IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

W.P.A. No.15313 of 2008
M/s. Manaksia Ltd.
versus
The State of West Bengal & Ors.

For the Petitioner	:	Mr. Chayan Gupta, Advocate Mr. Saaqib Siddiqui, Advocate
For the State	:	Mr. Amitabra Roy, Advocate Mr. Nilotpal Chatterjee, Advocate Mr. Amritalal Chatterjee, Advocate
For the Respondent Nos. 2 & 3	:	Mr. Salil Kumar Maiti, Advocate Ms. Dolon Samanta, Advocate
Heard on	:	02.04.2024, 26.11.2024, 10.12.2024, 06.01.2025, 13.03.2025, 23.04.2025, 13.05.2025, 29.10.2025
Judgment on	:	27.07.2026

Bivas Pattanayak, J. :-

1. By the present writ petition, the petitioner seeks for setting aside and/or cancellation of order under Memo no. 2652/HDA/VII-E-142/2001 dated 5th February, 2008 (Annexure P13 to the writ petition) and order under Memo No. 1371/HDA/VII-E-142/2001 dated 4th July, 2008 (Annexure P14 to the writ petition) both issued by respondent no.3, Chief Executive Officer, Haldia Development Authority *(in short, 'HDA')* and direction upon respondent authorities to allow the petitioner-company to deposit the balance land premium of Rs.96,25,000/- at the rate of Rs.5.50

lac per acre for settlement of 35 acres of land in favour of the petitioner-company on lease.

2. The petitioner's case in nutshell is as follows:

(i) The petitioner is a Public Limited Company duly incorporated and registered under the Companies Act, 1956.

(ii) In pursuance of the letter dated 7th September, 2001 of the petitioner-company, the Chief Executive Officer, HDA, respondent no.3 on 11th September, 2001 offered allotment of 50 acres of land comprised within J.L no. 122, Mouza-Bhuniaraychak, Police Station-Sutahata (presently Durgachak), District- Purba Medinipur *(hereinafter referred to as 'the subject land')* in favour of the petitioner-company for setting up an Aluminum and Steel based industry, on lease basis in consideration of land premium @ 5.50 lacs per acre, on certain terms and conditions as per memo no. 1393/HDA/VII-E-142/01 dated 11th September 2001.

(iii) By letter dated 13th September, 2001, the petitioner-company acknowledged the offer and requested respondent no. 3 to re-consider and reduce the land premium rate in appreciation of the fact that huge fund would be required for filling up and development of 50 acres of land. Although respondent no.3 did not cause any reply to the aforesaid letter of the petitioner-company, however, the said prayer was duly considered in 71st Board meeting of HDA held on 4th October, 2001, wherein it was resolved as follows *"board resolved in view of the fact that construction of infrastructure such as approach* *road, water supply and availability of power line upto the factory gate involves huge cost, it is not possible to reduce the land premium rate".*

(iv) Admittedly, the land premium of 50 acres of land was fixed and accepted at the rate of Rs.5.5 lacs per acre. The petitioner-company on 28th December, 2001 sent two demand drafts totalling to Rs. 10 lacs in favour of the respondent no.3 as a token booking amount for the scheduled land and also requested (a) to handover the possession of plot of land, (b) to construct the approach road and (c) to provide electricity connection and water supply.

(v) By its letter under Memo no. 2479/HDA/VII-E-142/2001 dated 14th January, 2002, the HDA informed the petitioner-company that permission was accorded for soil testing and survey work of the petitioner-company's project but formal possession of the land would be given after full and final payment of land premium. Virtually the petitioner-company got the physical possession of 50 acres of vacant land from the date of acceptance of the offer of its allotment.

(vi) The Chief Executive Officer, respondent no.3 sent a revised site plan of 50 acres of land to the petitioner-company for setting up an aluminum and steel-based industry along with a forwarding letter under Memo no. 2831/HDA/VII-E-142/2001 dated 23rd February, 2002, wherein the receipt of Rs. 10 lacs towards the advance of land premium were acknowledged and the terms and conditions of the allotment of land vide Memo no. 1393/HDA/VII-E-142/2001 dated 11th September, 2001 would remain the same was confirmed. The revised site plan is nothing but alteration of shape of the plan.

(vii) By a forwarding letter dated 26th March, 2002, the petitioner-company deposited Rs.1,27,50,000/- by a cheque in favour of respondent no.3 on account of land premium in additional to earlier payment of Rs.10,00,000/-. As such the petitioner-company deposited 50% of the land premium for 50 acres of land at the accepted rate of Rs.5.50 lacs per acre. By the aforesaid letter, the petitioner-company once again requested the respondent no.3 to provide water supply and electricity connection at the site of the petitioner-company.

