

A.B.C. India Limited and Others Vs The A.P. Industrial Infrastructure Corporation Limited and Others

Court: Andhra Pradesh High Court

Date of Decision: July 16, 2010

Acts Referred: Constitution of India, 1950 " Article 12, 14, 226, 299

Contract Act, 1872 " Section 23

Registration Act, 1908 " Section 69

Registration Rules, 1908 " Rule 26A

Specific Relief Act, 1963 " Section 31, 39

Transfer of Property Act, 1882 " Section 10, 11, 31, 32, 4

Citation: (2010) 6 ALT 142 : (2011) 3 CivCC 637

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: V.V.N. Narasimham, A. Venkata Ramana and V. Ravinder Rao, for the Appellant; P. Roy Reddy for APIIC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

This group of 22 cases can conveniently be disposed of by a common order in view of the factual background and the

issues that arise for adjudication are almost similar. All the petitioners were allotted industrial plots by the Andhra Pradesh Industrial Infrastructure

Corporation Limited (APIIC or Corporation, for brevity), respondent No. 1, two decades ago. Sale deeds were also executed transferring title in

immovable property in their favour. Half a decade thereafter on the ground that the allottees flouted the conditions of allotment and agreement of

sale, which preceded sale deeds, the allotment was cancelled, aggrieved by which, the present writ petitions are filed.

2. Taking W.P. No. 7320 of 2006 as illustrative case, the factual background in little more detail may be noticed. The petitioner in W.P. No. 7320

of 2006 is a Company engaged in transport business all over India. They have branch Office in Visakhapatnam. APIIC developed Industrial

Estate, Pedagantyada (hereafter called, IE). The second respondent, namely the Zonal Manager, APIIC, by letter dated 25.09.1987 allotted

2322.58 square metres comprised in plot No. 192 at a rate of Rs. 60/- per square metre for construction of godown for petitioner's transport

business. By 11.12.1987 the petitioner paid Rs. 1,39,354.80 ps. The allotment letter was followed by an agreement of sale on 11.12.1987

between the petitioner and APIIC. Twelve years thereafter, on 08.10.1999 APIIC executed sale deed which was registered by the second

respondent.

3. The petitioner alleges that APIIC did not provide basic infrastructure facilities like roads, water, electricity, and therefore, the plot could not be

utilized for the purpose for construction of godown. It is also the case of the petitioner that APIIC provided road, electricity, water only in 2006.

The petitioner then applied seeking permission for construction of godown to Industrial Area Local Authority (IALA) i.e., Zonal Manager. By

letter dated 20.01.2006 the Corporation approved the building permission. The petitioner commenced construction. At that stage, second

respondent issued a show cause notice dated 10.08.2005 calling upon the petitioner company to show cause as to why the allotment of the plot

should not be cancelled, as to why the agreement of sale and sale deed be determined, and as to why the petitioner should not be evicted from the

premises to make available the industrial plot for utilization for industrial use by a needy entrepreneur. The petitioner statedly submitted explanation.

The second respondent then passed the impugned order dated 28.03.2006 duly determining the agreement of sale dated 11.12.1987 and sale

deed dated 08.10.1999.

4. It may be noted that most of the petitioners in this group of cases are transport companies and so as to accommodate all such companies at one

place, APIIC allotted industrial plots for construction of transport offices and godowns. Various details of all the petitioners are reflected in the

following tabular column.

Statement showing the particulars of allotment, agreement of

sale, sale deed, show cause notice and date of cancellation

(All the petitioners are allottees of plots in Industrial Estate, Pedagantyada)

Cost

paid

Writ Area in per

Sl. Petition Sq. Sq. Date of Date of Date of Sale Date of

No No. Plot No. Mts. Mt. Allotment Agreement Deed Cancellation

(Rs.)

