance with the same. The respondent-Board was directed to refund to the petitioner the development fee paid by him without any interest within a period of two months, and to release in his favour the bank guarantee furnished towards the entire development fee in terms of the agreement dated 08.02.2006. The Learned Single Judge also held that, in case the respondent-Board decided to proceed with the earlier plan of developing the site in question, it may do so by initiating fresh proceedings.

4. Sri V. Venkataramana, learned Counsel for the petitioner, would submit that termination of the agreement was in total disregard of the terms and conditions of the contract and that the learned Single Judge had rightly concluded that such termination was arbitrary and in violation of Article 14 of the Constitution of India. Learned Counsel would contend that entertaining a writ petition involving contractual disputes was well within the discretion of the learned Single Judge and that the Division Bench, in an intra-Court appeal, should not interfere with the exercise of such discretion. While submitting that the learned Single Judge was justified in entertaining the writ petition, learned Counsel would contend that it was not obligatory that detailed reasons should be furnished for entertaining a writ petition involving contractual disputes. Learned Counsel would place reliance on Noble Resources Ltd. Vs. State of Orissa and Another, , Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another, , ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , K.N. Guruswamy Vs. The State of Mysore and Others, , The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , India Thermal Power Ltd. Vs. State of M.P. and Others, , Royal Laboratories v. Labour Court, Hyd. 1984 (2)

ALT 207 , Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, , Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others, , Krishena Kumar and Others Vs. Union of India and others, , Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, .

5. On the other hand, Sri S.R. Ashok, learned Senior Counsel appearing for the respondent-Board, would submit that the jurisdiction of the High Court under Article 226 of the Constitution of India was barred in respect of non-statutory contracts, more particularly contracts such as the one involved in the present writ petition, that, while disputed questions of fact in the public law domain may be examined in writ proceedings, those in the private law realm were better relegated to an adjudication by a competent Civil Court, that in Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, and Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , which were relied upon in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , the dispute was in the public law realm and that in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, there were no disputed questions of fact. According to the learned Senior Counsel, even assuming that this Court had the discretion to entertain a writ petition involving disputes relating to non-statutory contracts, it was only if the Court was satisfied that interference was justified would it exercise its discretion to entertain a writ petition, that, while the rule is to relegate parties to a civil suit, entertaining non-statutory contractual disputes in writ proceedings is an exception, that a dispute of this nature could not be entertained because the relief sought for by the petitioner herein was for specific performance of the agreement, that this Court should refuse to exercise its discretion in an intra-court appeal only if two views were possible, that the view taken by the learned Single Judge was a view which could not have been taken at all and, therefore, interference by the Division Bench was necessary, that in the present case the dispute related to interpretation of various clauses of the agreement, that the understanding of both parties, of the clauses therein, were at variance and that the entire controversy could be unravelled only after evidence was adduced and the disputes adjudicated in a civil suit before the competent civil court. Learned Senior Counsel would submit that K.N. Guruswamy Vs. The State of Mysore and Others, was a case of a statutory-authority exercising statutory power and was in the public law realm, that, even otherwise, it is only for weighty reasons, in exceptional circumstances, and if, in the peculiar facts of the case, larger public interest is adversely affected or the contract is unconscionable or is in violation of Article 14, would this Court exercise its discretion to interfere. Learned Senior Counsel would submit that the nature of dispute was determinative, that no reasons were assigned by the learned Single Judge for entertaining the writ petition, that the disputed questions of fact involved in the present writ petition

were as to what constituted the contract, what were the obligations of each party, when was each party required to perform its obligations, whether the petitioner had performed its obligations in accordance with the agreement, whether the contractual understanding was modified expressly or impliedly by subsequent conduct, attitude, behaviour and understanding and whether termination of the agreement was proper. Learned Senior Counsel would rely on Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , Banchhanidhi Rath Vs. The State of Orissa and Others, , Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, ; Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, ; Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., ; State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, , State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., , Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , National Highway Authority of India Vs. Ganga Enterprises and Another, , Pimpri Chinchwad Municipal Corporation and Others Vs. Gayatri Construction Company and Another, , ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , S.L. Kapoor Vs. Jagmohan and Others, , Life Insurance Corporation of India v. Asha Goel (2001) 2 SCC 160, Union of India and Another Vs. S.P. Anand and Others, ; K.D. Sharma v. Steel Authority of India Ltd. 2008 (3) CCC 433.

6. On the question of maintainability of a writ petition involving contractual disputes, a distinction must be made between statutory and non-statutory contracts. A contract would not become statutory simply because it has been awarded by a statutory body. Merely because the obligations imposed by the contract, on the contracting parties, come within the purview of the Contract Act, that would not make the contract statutory. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied for every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have the power to contract or deal with property. Such activities may not raise any issue of public law. (Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others,).

7. Merely because a contract is entered into in exercise of an enabling power conferred by a statute would not by itself render the contract statutory. It is only if entering into a contract containing the prescribed terms and conditions is a must under the statute would the contract be statutory in character. A contract may contain terms and conditions which may not be statutory and which have been incorporated therein as a result of mutual agreement between the parties. [India Thermal Power Ltd. Vs. State of M.P. and Others,]

8. We are, however, saved the trouble from examining this question any further,

as both Sri V. Venkataramana, Learned Counsel for the petitioner and Sri S.R. Ashok, Learned Senior Counsel appearing on behalf of the respondent-Board, would agree that the contract, in the case on hand, is a non-statutory contract.