(viii) The petitioner-company further applied before respondent no.3 by its letter dated 3rd July, 2002 and 4th July, 2002 for allotment of 15 acres of land for establishment of an Export Oriented Unit (EOU). In reply, respondent no.3 informed the petitioner-company on 9th July, 2002 that 15 acres of land being part of 50 acres of land was allotment to the petitioner-company for the purpose of establishment of an Export Oriented Unit. On full and final payment of land premium 15 acres of land at the rate of Rs.5.50 lacs per acre, a registered lease deed was executed by and between the parties on 13th July, 2004 for settlement of 15 acres of land. The petitioner-company developed and constructed infrastructure on 15 acres of land and started commencement of commercial production at its Export Oriented Unit. A huge amount has also been invested by the petitioner-company for development of infrastructure on remaining 35 acres of land for setting up an aluminum and steel-based industry which was never objected by the concerned respondent at any point of time.

(ix) By its resolution adopted in 73rd Board Meeting and 75th Board Meeting, it was resolved that the HDA would provide electricity connection at the doorstep of the petitioner's site and meetings were held between the respondent and the Chairman of the petitioner-company to finalise the modalities for commencement of 132KB sub-station for bulk power supply to the petitioner-company and to that effect, resolution was also adopted in 77th Board Meeting. In 79th Board Meeting, it was resolved to approach West Bengal State Electricity Board proposing to share the cost of high-tension line at the rate of 25% by HDA and 75% by the West Bengal State Electricity Board respectively.

(x) The Chief Executive Officer, respondent no.3 requested the petitioner-company to deposit balance land premium amounting to Rs.96,25,000/- (at the rate of Rs.5.50 lacs per acre). The petitioner could not deposit the aforesaid amount due to its financial stringencies, which was intimated to respondent no.3 *vide* letter dated 2nd February, 2006 contending that the petitioner-company incurred a substantial investment on plant and equipment for the project as well as towards installation of power line and construction of sub-station. The petitioner-company was able to deposit the balance land premium of Rs. 96,25,000/- for 35 acres of land at the rate of Rs.5.50 lacs per acre by way of a cheque to respondent no.3 on 21st January, 2008.

(xi) The Chief Executive Officer, respondent no.3 asked the petitioner-company by letter under Memo no. 2652/HDA/VII-E-142/2001 dated

5th February, 2008 to pay full land premium for 35 acres of land at the present enhanced rate of Rs.15 lacs per acre totaling to Rs.4,28,75,000/- on the ground of alleged failure on the part of the petitioner-company to deposit 50% of the land premium for 35 acres at the rate of Rs.5.50 lacs per acre i.e. Rs.96,25,000/- within time.

(xii) The petitioner-company by its letter dated 6th June, 2008 informed respondent no.3 that the balance payment could not be made due to inordinate delay in commissioning of the project.

(xiii) By its letter under Memo No. 1371/HDA/VII-E-142/2001 dated 4th July, 2008, the Chief Executive Officer, respondent no.3 asked the petitioner-company to deposit the land premium amounting to Rs.4,28,75,000/- within 15 days from the date of issue of the said letter failing which HDA will evict the petitioner-company from the land measuring 35 acres occupied by the petitioner-company.

(xiv) In the aforementioned allotment memo, there are no express conditions that the land premium rate may be enhanced for deferred payment of the balance 50% of the land premium by the petitioner-company or the petitioner-company can be evicted from the schedule land either for deferred payment of 50% of the land premium @ 5.50 lacs per acre or for non-payment of the land premium at an enhanced rate without any due process of law.

(xv) Being aggrieved by and dissatisfied with the impugned letters dated 5th February, 2008 and 4th July, 2008, the petitioner has preferred the present writ petition seeking for quashing of the said letters.

3. The writ petition has been keenly contested by the respondent no.3, Chief Executive Officer, HDA denying, *inter alia,* the case of the petitioner and contending as follows.

(i) The HDA is the owner of the scheduled land comprised within Mouza – Bhunia Raychak and other adjoining lands which was acquisitioned for the purpose of establishing industries.