1. 7320/2006 192 2322.58 60/- 25.09.1987 11.12.1987 08.10.1999 28.3.2006

2. 7321/2006 173A 2136.16 132/- 31.03.1997 29.12.1997 08.02.1999 23.3.2006
and B 28.08.1997
3. 7323/2006 188 1858.06 60/- 11.09.1987 11.12.1987 31.03.1999 23.3.2006
4. 7399/2006 164B 991 120/- 05.09.1996 26.07.1997 23.02.1999 22.3.2006
5. 9454/2006 166 2013.60 23.03.1987 22.06.1988 08.02.1999 15.4.2006
6. 9478/2006 161 2053.16 120/- 10.09.1997 09.01.1998 22.12.1998 15.4.2006
7. 9707/2006 167/B 991.00 100/- 11.01.1990 22.10.1990 31.03.1999 15.4.2006
8. 9708/2006 179/A/B 1263.48 78/- 10.05.1989 18.08.1990 28.05.2001 15.4.2006
9. 9709/2006 187/A 845.42 120/- 11.09.1996 09.05.1997 01.05.2000 15.4.2006
10. 9710/2006 180/B 1026.58 75/- 22.03.1989 20.10.1989 30.04.1999 15.4.2006
11. 10359/2006 172/B 1184.51 60/- 20.11.1987 16.09.1988 No sale deed 24.1.2004
12. 5732/2007 181/B 1026.58 75/- 16.07.1988 16.02.1991 31.03.1999 23.3.2006
13. 7322/2006 189 4830.96 60/- 11.09.1987 10.12.1987 25.03.1999 28.3.2006
190B
14. 5938/2007 173A 2136.16 132/- 31.03.1997 29.12.1997 08.02.1999 23.3.2006
and B 28.08.1997
15. 6495/2007 180/B 1026.58 75/- 22.03.1989 20.10.1989 30.04.1999 15.4.2006
16. 6503/2007 38 42.60 27.03.1998 08.06.1998 13.10.1998 15.4.2006
17. 6513/2007 179 A/B 1263.48 78.76 10.05.1989 18.08.1990 28.05.2001 15.4.2006
18. 6514/2007 161 2053.16 120/- 10.09.1997 09.01.1998 22.12.1998 15.4.2006
19. 6515/2007 192 2322.58 60/- 25.09.1987 11.12.1987 08.10.1999 28.3.2006
20. 6516/2007 167/B 991.00 100/- 11.01.1990 22.10.1990 31.03.1999 15.4.2006
21. 6517/2007 187/A 842.42 120/- 11.09.1996 09.05.1997 01.05.2000 15.4.2006
22. 6768/2007 188 1858.06 60/- 11.09.1987 11.12.1987 31.03.1999 23.3.2006

N.B:

1. The show cause notice was issued on 10.8.2005.
2. In writ petitions at Sl. Nos. 1 to 13 above, order cancelling the allotment is challenged.
3. In writ petitions at Sl. Nos. 14 to 22 above, challenge is to the conditional offer for extension of time.
5. The petitioners in the writ petitions at serial Nos. 1 to 13 in tabular column again filed another set of writ petitions as shown in serial Nos. 14 to 22 above. To complete the narration, we may briefly indicate the circumstances leading to filing of other writ petitions. For this purpose, we may

sum up the case of petitioner in W.P. No. 5938 of 2007. The same petitioner filed W.P. No. 7321 of 2006 challenging the cancellation order. The

impugned order was suspended. The second respondent issued a letter dated 26.2.2007 informing that a decision is taken to give one more

opportunity to petitioner subject to terms and conditions stipulated therein. One such condition was payment of Rs. 16,01,120/- towards 50% of

prevailing market value in lump sum for condoning the delay and also subject to withdrawing the writ petition filed by the petitioner earlier.

Challenging the said letter, W.P. No. 5938 of 2007 is filed. The conditions in the letter dated 26.2.2007 of second respondent read as under.

1. You should withdraw the suit/writ petition filed by you challenging the cancellation orders.

2. You should give an undertaking, duly signed before the Notary Public in the prescribed proforma enclosed, agreeing to commence the

construction of factory building in the above Plot duly obtaining permissions from the competent authorities including the Commissioner, APIIC-

IALA before 31.7.2007 and complete construction of factory building and implement your project and commence commercial production before

31.7.2007.

3. You should pay Rs. 16,02,120.00 (50% on the present prevailing land cost for the entire extent of the Plot) by way of crossed demand draft

drawn in favour of APIIC Ltd., payable at Visakhapatnam towards fee for condonation of delay in lump sum positively by 31.3.2007.

4. After fulfilment of the above two conditions, orders will be issued for keeping the cancellation orders issued already on 23.3.2006 in abeyance

and deter the action for eviction duly granting time for commencement of Building, for completion of building and for going into commercial

production.

5. Only after complying with the above conditions and after implementation of the project within the stipulated time, the allotment of above Plot

shall be restored in your favour duly revoking the cancellation orders.

6. The allottee challenged the same on the same grounds which were arrayed in the earlier writ petition.

7. The APIIC filed separate counter affidavits in this type of cases also. The averments therein are not in any way different from the averments in

the affidavits filed earlier and nothing new has been averred or alleged.