9. On the question whether a writ petition would lie under Article 226 of the Constitution of India for resolution of contractual disputes, or for enforcement of obligations arising therefrom, one line of judicial pronouncement of the Supreme Court is that the remedy under Article 226 of the Constitution of India is barred in such matters. In Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , the Supreme Court held that a writ of mandamus may be granted only in a case where there is a statutory duty imposed, there is failure to discharge that statutory obligation and that any duty or obligation arising out of a contract cannot be enforced by the machinery of a writ under Article 226 of the Constitution. In Banchhanidhi Rath Vs. The State of Orissa and Others, the Supreme Court held that a right claimed in terms of a contract cannot be enforced in a writ petition. In Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , a Constitution Bench of the Supreme Court held that a writ petition was not an appropriate remedy for impeaching contractual obligations. In Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , the Supreme Court, following Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , held:

...Even if the appellants could be said to have raised any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed adduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties....

(emphasis supplied)

10. In Bishwanath Tea Co. Ltd. 20 the Supreme Court held that, ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, or for damages, that such a suit would ordinarily be cognizable by the Civil Court and that the High Court, in its extraordinary jurisdiction, would not entertain such a petition. In Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , the Supreme Court held that where the contract, entered into between the State and the person aggrieved, was non-statutory and the rights were governed only by the terms of the contract, no writ or order could be issued under Article 226 of the Constitution so as to compel the authority to remedy the breach of contract

and that the High Court in such cases could not examine the question of arbitrariness and unreasonableness on the part of the State or its instrumentalities. In State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, the Supreme Court held that if the matter is governed by a contract, a writ petition is not maintainable since it is a public law remedy and is not available in the private law field. In Assistant Excise Commissioner and Others Vs. Issac Peter and Others, the Supreme Court held that there was no room for invoking the doctrine of unjust enrichment in business transactions, that the rule of promissory estoppel and estoppel by conduct could not be invoked to alter or amend specific terms of the contract, that the rule of legitimate expectation could not be invoked to modify or vary the express terms of the contract, that in case of contracts freely entered into with the State, there was no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract and that, in such cases, the mutual rights and liabilities of the parties are governed by the terms of the contract and the laws relating to contracts.

11. In State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., the Supreme Court held that the contract between the parties was a contract in the realm of private law, that any dispute relating to interpretation of the terms and conditions of such a contract could not have been agitated in a writ petition and that it was a matter either for arbitration as provided by the contract or for the civil court, as the case may be. In Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, the Supreme Court held that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition, that if a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226, that the contract between the parties was in the realm of private law, that disputes relating to interpretation of the terms and conditions of a non-statutory contract could not have been agitated in a petition under Article 226 of the Constitution of India and that it was a matter for adjudication by a civil court or in arbitration if provided for in the contract.

12. In State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., the Supreme Court held that while it was true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits but that was hardly a ground for exercise of the extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract, that such seriously disputed questions or rival claims of the parties with regard to breach of contract was to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising the prerogative of issuing writs.

13. In National Highway Authority of India Vs. Ganga Enterprises and Another, the Supreme Court held that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. In National Highway Authority of

India Vs. Ganga Enterprises and Another, , the Supreme Court, following its earlier judgments in National Highway Authority of India Vs. Ganga Enterprises and Another, , Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , India Thermal Power Ltd. Vs. State of M.P. and Others, , and State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., , held that the High Court ought not to have entertained a writ petition involving contractual disputes.

14. There is, however, another line of decisions of the Supreme Court wherein it has been held that where the action of the State or its instrumentalities, even in contractual matters, is in violation of Article 14, a writ petition would lie, that entertaining such disputes was in the discretion of the High Court and that the scope of judicial review, in such contractual disputes, was limited.

15. In K.N. Guruswamy Vs. The State of Mysore and Others, , a Constitution Bench of the Supreme Court observed:

...The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else....

16. In The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh, , the Supreme Court expressed their inability to hold that merely because the source of the right which the respondent-Board claimed was initially in a contract, he must resort to a suit, and not to a petition by way of a writ for obtaining relief against any arbitrary and unlawful action on the part of a public authority and that, in view of the judgment in K.N. Guruswamy Vs. The State of Mysore and Others, , there could be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.

17. In Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , the Supreme Court held that a public body must act in public interest, and an infraction of that duty is amenable to examination either in a civil suit or in writ jurisdiction and that, if a governmental policy or action even in contractual matters failed to satisfy the test of reasonableness, it would be unconstitutional. In Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , the Supreme Court observed that if governmental action, even in matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable and that the decision of the State/public authorities under Article 298 of the Constitution was an administrative decision and could be impeached on the ground that the decision was arbitrary or in violation of Article 14 of the Constitution of India or any other ground available in the public law field.

18. In Asha Goel (2001) 2 SCC 160 the Supreme Court held that it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a contractual

claim, that the matter was to be considered in the facts and circumstances of each case, that if the contract entered into between the parties provided an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to by-pass the agreed forum of dispute resolution and that, ordinarily, the High Court should not entertain a writ petition for mere enforcement of a claim under a contract.

19. In ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, the Supreme Court held that there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact and that, in cases where there is a contravention of Article 14, a writ court can issue suitable directions to set right such arbitrary action. The Supreme Court laid down the following legal principles as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

20. The Supreme Court further held that, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition, that this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate Article 14, that the scope of judicial review in respect of disputes falling within the domain of contractual obligations is limited and, in doubtful cases, the parties may be relegated to adjudication of their rights by resort to the remedies provided for adjudication of purely contractual disputes, but to the extent challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14 and that this obligation is of a public character.

21. In Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, the Supreme Court, relying on its earlier decision in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , held that, while acting in the field of contractual rights, the personality of the State does not undergo such a radical change as not to require regulation of its conduct by Article 14, that it

was not as if the requirements of Article 14 and contractual obligations were alien concepts which cannot co-exist and that exclusion of Article 14 in contractual matters was not permissible.