(ii) By letter dated 7th September, 2001, Mr. B. K. Agarwal, Chairman and Managing Director, Hindustan Seals Limited requested for purchasing a plot of land measuring 50 acres within the Industrial Zone at Haldia on the bank of River Bhagirathi to set up an aluminum and steel-based industry. The HDA upon receipt of the said request by Memo No. 1393/HDA/VII-E-142/2001 dated 11th September, 2001 offered to lease out land measuring about 50 acres only for a period of 90 years for setting up of aluminum and steel-based industry with certain agreed terms and conditions. The acceptance of the offer should be done after complying the terms and conditions within a specific period of two months from date of issue of that offer letter i.e. by 10th November, 2001.

(iii) As per clause 3 and 4 of the offer letter, two months time was fixed for acceptance within which period the company had to deposit 50% of the land premium at the rate Rs. 5.50 lacs per acre. The 50% of the land premium was paid by the petitioner-company by way of several installments starting from 28th December, 2001 to 30th December, 2003, which is long after the stipulated period of two months. Therefore, such acceptance of the offer after the specified period amounts to breach of the mandatory terms and accordingly, the proposal made by the offer became unenforceable and the same cannot be extended as time was the essence of the offer.

(iv) The petitioner-company has failed to act strictly in terms of the offer in not depositing the 50% of the land premium within the specified period without any plausible reason and as such, the petitioner-company cannot pray for any relief under the offer dated 11th September, 2001.

(v) The petitioner-company itself changed the mode of requirement by proposing the set of industries in different norms contrary to their prayer dated 7th September, 2001. The subsequent split of the total allotted land in the name of different industries are in clear violation of the offer made on 11th September, 2001. The petitioner has come up seeking permission to make payment of balance 50% of the land premium at the rate of Rs.5.50 lacs per acre as per original offer after lapse of more than 7 years, which is not at all sustainable in the eye of law.

(vi) The question whether the offer dated 11th September, 2001 continues beyond the specific period of two months or any counter offer is created in *lieu* of original offer can only be decided by a competent civil court and not by invoking writ jurisdiction under Article 226 of the Constitution of India since disputed questions of facts are involved in the present writ petition.

(vii) The original offer was made for the purpose of establishment of industry in the Industrial Zone. However, it is evident from record that the said company as per its whims and caprice erected residential complex over the said offered land within the periphery of 35 acres of land. Such deviation from the original offer amounts to breach of the said offer.

(viii) Despite several communications by the Haldia Development Authority, the petitioner-company deliberately avoided to make any payment of balance premium and on the contrary, made construction over the said land without taking necessary permission from the competent authority i.e. Haldia Municipality. The entire construction is illegal and unauthorized made in violation of Municipal Rules and is liable to be demolished. On receipt of letter dated 27th January, 2006, the petitioner-company has made attempt to pay the balance premium, after lapse of 7 years from the original offer in order to cover up the wrongful acts. The petitioner-company committed to make payment of balance amount from April, 2006 but did not make any payment by deliberately violating its own commitment.

(ix) The present market rate in respect of Industrial Zone is much more than Rs. 5.50 lacs per acre. The adjoining companies namely (i) *M/s. Modern India Con-cast Ltd.,* (ii) *M/s. Rahit Ferro Tech Pvt. Ltd.,* (iii) *M/s. Mortex Pvt. Ltd.* and (iv) *M/s. Dhunsheri Poly carbonate Ltd.* were offered land at rate of Rs. 15 lacs per acre and they have all accepted the same as per their required area. The claim of the Haldia Development Authority for present rate of Rs. 15 lacs per acre is thus absolutely reasonable and the petitioner is bound to pay the balance premium of land of Rs.4,28,75,000/- forthwith.

(x) The petitioner-company has repeatedly harped about the so-called commitment by the Haldia Development Authority but has not forwarded any iota of ground which might prove its claim. The petitioner-company, on being requested by the WBSEB to deposit Rs.30,000/- for bulk power supply at 33 KV, duly deposited the same on 18th July, 2002. Such fact clearly shows that there was no commitment or promise by the Haldia Development Authority to supply power to doorstep of the petitioner-company. In spite of no commitment by Haldia Development Authority to the petitioner, however, just to facilitate industrial growth and to provide infrastructure, the Haldia Development Authority allotted 7.5 acres of land absolutely free of cost to the WBSEB *(at present WBSEDCL)* adjacent to the petitioner-company in order to provide power to the Industrial Zone, which has acted upon the decision of the Board. The petitioner-company got the power on August, 2006, which has been accepted by them in their letter dated 6th June, 2008, however, they did not take any initiative to make the balance payment even though they committed to make payment from April, 2006 *vide* letter dated 2nd February, 2006. Hence, the intention of the petitioner-company was not noble and they took lame excuses for not making payment which remained due to HDA.