8. As noticed supra, petitioners mentioned in Sl. Nos. 1 to 13 in tabular column were served such letters and all of them filed writ petitions

mentioned at Sl. Nos. 14 to 22. The cause of action for this category of writ petitions is the letter of second respondent demanding 50% of

prevailing market value of the land.

9. This Court heard argument of counsel for petitioners, M/s. V.V.N. Narasimham, A. Venkata Ramana, v. Ravinder Rao, and Standing Counsel,

Mr. P. Roy Reddy. APIIC also relies on Radhakrishna Agarwal and Others Vs. State of Bihar and Others, State of U.P. and others Vs. Bridge

and Roof Co. (India) Ltd., Indu Kakkar Vs. Haryana State Industrial Development Corporation Ltd. and Another, Infotech Enterprises Ltd. v.

Bharat Sanchar Nigam Limited 1999 (6) ALT 600 Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, and Teri Oat

Estates (P) Ltd. Vs. U.T., Chandigarh and Others, In view of the pleadings and rival submissions, the question of maintainability of writ petitions,

question of power of APIIC to cancel allotment and the question of arbitrariness and waiver are the points, which need to be considered by this

Court.

Maintainability of writ petitions

10. APIIC contends that "'past threshold contract dispute'" arising out of private contract entered into between public authority and a private citizen

is not amenable to judicial review. According to them, the allotment letter/ conditions and covenants in the sale agreement between the parties form

part of registered sale deed and, therefore, dispute in relation to cancellation of allotment for non-compliance with the conditions of allotment is not

justiceable before this Court. Petitioners would urge that when once the registered sale deeds are executed, petitioners acquired absolute

marketable title to the property and APIIC being in the position of vendor does not have any power under Sections 11, 54 and 55 of the Transfer

of Property Act, 1882 (TP Act). They would also urge that APIIC being public authority cannot unilaterally take a decision, which would render a

valid registered conveyance deed ineffective. The controversy needs to be considered in two parts: first, regarding the arbitrariness on the part of

APIIC and the second, power of APIIC to do so. These questions are adverted to later.

11. In Radhakrishna Agarwal, a Division Bench of Supreme Court considered the question of maintainability of a writ petition challenging the

breach of contract between the citizen and the State. In 1970, appellants therein were awarded the lease to collect and exploit sal seeds from

forest area. Four years later, State Government issued orders revising rate of royalty payable by the lessees. The challenge before Patna High

Court failed even though the appellants therein relied on Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, The

Supreme Court noticed that the contract was not statutory contract and, therefore, a writ petition would not lie as no questions of Article 14 of

Constitution of India would arise. The Supreme Court also appraised the following three types of breaches pointed out by Patna High Court as to

alleged obligation of the State or its agents where a writ petition would not lie in which event aggrieved party has to approach the Civil Court for

damages for breach.

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State

he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules

framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities

of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

12. Thus where the questions of pure alleged breaches of contract are involved, a writ would not issue to compel the authorities to remedy breach

of contract.

13. In Bridge and Roof Company, the respondent was awarded a contract by the Government of Uttar Pradesh for the work of improvement of a

road. After completion of the work, disputes arose about certain payments with regard to sales tax and price adjustment. The contractor

approached the Commissioner of Sales Tax for reduction and composition of tax in terms of Section 7-D of U.P. Trade Tax Act, which appears

to have been acceded. But the concerned Deputy Commissioner ordered 1% tax deduction at source in view of Government Order with regard to

composition scheme, which was valid upto 31.3.1995. Against this, the writ petition was filed. Allahabad High Court disposed of the writ petition

directing to deduct only 1% of the bill upto 31.3.1995. The Supreme Court noticed that when the contract provides for arbitration, the parties

should follow that remedy and should not invoke Article 226. The relevant dictum is as follows.

...the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the

Contract Act or, maybe, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of

such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the

contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract

and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters

which cannot be agitated in or adjudicated upon in a writ petition.

14. Kurien E. Kalathil deals with features that distinguish non-statutory contract from that of a statutory one. Kerala State Electricity Board entered

into agreement for construction of a dam. The agreement provided for payment of minimum wages fixed under the Minimum Wages Act, 1948.

The contractor claimed compliance with the said condition. The Board stopped payment insofar as revised (escalated) minimum wages from

January 1985. The contractor's request to State Government was negatived ordering recovery. It was challenged before Kerala High Court

seeking a direction to Board for payment of the amounts towards labour charges with interest. The same was allowed which was assailed before

the Supreme Court inter alia on the ground that such dispute relating to interpretation of clause in a contract and implementation of such clause

cannot be made subject matter of writ petition and that remedy of aggrieved person lies in approaching the Civil Court. The argument found

acceptance by the Court and the Supreme Court held as follows.