22. In Noble Resources Ltd. Vs. State of Orissa and Another, , the Supreme Court held that if the action of the State is violative of Article 14, a writ petition would be maintainable even in the contractual field, that, while exercising contractual powers also, government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part, that while contractual matters are not beyond the realm of judicial review, its application may be limited, that each case must be decided on its own facts, that, having regard to ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , it could not be held that only because there existed disputed question of fact, or an alternative remedy was available, the same by itself would be sufficient for the High Court to decline its jurisdiction, that in cases where serious disputed questions of fact arose for determination, such disputed questions of fact, ordinarily, could not have been entertained by the High Court in exercise of its power of judicial review, and that, ordinarily, specific performance of a contract would not be enforced by issuing a writ of/or in the nature of mandamus.

23. In Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, the question whether a writ would lie for enforcement of the conditions of a non-statutory contract did not arise for consideration. In Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another, , while a contention was raised that availability of an alternate remedy, which was less efficacious than a writ petition, did not absolutely bar the filing of a writ petition, the Supreme Court did not express any opinion thereupon.

24. As noted hereinabove, while in one line of judicial pronouncements of the Supreme Court it has been held that a writ petition would not lie for resolution of contractual disputes, the other line of decisions have held that, while interference is permissible, it is on limited grounds and is, in any event, a matter to be decided by the High Court in its discretion.

25. Both Sri V. Venkata Ramana, Learned Counsel for the petitioner and Sri S.R. Ashok, Learned Senior Counsel appearing on behalf of the respondent-Board, would rely on one line of judgments and seek to distinguish the other. Both would, however, agree that these two line of judicial pronouncements are incapable of reconciliation by the High Court. While they would ask us to count the numerical strength of the bench to decide which view to adopt, we refrain from doing so, since both K.N. Guruswamy Vs. The State of Mysore and Others, and Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, are Constitution Bench judgments. While the submission of Sri S.R. Ashok, Learned Senior Counsel, that K.N. Guruswamy Vs. The State of Mysore and Others, was in the public law realm, as the contract therein was a statutory

contract governed by statutory rules cannot be said to be without merit, we must bear in mind that the law laid down therein has been applied even to non-statutory contracts in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, .

26. In the light of the two distinct line of judicial pronouncements of the Supreme Court, one holding that a writ petition would not lie, and the other that a writ petition involving contractual disputes could be entertained at the discretion of the High Court, the next question which necessitates examination is whether a Division Bench, in an intra-court appeal, would be justified in interfering with the discretion exercised by the Learned Single Judge to entertain a writ petition seeking enforcement of contractual obligations.

27. It is the internal working of the High court which splits it into different ''benches'' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent bench, sitting as a court of correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single bench. (Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others,). The judgment under appeal cannot be faulted on the ground that an alternative view which might commend itself to the appellate court is not accepted. At least, such review is not open to an appellate court hearing appeals against orders made under Article 226 of the Constitution which is a discretionary remedy. Interference can only be on an error of principle but not on re-evaluation of evidence; nor on the basis of preferential choice of alternatives. (Royal Laboratories 1984 (2) ALT 207).

28. While we may well have relegated the petitioner to the forum of the civil court for obtaining the relief sought for in the writ petition, since the Learned Single Judge, following one line of judgments of the Supreme Court, has exercised his discretion to entertain the writ petition, he cannot be held to have committed such a grave error as to necessitate interference in an intra-court appeal. The objection to the present writ petition, involving contractual disputes, being entertained under Article 226 of the Constitution of India must, therefore, fail.

29. The question which then arises for consideration is whether the conclusion of the learned Single Judge, that the impugned notice of termination is illegal, arbitrary and in violation of Article 14 of the Constitution of India, necessitates interference in appeal.

30. Sri Vedula Venkataramana, learned Counsel for the petitioner, would submit that the petitioner was a joint venture in which 51% share capital was held by I.G.M. India Limited and 49% by the respondent-Board, that the development agreement, entered into between the petitioner and the respondent-Board dated 08.02.2006 provided for 35.5 acres of land in Survey No. 1009 of Kukatpally to be handed over to the petitioner on payment of the development fee of Rs. 3.85

crores per acre, that the aggregate amount payable by the joint venture to the respondent-Board, in five instalments of 20% each, was Rs. 140 crores of which the 1st instalment was payable, and was paid, on the date of the agreement dated 08.02.2006, that, as stipulated, a bank guarantee for the remaining 80% of the amount i.e., for Rs. 110 crores was furnished in favour of the respondent-Board and was still in force. According to the learned Counsel, the 2nd instalment of 20% was due and payable only on the respondent-Board issuing a power of attorney to the petitioner, in accordance with the proforma contained in Schedule-I, that possession of the land was delivered to the petitioner on 02.05.2006, that levelling operations were taken up by the petitioner and that they had spent approximately Rs. 10 crores.

31. Learned Counsel would submit that the respondent-Board had acted arbitrarily in terminating the contract on an erroneous interpretation of its terms, and in complete disregard to the terms of the agreement. According to the learned Counsel, the letter dated 26.10.2005 was at best an invitation to offer based on which the Request for Proposal (RFP) was issued inviting offers from others, that acceptance of the petitioner''s offer matching the highest bid was accepted and the letter of award dated 31.12.2005 was issued resulting in the agreement dated 08.02.2006 and, in view of the aforesaid subsequent events, the earlier offer in the letter dated 26.10.2005 was of no consequence. Learned Counsel would submit that, while the earlier invitation to offer in the letter dated 26.10.2005 was for 26 acres at Rs. 2.25 crores per acre, the contract awarded was for an extent of 35 acres at Rs. 3.82 crores per acre. According to the Learned Counsel, it is only in respect of those violations, enumerated in clause 7.1 of the agreement, that the respondent-Board was entitled to terminate the agreement and since the 2nd instalment, in terms of schedule IV of the agreement, was required to be paid only on issuance of a power of attorney the petitioner had neither violated nor acted contrary to the terms and conditions of the agreement and that the finding, recorded by the learned Single Judge that termination of agreement was arbitrary, did not necessitate interference in appeal.