(xi) For the betterment of establishment, the HDA took lenient view for recovery of balance land premium from the petitioner-company upto 27th January, 2006 and *vide* letter under Memo no. 3123/HAD/VII-E-142 dated 27th January, 2006, granted further 7 days' time to make such payment. The petitioner-company has not submitted any iota of document showing that it is ready and willing to pay the balance premium amount as per offer letter or counter offer letter. In spite the petitioner-company has taken resort to so-called commitment for development of infrastructure by the Haldia Development Authority such as water, power and approach road etc. to its door step. The Haldia Development Authority admittedly on or before August, 2006 fulfilled all its obligations, however, the petitioner-company deliberately did not take any initiative to make balance payment, even though they committed to make payment from April, 2006.

(xii) The petitioner-company is estopped from claiming any legitimate expectation after a lapse of more than 6 years from the stipulated period of 2 months. The petitioner-company has deliberately and willfully violated terms of the offer letter in not making payment of the balance land premium and is unwilling to perform its part of the offer letter.

(xiii) On aforesaid ground, respondents-Haldia Development Authority sought for dismissal of the writ petition.

4. The petitioner filed affidavit-in-reply denying the averments in the affidavit-in-opposition and contending that Haldia Development Authority in its letter under Memo No. 3123/HDA/VII-E-142/2001 dated 27th January, 2006 requested the petitioner-company to deposit the balance land premium of Rs.96,25,000/- within 7 days from the date of issue of the letter, otherwise the offer letter may be treated as cancelled. Thus, the expression *'the offer letter may be treated as cancelled'* does not amount to cancellation of the offer letter automatically. As such the offer letter dated 11th September, 2001 still remains in force. In reply to the letter dated 27th January, 2006, the petitioner expressed its inability to deposit the balance amount land premium. Ultimately on 18th January, 2008 the petitioner-company tendered the balance land premium of Rs.96,25,000/- but the same was not accepted by the office of respondent no.3-HDA. As the petitioner-company has been allowed to construct the industry on 50 acres of land, the question of forfeiture by the concerned respondents does not arise at all. Further no lease agreement has yet been executed between the parties in respect of allotment of 50 acres of land nor possession of the land has been formally delivered to the petitioner-company but respondent no.3 has been realizing the lease rent in respect of leasehold property from the petitioner-company.

5. The respondent no.3, on the contrary, has filed supplementary affidavit-in-opposition stating that the notice of payment of lease rent is nothing but a token rent as per the offer letter dated 11th September, 2001 and it does not confer any special right to the petitioner-company to claim to the effect that the said offer letter is still binding upon the parties and is enforceable in the eye of law. A tenancy is only created as and when lease agreement is executed, registered and possession is delivered. Mere demand of token rent as made on 7th March, 2007 is not a rent at all and may be treated as user's fee and/or licence fee.

6. Mr. Abhrotosh Majumdar, learned Senior Advocate appearing for the petitioner submitted that Chief Executive Officer of HDA being respondent No.3 offered allotment of 50 acres of land at the subject plot in favour of the petitioner for setting up aluminium and steel-based industry on certain terms and conditions @ Rs.5.50 lacs per acre by dint of memo dated 11th September, 2001 and a token rent @ Rs.0.25% of the total land premium per acre which would be enhanced @ 5% annually. The petitioner acknowledged the said offer, however, by letter dated 13th September, 2001 requested the authority concerned to reconsider the rate of premium. The petitioner pointed out that the subject-land is a very low land and substantial amount of funds would be spent for its development. In 71st Board meeting held on 4th October, 2001, the HDA considered the prayer made by the petitioner for reduction of rate of premium. However, it was resolved that in view of the fact that constructional infrastructure such as approach road, water supply and availability of power line up to the factory gate would involve huge costs, it would not be possible to reduce the land premium rate. Hence the counter offer made by the petitioner was rejected. On a conjoint reading of the offer letter dated 11th September, 2001, and 71st Board resolution dated 4th October, 2001, it would be apparent that the land premium rate in the offer letter was inclusive of the cost of construction of infrastructure such as approach road, water supply and availability of power line up to the factory gate. The petitioner accepted the offer and made payment of Rs 1,68,75,000/- i.e. 61.36% of the total land premium of Rs.2,75,00,000/-@ of Rs. 5.5 lacs per acre for 50 acres.