The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages

actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under

Article 226.... A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory

body.... 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. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract.

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. The disputes

about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act.

Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to

contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is

statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the

terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for

adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the

appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have

relegated to other remedies.

(emphasis supplied)

15. In Infotech Enterprises, a Division Bench of this Court considered the question of maintainability of writ petition when the allotment of industrial

plot was cancelled for non-compliance with the conditions of allotment. In that case, in 1996, APIIC allotted the land admeasuring Acs. 1.50 cents

comprised in Plot Nos. CFC4 and CFC5 at tentative value of Rs. 1,923/- per Sq. yard to Department of Telecommunications for construction of

a Telephone exchange and ground based tower at Infocity, Madhapur. The payment was made with some delay. Though foundation stone was

laid for construction of BSNL Bhavan, work was not taken up. In the mean while, BSNL came into existence as wholly owned Government of

India company. After issuing notice, APIIC cancelled the allotment, took delivery of possession and re-allotted two plots to Infotech Enterprises.

In their challenge, BSNL was successful before the learned Single Judge who held that cancellation of allotment was illegal. Before the Division

Bench, the main question was regarding maintainability of writ petition in relation to dispute arising out of a non-statutory contract. While

concluding in the affirmative, the Division Bench held as follows.

Admittedly, the contract is not a statutory sanction behind the same, and therefore, neither side can take any benefit nor any advantage or any

upper-stray in regard to its enforceability. The Industrial Infrastructure Corporation is a body, which has been constituted for the purpose of

development of the industries, the business of which includes including the allotment of the plots to the eligible units, both private and public.

Therefore, the question now necessarily has to be seen from the angle and a pedestal of a commoner or a citizen as to whether the same approach

could have been made for any such attributions as made. Admittedly, there has been no construction and the time lapse far beyond the period and

though the notice has been issued and no progress has been shown.... The complaint admittedly is one against the cancellation of the plot and for

the same being allotted to appellant herein. Necessarily, it is only by measure of damages, which the writ petitioner can as well seek to enforce

rather than seeking for specific enforcement in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The principles

in regard to the enforceability of the contractual obligations under Article 226 of the Constitution no longer res integra. No doubt each case has to

be seen from its own facts and circumstances. It is not a case where any such arbitrary action can be attributed or can be made out on the facts

and circumstances and even to warrant any extraordinary knock of this Court.

(emphasis supplied)

16. APIIC relies on these precedents to deny extraordinary remedy to petitioners. In the facts and circumstances of this case, however, this Court

is not able to countenance the submission. Admitted fact is that the allotment was made to petitioners in 1987 followed by an agreement of sale

and ten years thereafter a sale deed was also executed by APIIC conveying right, title and interest absolutely to the allottees. When the contract is

concluded and regular sale deed is executed between the vendor and vendee in respect of immovable property, it cannot be said that the dispute

arises in the realm of a statutory contract or non-statutory contract. The dispute is not with regard to the contract. It is in effect the question of title,

which is sought to be nullified by APIIC unilaterally based on conditions of allotment. The same is not permissible in law.

17. APIIC offered industrial plots and the entrepreneurs gave counter offer, which was accepted by the Corporation. At that stage the conditions

of offer, counter offer and acceptance found expression in the allotment letter (acceptance of offer subject to conditions) and in the agreement of

sale (contract of sale) in terms of Section 54 of TP Act. This ultimately resulted in the conclusion of contract by way of execution of sale deed by

vendor in favour of vendee. When once the contract is concluded the allotment conditions or covenants of agreement of sale ordinarily cannot be

enforced having regard to various provisions of TP Act, Indian Contract Act, 1872, the Registration Act, 1908 and Specific Relief Act, 1963,

(these constitute Civil Code of India), which govern the transfer of immovable property from one person to another person. The sale agreement

does not survive when once the contract is concluded on execution of registered sale deed resulting in alienation, conveyance, assignment and

transfer of title. Any contrary view would be opposed to the Civil Code of India.

18. Chapter II of TP Act contains two parts. Part A deals with transfer of property whether ""movable"" or ""immovable"" and part B deals with

transfer of ""movable"" property. As per Section 5 thereof transfer is defined as conveyance of property from one living person to one or more living

persons. Section 6 of TP Act declares that property of any kind may be transferred except the one, which is prohibited. Section 6(h) of TP Act

inter alia prohibits transfer, which is opposed to the nature interest effected thereby or for an unlawful object or consideration within the meaning of

Section 23 of Contract Act. Sections 8, 10 and 11 of TP Act attach sanctity and solemnity to a transfer of immovable property and read as under.