32. Learned Counsel would submit that clause 9 of the RFP was only a proposal by the respondent-Board and, since it was not incorporated in the agreement, it must be held that there are no conditions precedent to be performed. Learned Counsel would point out that several clauses, such as clause 11 in the RFP which provided for project closure, were also not included in the agreement, that the final agreement dated 08.02.2007 was a simplified version of the draft R.F.P, that only the terms and conditions of the agreement were required to be examined and that no reliance could be placed either on the earlier letter dated 26.10.2005 or the Request for proposal. Learned Counsel would submit that, since the contract per se did not state that the RFP was a part of the agreement, the contention that it was so did not merit acceptance.

33. Learned Counsel would submit that having held that termination of the

contract was arbitrary, and in violation of Article 14 of the Constitution of India, and though the petitioner had not sought for any such relief, the learned Single Judge had erred in granting relief to the respondent-Board, in a writ petition filed by the petitioner, placing reliance on the earlier letter dated 26.10.2005. Learned Counsel would contend that the learned Single Judge had erred in holding that the 30 months period had to be computed from the date of the agreement i.e. 08.02.2006 though clause 2.3.3 of the agreement specifically provided that the period of completion was 30 months from the date of signing of the power of attorney, and not the date of agreement.

34. On the other hand, Sri S.R. Ashok, Learned Senior Counsel appearing on behalf of the respondent-Board would submit that the letter dated 26.10.2005 must be read along with the Agreement dated 08.02.2006 as the agreement itself so provided, that there were several expressions in the agreement which had not been defined therein and which necessitated the RFP being referred to, that, on a conjoint reading of the letter dated 26.10.2005, the RFP and the Agreement dated 08.02.2006, it was evident that the petitioner was required to make payment of the 2nd instalment within three months of the agreement and the very fact that they had not even asked for issuance of a power of attorney was proof that they had no intention to pay, that the petitioner had failed to comply with the conditions precedent such as obtaining sanction from the authorities etc. as stipulated in clause 9.1 read with clause 8.1 of the RFP, that the prayer in the writ petition was for specific performance, that no such relief could be granted even in a suit in view of Section 14 of the Specific Relief Act, that the only relief which the petitioner could seek was for damages and neither the writ court, nor the civil court, had the power to monitor and that a writ petition, seeking specific performance of the agreement, should not be entertained.

35. Before examining the rival contentions, it is necessary to note certain facts and contractual provisions to the extent they are relevant to the case on hand.

36. The petitioner made their initial offer, vide letter dated 26.10.2005, for development of Acs.26.00 of land for residential purposes and, as consideration, offered to pay Rs. 2.25 crores per acre for the hill area and Rs. 2.50 crores per acre for the flat areas of the said parcel of land. They submitted a letter of undertaking dated 26.10.2005 wherein, among other conditions, payment terms were stipulated. While the first instalment of 20% of the total sale consideration was to be paid on the signing of the agreement, the second instalment of 20% was to be paid on issue of power of attorney or 3 months from the agreement date, whichever was earlier. The petitioner''s offer was made the basis for inviting bids from others one of whom offered to pay Rs. 3.50 crores per acre. The petitioner, vide letter dated 19.12.2005, agreed to match the commercial offer given by the top ranking bidder. The respondent-Board, vide letter dated 31.12.2005, informed that, subject to the provisions laid out in the RFP document for the project and subject to government approval, the petitioner was

being designated as the successful bidder for the project. The petitioner was also informed that the procedure and conditions with respect to award of the project, signing of the agreement and payment of commercial consideration to the respondent-Board would be as laid out in the RFP document for the project, that 31.12.2005 may be deemed as the date of the letter of Award and that the 1st instalment be paid as early as possible. The letter of the respondent-Board dated 31.12.2005 was accepted by the petitioner in their letter dated 05.01.2006. Thereafter, an agreement dated 08.02.2006 was entered into between the petitioner and the respondent-Board.

37. As noted hereinabove, while the petitioner, in their letter dated 26.10.2005 had offered to pay the second instalment, of 20% of the total consideration, on the power of attorney being issued or 3 months from the agreement date whichever was earlier, in the Request for Proposal (RFP), which was furnished to all the bidders along with the offer made by the petitioner, the payment terms were stipulated in a form called the "Commercial Offer Format", (Exhibit-8 of the Request for Proposal), and, thereunder, while the conditions for payment of the first instalment of 20% of the total consideration was similar to the one in the letter dated 26.10.2005, the second instalment of 20% was required to be paid on issue of the power of attorney. The distinction in the payment terms of the second instalment of 20% is that the words "or 3 months from the Agreement date whichever is earlier" found in the letter dated 26.10.2005 is not reflected either in the Request for proposal or in the Agreement dated 08.02.2006 whereunder the second instalment is payable on the power of attorney being issued. While the Request for proposal, and the Agreement dated 08.02.2006, mention the total project area as Acs.35.50 and the consideration is mentioned in the Agreement as Rs. 3.82 crores per acre, the earlier letter dated 26.10.2005 relates to a total extent of land of Acs.26.00 for a consideration of Rs. 2.25 crores/2.50 crores per acre.