8. Operation of transfer.--Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee

all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all

things attached to the earth;

and, where the property is machinery attached to the earth the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors,

windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not

transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

10. Condition restraining alienation.--Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any

person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void except in the case of a

lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit

of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same

for her beneficial interest therein.

11. Restriction repugnant to interest created.--Where, on a transfer of property, an interest therein is created absolutely in favour of any person,

but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and

dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of

another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction

or any remedy which he may have in respect of a breach thereof.

19. Thus when transfer is completed (on execution of sale deed in case of immovable property) any restriction contained in the transfer deed

disentitling the transferee from operating or disposing of his interest would be void and even when such a restriction is created, transferee can enjoy

the property ignoring the same. In view of Section 4 of TP Act, all the provisions relating to contracts shall apply to TP Act and, therefore, any

transfer or conveyance incorporating restraint clauses would be void and the purchaser can ignore such clauses.

20. In case of contract of sale of immovable property, Section 55 of TP Act dealing with rights and liabilities of buyer and seller governs and when

the buyer discharges obligations and the seller passes/conveys the ownership of property the contract is concluded. The liabilities, obligations and

rights if any between the buyer and seller after execution of sale deed would be governed by other provisions of Contract Act and Specific Relief

Act as referred to infra and the seller cannot unilaterally cancel the conveyance or sale.

21. In State of Kerala Vs. Cochin Chemical Refineries Ltd., the Supreme Court held that when a document transferring immovable property is

registered, the transaction passes out of the domain of a contract. The relevant observations are as follows.

Similar observations were made in Rashik Lal v. Ram Narain and Ors. ILR (1912) All 273 where Karamat Hussain, J., observed at p. 276:

...mortgage under the Transfer of Property Act is a transfer of an interest in the land mortgaged, and not a mere contract. It therefore follows that

no sooner a valid mortgage deed is registered, an interest in the property mortgaged, in the absence of any contract to the contrary, vests in the

mortgagee notwithstanding the fact that the mortgage money has not been paid by the mortgagee to the mortgagor. The mere non- payment of the

mortgage money cannot have the effect of rendering the mortgage invalid.

Sulaiman, J., in Dip Narain Singh Vs. Nageshar Prasad and Others observed that once a document transferring immovable property has been

registered, the transaction passes out of the domain of a mere contract and into one of a conveyance. Such a completed transaction is governed by

the provisions of the Transfer of Property Act and so much of the Contract Act as is applicable thereto.

22. Badugu Venkata Durga Rao and another Vs. Surneni Lakshmi, and K. Gopal Reddy Vs. Secretary and Others, this Court applied the above

principle. Therefore the issue would be whether the seller of immovable property can cancel the transfer of the property on an allegation that the

conditions if any in the sale deed are not complied with by the buyer.

23. APIIC is certainly an "agency" within the meaning of Article 12 of Constitution and, therefore, deemed to be State for the purpose of Part III

of Constitution see B. Satyanarayana v. State 1987 (1) ALT 378 (FB). The issue therefore is, being a State can APIIC cancel the sale deed or

issue a letter of allotment, which has effect of nullifying the conveyance/transfer of title to the entrepreneur. The answer must be in the negative. As

noticed supra, in a sale transaction the vendor has remedy u/s 31 of Specific Relief Act to seek cancellation of sale deed in a Civil Court if the sale

deed executed is likely to affect the right, interest and title of the vendor subsequently. As held by the Full Bench of this Court in Yanala

Malleshwari and Others Vs. Ananthula Sayamma and Others, if the real owner of the immovable property did not execute the sale deed in respect

of the property owned by him and by playing fraud two strangers entered into sale transaction in respect of the same property, the real owner can

always go to the Registering authority and submit cancellation deed. After the Full Bench ratio, the Government of Andhra Pradesh amended

Registration Rules (issued u/s 69 of the Registration Act) and introduced Rule 26-A which is to the effect that whenever a cancellation deed is

submitted by the person alleging to be owner, the Registering authority is bound to issue notice to the persons interested.

24. This does not however mean that APIIC which discharges an important public function of giving a fillip to industrialisation cannot act arbitrarily

ignoring the relevant legislation and take any action which has effect of nullifying the registered sale deed. This Court in K. Gopal Reddy dealt with

the case wherein the Cooperative Society as a vendor executed sale deeds and subsequently cancelled on the ground that the petitioner was not

eligible to be a member of the Co-operative Society. This Court while allowing the writ petition held that when once the sale deed is registered the

transaction goes out of realm of contract and such sale deed can be cancelled or annulled only with the participation of the parties to such

transaction. The relevant observations are as under.

It hardly needs any emphasis that wherever a transaction of sale, mortgage or other transfer takes place in accordance with law, it can be annulled

only with the participation of parties to such transaction. If one of the parties does not co-operate for such annulment or cancellation, the only

course open to the party intending such cancellation is to have recourse to an action u/s 39 of the Specific Relief Act. If unilateral cancellation of

sale deeds or other instruments is permitted, there is every danger of a party to a transaction becoming an ultimate Judge in his own cause. In such

cases, the sales or other transactions brought about in accordance with law, lose their significance and have to depend for their efficacy or

enforceability on the mercy of the persons who transferred the rights under the documents.... There is another reason why such a course of action

is impermissible in law. Sale deeds invariably result in delivery of possession of the subject property. Even where the vendor has executed a Deed

of Cancellation unilaterally, it hardly tells upon the possession, which stood delivered to the purchaser. To recover possession, one has invariably,

to have recourse to suit, once again, under the provisions of the Specific Relief Act. No individual or agency is vested with the power to resume to

himself, the possession of a property conveyed by him or it under a sale deed. Nothing is said about the consideration received from the petitioner.

It is not stated as to whether it was forfeited or refunded.

25. As the question in these cases is not in relation to the contract but in relation to the authority, power and jurisdiction of APIIC as vendor to

cancel the sale, the principle in the decisions relied on by the Standing Counsel have no application. This Court therefore holds that these writ

petitions are maintainable.

Power of APIIC

26. Some of the reasons for holding that writ petitions are maintainable are also relevant for this point. In Yanala Malleshwari, the Full Bench held

that when once a document is registered by the Registering Authority, the remedy is to seek cancellation of such deed by filing a suit for

cancellation of document or by filing a suit for appropriate declaration. The only exception being a case where fraud is alleged in the registration of

a document by a person, who is not competent to transfer the property. Even in such a case, Registering authority can cancel the earlier sale, after

notice to the parties. Without following such procedure, APIIC cannot cancel the allotment nor determine the sale agreement and sale deed. Such

a course of action is not permissible.

27. The Standing Counsel relies on Clause 7 in the sale deed and Section 31 of TP Act to contend that when there is a ""condition super added"" ,

the absolute transfer of title in the property cannot be inferred. He also relies on Indu Kakkar wherein Supreme Court considered the question

whether Haryana State Industrial Development Corporation Limited (HIDC) could have validly resumed the land for non-compliance with the

conditions of allotment. Industrial plot of 450 Sq. mts situated in industrial complex at Dundahera in Gurgaon District, was conveyed by HIDC

under registered deed dated 10.12.1992. The allottee York Printers did not establish the industrial unit. Clause 7 provided that the allottee shall

commence construction of building within six months and complete the same within two years, and complete installation of machinery within 3

years failing which HIDC is entitled to cancel agreement and resume possession. HIDC resumed land on 16.3.1984. A suit was filed by allottee

for declaration that resumption is illegal and void. Pending suit, Indu Kakkar purchased property under sale deed dated 27.12.1989 and got

impleaded in suit. The suit was decreed but the first appellate Court as well as High Court in Second Appeal reversed the trial Court. The High

Court in its judgment observed that, ""no indulgence of any kind can be shown by the Court to claim which is not bona fide nor can the Court come

to the aid of a person trying to resile from the express obligation undertaken by him with the State or its Agencies."" In appeal, apex Court came to

the conclusion that allottee did not set up industrial unit and therefore Clause 7 would be attracted. The next question was whether Clause 7 of the

agreement is unenforceable in view of Section 11 of TP Act. Supreme Court considered the issue as under.

All that Section 32 of the Transfer of Property Act provides is that ""in order that a condition that an interest shall cease to exist may be valid, it is

necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest."" If the condition is

invalid it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be

established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the Agreement between the parties, is

therefore, valid and is binding on the parties thereto....

...Here the Agreement was entered into between the Corporation and the allottee as a sequel to the request made by the allottee to give him an

industrial plot for the purpose of setting up an industry. Corporation reciprocated to the request on being satisfied that the allottee was able to carry

out the obligations so as to accomplish the purpose of allotment. The assurance given by of the allottee that he shall start construction of the

building for setting up the industry within a period of six months and complete the construction thereof within two years from the date of issue of

allotment letter was verified and found acceptable to the Corporation and then only the Corporation has chosen to enter into the agreement with

the allottee. It is a matter of confidence which the Corporation acquired in the promise made by the allottee that the latter would perform such

obligations.