38. Clause 1.1.10 of the Agreement dated 08.02.2006 defines ''Development Fee'' to mean the consideration payable as per Section 4.2 of the Agreement. Clause 1.1.16 defines ''Power of Attorney'' as the power of attorney given to the Developer Company for development/construction and sale of the properties developed under the Project and executed in the format given in SCHEDULE 1: Power of Attorney. Clause 1.1.17 defines ''Project'' as the erection and completion within the said land of the building, erections and structures and all works including planning, designing, financing, constructing, operating maintaining and marketing of the township at the said parcel of land measuring approximately 35.50 acres, to be undertaken by the Developer Company subject to the provisions of the Agreement and as set forth in SCHEDULE 3: Map of the Project.

39. Clause 2 deals with the Obligations of the Developer Company. Clauses 2.1. and 2.3.3. read thus:

2.1. The Developer Company shall design, plan, finance, market, develop necessary infrastructure, provide necessary services, operate and maintain the infrastructure, administer and manage the Project and shall for such purposes, do all such acts, deeds and things as may be required in accordance with the terms and conditions set out in this Agreement.

2.3.3. The Developer Company shall complete construction of the Project within 30 months from the date of signing of the Power of Attorney.

40. Clause 3.1 which relates to the obligations of respondent-Board reads thus:

3.1. Subject to the other provisions of this agreement, APHB shall enter into a Power of Attorney in the format specified in SCHEDULE 1: Power of Attorney with the Developer Company on the Effective Date and make available the said parcel of land on an "as-is-where-is-basis", for the Developer Company to undertake and execute the Project in accordance with the terms and conditions mutually agreed between the Parties.

41. Clause H of the preamble to the Agreement dated 08.02.2006 takes note of the Request for proposal. While Clause 3.1 of the agreement refers to the "effective date" the said expression is not defined therein. It is only in the clause 1.1.15 of Part II of the Request for proposal (RFP) that "effective date" is defined to mean the date on which all the conditions precedent are satisfied or waived in writing by both the parties and the power of attorney is executed by APHB in favour of the developer company. The conditions precedent are those specified in Clause 9 of Part II of the Request for proposal. Clause 9.1 provides that the drop dead date shall be the date occurring upon the expiry of six months from the agreement date or such other date as may be agreed to in writing between the parties. Clause 9.2 provides that the rights and obligations of the parties shall terminate if the following events are not satisfied by the Drop Dead Date:

9.2.1. The Developer Company having achieved Financial Commitment.

9.2.2. The Developer Company obtaining FIPB and other approvals required for the commencement of the project, as provided u/s 8.1 of the agreement.

9.2.3. The Developer Company providing the bank Guarantee as mentioned in Section 2.9.1.

42. Section 8 relates to approvals and, u/s 8.1 thereof, the developer company shall obtain all approvals from governmental authorities and other persons for purposes of the project including approvals for (i) constructing and developing the Project and (ii) operating and maintaining the Project in accordance with the terms of the Agreement, the basic documents and the applicable law.

43. Clause 4 of the Agreement dated 08.02.2006 relates to commercial consideration and reads thus:

4.1. In consideration of the APHB granting the Power of Attorney, the Developer Company shall pay to APHB the amounts as given below:

4.2. Development Fee

4.2.1. The Developer Company shall pay to APHB the consideration of Rs. 3.82 crores per acre in the manner specified in SCHEDULE 4: Payment Schedule for Development Fee of this Agreement

4.2.2. Interest at the rate of 6.5% per annum from the Agreement date would be payable in respect of outstanding instalments as laid out in SCHEDULE 4: Payment Schedule for Development Fee.

The table give in Schedule 4 is as under:

Installment Percentage of No. Milestone Total Consideration --- 1 Signing of the Agreement 20% --- 2 On issue of Power of Attorney 20% --- 3 On the first day of the Fourth month from date of 20% issuing the Power of Attorney --- 4 On the first day of the Eighth month from date of 20% issuing the Power of Attorney --- 5 On the first day of the Twelfth month from date of 20% issuing the Power of Attorney

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44. Clause 7 relates to the events of default. Clause 7.1.1 enumerates the events which shall be construed as events of default on the part of Developer Company ("Developer Company-Default Event"). Clauses 7.1.2 and 7.1.3 read thus:

7.1.2. Without prejudice to the provisions of Section below, upon the occurrence and continuation of any Developer Company Default Event as stated in Section 7.1.1., APHB may deliver a notice to the Developer Company. Such notice shall specify in reasonable detail the breach, default or failure to which such notice relates.

7.1.3. Where the Developer Company commits a default in respect of the payment of the instalments due towards the Development Fee under this Agreement, APHB shall be entitled immediately upon expiry of 30(thirty) Business days from the date of receipt of the notice specified in Section 7.1.2 by the Developer Company to make a drawing or request for payment of the defaulted amount under the Bank guarantee issued and maintained pursuant to Section 2.9. In respect of Developer Company Default Event under Sections 8.1.1(i), 7.1.1(iii), 7.1.1(v), 7.1.1(vi), 7.1.1(vii), APHB shall be entitled immediately to terminate this Agreement and revoke the Power of Attorney and proceed with the encashing/invoking of the Bank Guarantee for the amount due to APHB.