28. In these cases, however, Clause 7 of sale deed cannot be treated as ""condition super added"". For the sake of convenience, we may read

Clause 7 interpreted in *Indu Kakkar* and Clause 7 of sale deed in these cases.

Clause 7 of agreement in *Clause 7 of the sale deed*

Indu Kakkar

That the allottee shall start on and Whereas The Party of The First

the said site construction of Part has agreed to sell and the Party of The

the building for setting up the Second Part has agreed to purchase the said

aforesaid Industry within a land free from all encumbrances for a total period of 6 months and consideration of Rs. 1,39,355-00 (Rupees one complete the construction lakh thirty nine thousand three hundred fifty thereof within two years from five only) towards the cost of the Land and the date of issue of the development charges having been paid to the allotment letter, the plans of Party of The First Part by the Party Of which shall be in accordance The Second Part, the receipt where of the with the rules made and with Party of The First Part hereby admits and the directions given from time acknowledges the Party of The First Part to time by the Town and doth hereby sell, grant, convey, transfer and Country Planning and Urban assign unto the Party of The Second Part Estates Department in respect all that piece and parcel of land being plots in and approved by the Director, Industrial Estate/Industrial Development Areas/ Town and Country Planning Autonagars particularly described in the Department or any other schedule hereunder and for greater clearness office duly authorized by him delineated in the plan annexed hereto together in this behalf/ Further the with all rights, title, easements and all other allottee shall complete the rights in any wise appertaining thereto to Hold erection and installation of the said land unto and to the use of the Party machinery and commence of The Second Part absolutely and for ever. production within a period of The Party of The Second Part shall use the 3 years from the date of said land for the aforesaid purpose of putting up allotment of plot failing which a factory or factories duly permitted by the the plot be liable to be competent Authority and for no other purpose. resumed by the corporation. The Party of The Second Part agree that it shall not put any structure or buildings other than a factory building or buildings.

29. The Standing Counsel for APIIC has brought to our notice APIIC Allotment Regulations, 1998. The counsel has also placed before this Court

the proforma of agreement, which is adopted subsequent to such Regulations. Clause 10 of the Regulations reads as under.

10. And Whereas The Party of The Second Part having agreed to hold the land allotted to them on the terms and conditions hereinafter mentioned.

a) That the party of the second part shall use the shed and land/land for setting up of a factory for manufacture of
GENERAL ENGINEERING

WORKS.

The party of the second part agree that they shall not put up any structure or building other than factory building or
buildings without the prior

permission in writing of the party of the first part.

b) The party of the second part expressly agree and undertake that the said land/shed shall be utilised exclusively for
the purpose set forth in the

allotment proposal and that no change shall be made without the written sanction of the party of the first part.

c) The party of the second part shall implement the project within two years of being put in possession of the said
shed/land/plot as detailed at

Clause 3 above.

d) That as and when the said shed/plot/land is no longer required by the party of the second part for the aforesaid
purpose, the party of the second

part shall forthwith relinquish and restore the land in favour of the party of the first part provided such surrender of the
property by the party of the

second part is made before cancellation of the allotment by the party of the first part for breach of any of the covenants
of this agreement. In the

event of surrender refund of the cost of land/shed/plot paid by him shall be made after making deductions as under.

i) EMD will be forfeited.

ii) Amounts paid towards process fee, penalties and surcharges shall not be refunded.

iii) Dues in respect of water charges will be deducted for the actual consumption as against the minimum rate as per the
water agreement.

iv) In case power supply was obtained by the party of the second part no dues certificate and a certificate of dismantling
the service meter issued

by the APSEB should be submitted by the party of the second part.

v) The party of the second part shall also clear the property taxes to the local bodies and a certificate to this effect
should be furnished.

No interest will be paid to the party of the second part in this respect. If there are any buildings on the land other than
shed/land the party of the

first part, may at its option, either refund the cost as assessed by it after the assessed cost is collected from the
incoming party or otherwise direct

the party of the second part to remove the buildings at their cost within such time as may be allowed by the party of the
first part. (e) to (q) are

omitted.

30. There is no denial that the agreement entered into by APIIC and the petitioners in these cases, does not contain
any clause in the above terms

nor Clause 7 in the registered sale deed can be construed as ""condition super added"". This Court is not able to
countenance the submission of the

counsel that the phrase in Clause 7 of the sale deed reading "...shall use the said plots for the aforesaid purpose of putting up factory or factories

duly permitted by the competent Authority and for no other purpose"" should be construed as ""super added clause"". As held by this Court in K.

Gopal Reddy, when once sale deed is registered by the seller in favour of buyer, contract is concluded and no party can enforce sale agreement

covenants. Therefore, this Court holds that insofar as these cases are concerned, APIIC has no such power or jurisdiction to cancel the allotment,

which has effect of nullifying the sale deed.

Arbitrariness and waiver

31. In all these cases after APIIC issued notices in 2006, petitioners obtained building permission from IALA and commenced construction. This

allegation is not traversed in the counter affidavits. When the petitioners did not commence the civil construction allegedly as stipulated in the

allotment letter and sale agreement, nothing prevented APIIC to cancel the allotment. They did not do so. Indeed they executed sale deed in

favour of the petitioners. Therefore, they waived the right if any as a contracting party. Further, APIIC acting as statutory IALA accorded

permission for construction of the building. Again APIIC waived their right. Therefore the cancellation is arbitrary and cannot stand to Court's

scrutiny. APIIC however strongly relies on Indu Kakkar. In the considered opinion of this Court, the same has no application.

32. In Teri Oat Estates, Union Territory of Chandigarh allotted lands on leasehold basis, regulated by the Capital of Punjab (Development and

Regulation) Act, 1952; Chandigarh Leasehold of Sites and Buildings Rules, 1973 and Public Premises (Eviction of Unauthorised Occupants) Act,

1971. Clause 8A of allotment letter empowered estate officer to cancel allotment if amount is not paid within stipulated period. Teri Oat Estates

constructed six storeyed building but could not market built up space for various reasons. They did not pay balance amount. Possession was

resumed under Public Premises Act on 21.12.1995. Allottee's appeal was dismissed by Chief Administrator, Chandigarh. This was confirmed by

Punjab and Haryana High Court. In appeal, Supreme Court did not consider question whether such a clause is enforceable or such a clause is

unconscionable in case of absolute alienation. What Supreme Court considered was the question whether estate officer could invoke the drastic

power of resumption and forfeiture while initiating proceedings under Clause 8A. It was also a question before Supreme Court whether applying

doctrine of proportionality, the action of estate officer can be sustained when allottee paid interest for delayed payment. While disposing of

allottee's appeal granting time for payment within stipulated time, it was observed as below.

We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should

never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt

whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the

allotment or the statute with a dishonest view or any dishonest motive, then Section 8A can be taken recourse to.

(emphasis supplied)

33. In *Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees*

Association and Another, Supreme Court after referring to the standard textbooks on Administrative Law, English decisions and the decisions of

apex Court, held as follows.

So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has

come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various

administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational

or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising

power, known to law is the "doctrine of proportionality".... "Proportionality" is a principle where the court is concerned with the process, method

or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-

making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in

focus true nature of exercise--the elaboration of a rule of permissible priorities.

34. In these cases, after the allotment was made, all the petitioners paid entire sale consideration. APIIC entered into agreements and long

thereafter executed registered sale deeds. A decade thereafter when the allottees applied for building permission, as a statutory authority accorded

such sanction. In this background the question is whether the harsh action of cancelling allotment is proportionate to the situation. The answer

should be in the negative. Applying the doctrine of proportionality as was applied in *Teri Oat Estates*, in these cases, the petitioners should be

granted some more time for completion of construction especially when they alleged that till 2006, APIIC did not provide any infrastructural

facilities. Except denying the allegation in the counter affidavits, APIIC has not placed any material before this Court to disprove the allegation.

35. There is yet another aspect of the matter. When the writ petitions were pending, APIIC on their own came forward and sought to compound

the contravention (if any) by a novel method. Presumably under wrong impression that there is a default on the part of the petitioners, APIIC

sought to condone the default by demanding 50% of the market value in lump sum towards plot cost. When once the sale deed is registered, seller

has no such enforceable right to demand more money. There is no such law as of now in Andhra Pradesh, which enables to do so. Unless a law is

made conferring such special powers on APIIC any such adventurous attempts by a Government Corporation, cannot be approved by this Court.

Therefore all such orders which are challenged in some of the writ petitions noticed herein above are liable to be set aside.

36. In the result, for the above reasons, these writ petitions are allowed with costs. Advocate fee Rs. 5,000/- (Rupees five thousand only) in each

case.