45. The respondent-Board, vide letter dated 15.12.2006, informed the petitioner

that notice was issued u/s 7.1.2 of the Agreement dated 08.02.2006 calling upon him to make payment of the defaulted amount along with interest within a period of 30 days. The petitioner, vide letter dated 10.01.2007, submitted his reply thereto informing that there was no default on their part as regards the payment due in respect of the development fee. The respondent-Board, in their letter dated 24.01.2007, stated that the petitioner had never asked for the power of attorney and, meanwhile, nearly one year was over and if the power of attorney was not asked for, payment could not be delayed for years together. The petitioner was requested to make payment of the development fee without any further delay. This letter was followed by another letter dated 29.01.2007 wherein the petitioner is alleged to have constructed an electric sub-station intended for Phase-I area also in Phase-II area and another construction ostensibly for fixing LPG tank, without obtaining prior approval of the respondent-Board. The petitioner was informed that they were given permissive possession of the land on 02.05.2006 only to carry out preliminary activities like site levelling. The petitioner was requested to suspend all works on the site including construction of the electric sub-station and site levelling till further orders from the respondent-Board and to clear out of the Phase II area with all men and machinery except for security. The petitioner, vide letter dated 29.01.2007, informed that the understanding of the respondent-Board, regarding the due date for payment of 2nd and subsequent instalments of the development fee, was not in terms of the provisions of the Agreement, that the due dates for payment of all subsequent instalments were linked to the date of issue of the power of attorney by the respondent-Board, that the Payment Schedule contained in Clause 7 of the undertaking dated 26.10.2005 stood superseded by the Agreement dated 08.02.2006, that issuance of power of attorney to the petitioner was among the obligations under Clause 3.1 of the Agreement, that this obligation had to be fulfilled by the respondent-Board without any further act or thing having to be done by the petitioner and, until and unless this obligation was fulfilled by the respondent-Board, no further instalments of the development fee was due and payable under the Agreement. The respondent-Board was requested not to insist on payment of further instalments till they fulfilled their obligation of issuing the power of attorney. In their letter dated 30.01.2007, the petitioner referred to the allegations relating to construction of an electrical sub-station and the LPG tank. While stating that they were ready to honour the orders of the respondent-Board, and stop work of construction and development of the said utilities, they informed that the respondent-Board would remain liable for all the legal consequences that may follow.

46. Thereafter, the respondent-Board passed the impugned order of termination date 02.02.2007 wherein the petitioner was informed that the undertaking dated 26.10.2005 was part of a suo motu proposal from the petitioner forming part of the RFP document and that was the basis for the swiss challenge bidding process as mentioned in the Agreement dated 08.02.2006, that the suo motu undertaking given by the petitioner, which formed the basis for the Agreement

dated 08.02.2006, could not be allowed to be stultified by any other document and that the plea that the 2nd instalment was conditioned by issue of a Power of Attorney in favour of the petitioner was incongruous apart from being inconsistent with the undertaking given by them and hence was unsustainable. Petitioner was informed that the respondent-Board had no other option except to terminate the Agreement in terms of Section 7.1.3, and that they were hereby terminating the contract dated 08.02.2006 entered into with the petitioner, resuming the land given to the petitioner for development and that the petitioner was interdicted from entering into the subject land or undertaking any developmental activity thereon.

47. In the order under appeal, the learned Single Judge held that the notice dated 15.12.2006, issued under clause 7.1.1 of the agreement dated 08.02.2006, made no reference to the payment schedule as mentioned in the agreement and merely referred to the payment terms of the petitioner in the suo motu proposal along with the undertaking dated 26.10.2005, and that, by issuing a notice merely based on the proposal offered by the petitioner, without referring to schedule IV of the agreement dated 08.02.2006, the respondent-Board had violated clause 7.1.2 of the agreement dated 08.02.2006 and, from the said point of view, the impugned notice was illegal and arbitrary. The learned Single Judge further observed that, having entered into the contract with specific conditions, the respondent-Board had failed to detail the reasons in support of the allegations of default in payment of the second instalment on the part of the petitioner as contemplated under clause 7.1.2 by taking relevant aspects into consideration in the proposed document in the suo motu undertaking and also the agreement dated 08.02.2006 and thus the said action was arbitrary and in violation of Article 14 of the Constitution of India.

48. As noted hereinabove, the table in Schedule IV of the Agreement dated 08.02.2006 required the second instalment of 20% of the total consideration to be paid on issue of power of attorney. While it is true that the Agreement dated 08.02.2006 is linked, at least in part, to the Request for proposal (RFP) and that the Request for proposal, along with the petitioner''s offer in his letter dated 25.10.2006, was furnished to all the bidders who participated in the swiss challenge process, the fact remains that the words "or three months from the agreement date, whichever is earlier" in relation to the payment terms of the second instalment, found in the letter dated 26.10.2005 does not find mention either in the Request for proposal or in the Agreement dated 08.02.2006. While the letter dated 26.10.2005 is for development of Acs.26.00 of land for a consideration of Rs. 2.25 crores/2.50 crores, both the Request for proposal and the Agreement dated 08.02.2006 relate to development of a larger extent of Acs.35.50 of land and under the Agreement dated 08.02.2006 the consideration is Rs. 3.82 crores per acre, which are at variance with the development area of land and the consideration payable for development in the letter dated 26.10.2005. Since both the Request for proposal, and the Agreement dated 08.02.2006, merely require payment of the second instalment on the power of

attorney being issued, the earlier undertaking given by the petitioner in their letter dated 26.10.2005, in circumstances which no longer subsist after the letter of award was issued on 31.12.2005, or the Agreement was entered into on 08.02.2006, cannot be made the basis for terminating the Agreement dated 08.02.2006. In an intra-court appeal, while questions of fact and law may be re-apprised, normally, the Division Bench would not, unless there exist cogent reasons, differ from a finding arrived at by the learned Single Judge. (B. Venkatamuni v. C.J. Ayodhya Ram Singh (2006) 13 SCC 449; Manjunath Anandappa10. In such circumstances, the finding of the Learned Single Judge that the impugned proceedings dated 02.02.2007, whereby the agreement dated 08.02.2006 was terminated, is arbitrary, illegal and in violation of Article 14 of the Constitution of India, is not a conclusion which necessitates interference by a Division Bench in an intra-court appeal.

49. Sri S.R. Ashok, learned Senior Counsel appearing on behalf of the respondent-Board, would submit that, as required under clause 9.2.2 of the Request for proposal, the petitioner had not obtained the approvals required for commencing, constructing and developing the project within six months from the agreement date and as such, under clause 9.2, the rights and obligations of the parties under the Agreement dated 08.02.2006 stood terminated. We do not consider it necessary to examine this contention in these appeals, since the writ petition was filed challenging the order of termination dated 02.02.2007 and, thereunder, the only reason given for terminating the Agreement dated 08.02.2006 is failure on the part of the petitioner to pay the second instalment of 20% of the total consideration within three months from the Agreement date. Suffice to observe that, if the respondent-Board is entitled to proceed against the petitioner for other violations, this order shall not preclude them from taking action in accordance with law.

50. We see no reason to accept either the submission of Sri V. Venkataramana, learned Counsel for the petitioner, that as the respondent-Board had taken steps to comply with the order of the learned Single Judge in seeking to refund the 1st instalment amount and the Bank guarantee, they could not turn around and now question the very maintainability of the writ petition and that their conduct disentitled discretion being exercised in their favour or that of Sri S.R. Ashok, learned Senior Counsel appearing on behalf of the respondent-Board, that the very fact that the petitioner had issued a suit notice showed that it was their understanding that a suit was the proper remedy and that there was no exceptional circumstances for this Court to come to the petitioners'' rescue burdening itself with an adjudication of contractual disputes and converting itself into a civil court.

51. The respondent-Board in their letter dated 20.5.2008, while enclosing the cheque for Rs. 27.89 Crores and the bank guarantee for Rs. 108.48 Crores, informed the petitioner that the cheque and the bank guarantee were being returned in compliance with the order of this Court in W.P. No. 2085 of 2005

dated 1.5.2008 and this was without prejudice to their legal rights to pursue such remedies as were available to them in law. While the respondent-Board may well have been satisfied with the relief granted by the Learned Single Judge and to have decided to comply with the said order, the mere fact that they chose to do so would not bar them from preferring a writ appeal, consequent upon an appeal being filed by the petitioner, or to question the maintainability of the writ petition, more so, when it is evident from the aforementioned letter that compliance with the order was without prejudice to their legal remedies.

52. The notice, issued on behalf of petitioner u/s 68 of the A.P.H.B. Act on 15.03.2007, itself makes a reference to the petitioner having filed W.P. No. 2085 of 2007 before the High Court. It is also mentioned therein that the notice was being issued to the respondent-Board seeking substantial relief and for meeting the statutory requirement of issuing a notice u/s 68 of the A.P.H.B. Act. It is true that a party, who invokes the extraordinary-jurisdiction of the High Court under Article 226 of the Constitution, cannot be allowed to play ''hide and seek'' or to ''pick and choose'' the facts he likes to disclose and to suppress (keep back), or not to disclose (conceal) other facts, that suppression or concealment of material facts has no place in equitable and prerogative jurisdictions and, if the applicant does not disclose all material facts fairly and truly, but states them in a distorted manner and misleads the Court, the Court has the inherent power, in order to protect itself and to prevent an abuse of its process, to discharge the rule nisi and refuse to proceed further with the examination of the case on merits [K.D. Sharma 2008 (3) CCC 433]. As a general rule, suppression of a material fact by a litigant disqualifies him from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be material in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.

53. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226. (State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another,). But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If, however, a party has already availed the alternative remedy, while invoking the jurisdiction under Article 226, it would not be appropriate for the court to entertain the writ petition. The rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another court. But even when an alternative remedy has been availed of by a party, but not pursued, that party could prosecute proceedings under Article 226 for the same relief. (S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others,).

54. It is evident that the suit notice was issued on behalf of the petitioner, after the writ petition was filed, in order to comply with the statutory requirement u/s 68 of the A.P.H.B. Act. Sri V. Venkataramana, Learned Counsel for the petitioner, would contend, not without justification, that in case this Court had held that the writ petition as filed was not maintainable and that the remedy available to the petitioner was to approach the competent civil court, then, u/s 68 of the A.P.H.B. Act, the petitioner would have to await a period of two months after issuance of notice before filing the suit and in order to avoid any further delay in this regard, and to safeguard the interests of the petitioner in case of an adverse order from this Court, the suit notice was issued. It is also not in dispute that, while a notice u/s 68 of the Act was issued, the petitioner has not even elected to file the suit seeking the relief sought for in this writ petition. They can, therefore, neither be said to be guilty of suppression of fact nor as being disentitled from availing the remedy under Article 226 of the Constitution of India on the doctrine of election.

55. Sri V. Venkataramana, Learned Counsel for the petitioner would submit that the petitioner no longer desired an adjudication of their entitlement to any consequential relief as a result of the termination of the contract being held to be illegal and that it would suffice if that part of the order of the learned Single Judge, whereby relief was granted to the respondent-Board, was set aside. On the other hand, Sri S.R. Ashok, Learned Senior Counsel appearing for the respondent-Board, would submit that merely setting aside the order of termination without the consequential relief being granted would, in effect, amount to granting a declaration without a purpose and, since no consequence followed therefrom, it would be a futile writ, that the natural consequence of the order of termination being set aside, excluding the latter part, would be revival of the agreement, that a mere declaration that the termination was illegal would amount to grant of a decree of specific performance which the appellate Court should not grant since even a writ court would not do so under Article 226 of the Constitution of India and that the appellate court, in an intra-court appeal, could exercise all such powers as could be exercised by the writ Court itself.

56. Having held that the termination of the Agreement dated 8.2.2006 was arbitrary, illegal and in violation of Article 14 of the Constitution of India, the Learned Single Judge travelled beyond the scope of the writ petition in granting a relief which the petitioner had not sought for and which, Sri V. Venkata Ramana, Learned Counsel for the petitioner would contend, is in effect a relief granted in favour of the respondent-Board. The finding recorded by the Learned Single Judge that, since almost the time fixed in the agreement for completion of the contract had come to an end, and that the time fixed for payment of the entire development fee had also expired, the petitioner could not be allowed to execute the contract now, is contrary to the contractual terms. As noted hereinabove, Clause 2.3.3 of the Agreement dated 8.2.2006 specifically provides that the petitioner should complete construction of the project within 30 months from the date of signing of the power of attorney and since, admittedly, the respondent-Board has not issued the power of attorney till date, the period for completing

construction of the project has not as yet expired. Similarly, under Clause 4 of the Agreement, read with Schedule IV thereof, the 2nd, 3rd, 4th and 5th instalments are all linked to the date of issuance of the power of attorney and, since the power of attorney has not yet been issued, it cannot also be said that the time fixed for payment of the entire development fee has also expired. The Learned Single Judge ought not to have accepted the respondent-Board''s contention that want of financial resources was the cause for not paying the second instalment amount, as this could only have been ascertained if the power of attorney had been issued which would have simultaneously required the petitioner herein to pay the second instalment. The order of the Learned Single, to the extent he held,:

However, at the same time, the petitioner is also not entitled to have the benefit of contract pursuant to the agreement dated 8.2.2006 so as to proceed further in accordance with the same. Respondent No. 1/Housing Board shall refund to the petitioner, the development fee paid by him, without any interest, within a period of two months from today. Further, the bank guarantee furnished by the petitioner towards the entire development fee in terms of the agreement dated 8.2.2006 shall be released in favour of the petitioner. However, it is also made clear that in case the 1st respondent - Housing Board decides to proceed with the earlier plan of developing the site in question, it may do so by initiating fresh process.

is set aside.

57. As the order of the Learned Single Judge to the extent he declared the termination of the Agreement dated 08.02.2006, vide proceedings dated 2.2.2007, as arbitrary, illegal and in violation of Article 14 of Constitution of India is affirmed, the question which necessitates examination is whether such declaration can be issued without any consequential relief being granted.

58. It is well settled that the High Court under Article 226 of the Constitution of India would not issue futile writs. A petition under Article 226 of the Constitution may be dismissed on the ground that issuance of a writ will be ineffective, infructuous, unnecessary or futile. If the Court is satisfied that no useful purpose would be served by issuing a writ, it can dismiss the application on that ground alone. As it is not the practice of Courts to issue meaningless writs the High Court while granting relief, on being satisfied that issuance of a writ would be ineffective, should consider whether grant of a writ would be an exercise in futility. (Suresh Vs. Vasant and Others, , Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu,). It is a well-known rule that whenever a writ of mandamus would be unavailing, or if granted fruitless, it will be refused. (Bal Krishan Aggarwal Vs. The Punjab State, ; Ajit Kumar Addy and Others Vs. S.M. Maitra, Collector, 24-Parganas,). It is also well established that a writ of certiorari or mandamus should not be issued when they would be useless. (Debendra Bandhu Lahiri Vs. The State of West Bengal and Others,). In S.L. Kapoor Vs. Jagmohan and Others, , while holding that the impugned order was

vitiated for failure to observe principles of natural justice, the Supreme Court let the matter rest there and chose not to quash the notification since the term of the committee was to run out in a few days time.

59. In the case on hand, the petitioner has sought a declaration that the order dated 2.2.2007 is arbitrary, illegal and in violation of Article 14 of the Constitution and the Learned Single Judge has declared it to be so. This Court would have been required to examine the question, whether or not any consequential relief should be granted and, if so, what should be the nature of the relief, only if the petitioner continued to seek grant of any consequential relief. Since Sri V. Venkataramana, Learned Counsel for the petitioner, would now state that the petitioner no longer desired grant of any consequential relief by this Court, we consider it wholly unnecessary to examine this aspect any further. In exercise of its writ jurisdiction under Article 226 of the Constitution of India, the High Court quashes several orders without granting any consequential relief. We see no reason, therefore, to deny the declaration sought for merely because the petitioner does not press for a consequential relief.

60. Since the impugned proceedings dated 02.02.2007, terminating the agreement dated 08.02.2006, is for non-payment of the second instalment allegedly due by the petitioner, which proceeding is alone impugned in the writ petition, we see no reason to examine the question as to whether the respondent-Board is entitled to terminate the agreement for the petitioner''s violation of other contractual conditions. It is, however, made clear that this order shall not preclude the respondent-Board from taking action against the petitioners in accordance with law for any breach on their part of the contractual conditions governing the rights and obligations of the parties.

61. We let the matter rest by affirming the order of the Learned Single Judge declaring that the order of termination dated 2.2.2007 is illegal, arbitrary and in violation of Article 14 of Constitution of India. We make it clear that we have not expressed any opinion on the consequences of the declaration, and our order shall not be construed as implicitly granting or denying any relief which may arise as a consequence of this order.

62. W.A. No. 526 of 2008 is allowed in part and W.A. No. 847 of 2008 is dismissed. However, in the circumstances, without costs.