Further, on perusal of the minutes of 73rd Board meeting dated 11th April, 2002, 75th Board meeting dated 23rd August, 2002, 77th Board meeting dated 27th December, 2002 and 79th Board meeting dated 8th July, 2003, it would be apparent that HDA was not able to provide the infrastructure for enhancement of commercial production to the industrial unit of the petitioner. Hence, it is not gainsaid by the respondent authorities namely HDA that the rate of land premium i.e. Rs. 5.50 lacs per acre as provided in the offer letter dated 11th September 2001, was not inclusive of the cost of infrastructure development. As such the offer letter made by the respondent authorities for allotment of the subject land was coupled with their unequivocal commitment to provide necessary infrastructure for industrial development.

Needles to say that the petitioner made payment of 1.27 crores towards 50% of the total land premium payable for 50 acres of land. Thereafter, a decision was taken to split up the lands into 15 acres and 35 acres and lease deed was executed for 15 acres of land in favour of the petitioner for a land premium @ Rs. 5.50 lacs per acre. The petitioner made a further payment of Rs. 41.25 lacs on 30th December 2003, and subsequently had made payment of the balance amount of Rs.96.25 lacs in accordance with the directions passed by this Hon'ble Court *vide* order dated 18th July, 2008. The respondent authorities continue to charge rent in respect of 15 acres of land till now taking the base of Rs.5.50 lacs per acre as land premium.

Once the respondent authorities had accepted the rent for the entire 50 acres of land taking the base of Rs. 5.50 per acre, it is not open to the respondent authorities to enhance the land premium unilaterally. There has been an abject failure on the part of respondent authority to provide necessary infrastructure of the industrial units of the petitioner as committed by the respondent authorities in the 71st Board resolution dated

4th October, 2001. Therefore, the respondent authorities could not have arbitrarily enhanced the land premium @ Rs. 15 lacs per acre.

The HDA being an instrumentality of the State, is therefore, an '*authority'* within the meaning of Article 12 of the Constitution of India and is amenable to writ jurisdiction of the court. The consequence which follows is that in all its action, it must be governed by Article 14 of the Constitution and cannot act with arbitrariness and capriciousness. It is settled principle of law that the State and its instrumentalities have to be just, fair and reasonable in all their activities including those in the field of contracts. The State and its authorities playing the role of the landlord or tenant cannot be heard or seen causing displeasure or discomfort of Article 14 of the Constitution. In support of his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Jamshed Hormusji Wadia versus Board of Trustees, Port of Mumbai and Another***[1].

In the present case the HDA has accepted 50% of land premium for 50 acres of land. The petitioner had been regularly paying rent to HDA for 50 acres of land which has been accepted by the HDA Authorities till 31st March, 2007 without any demur. Despite such payment been made by the petitioner, the HDA failed to provide necessary infrastructure, the cost of which were included in the rate of land premium of Rs. 5.5 lacs per acres. Hence it is not open to HDA to issue the impugned memo dated 5th February, 2008, enhancing the land premium to Rs. 15 lacs per acre and memo dated 4th July, 2008 resorting to coercive actions of threatening the petitioner of consequences like eviction. Furthermore, since the petitioner

---

[1] ***(2004) 3 SCC 214***

had deposited the entire land premium upon deposit of the balance amount in terms of order of this Court which has not been challenged by the HDA authorities, hence the impugned notices are liable to be quashed and HDA be directed to execute lease deed in respect of the remaining 35 acres of land for a land premium @ Rs. 5.50 lacs per acre with effect from 13th July, 2004, that is the date on which deed of lease for 15 acres was executed and registered.

Moreover, once the writ petition had been entertained and is pending for merely for last 17 years and an *interim* order is still subsisting, it is not open to the respondent authorities at this belated stage to contend that the writ petition is not maintainable and the petitioner should be relegated to the civil court. The respondent authorities did not challenge the order dated 18th July, 2008 wherein the petitioner was directed to deposit the balance amount and as a matter of fact the respondent authorities have also accepted the payment. It is no more *res integra* that when the court has already entertained the writ petition and issued an *interim* order, affidavits have been filed and the matter have been heard at length, the court in such circumstances would not be justified in rejecting the writ petition on the ground of availability of alternative remedy. In support of his contention, he relied on the following decisions.

(i) ***L. Hirday Narain versus Income-Tax Officer, Bareilly[2];***

(ii) ***State of H.P. and Others versus Gujarat Ambuja Cement Ltd. and Another[3];***

---

[2] 1970(2) SCC 355
[3] (2005) 6 SCC 499

(iii) ***Naffar Chandra Jute Mills Ltd. versus Assistant Collector of C. Ex.***[4]***;***

(iv) ***Raja Mookherjee and Others versus Wealth-Tax Officer and Others***[5]***.***

In light of his aforesaid submissions, he prayed for setting aside and/or cancellation of order under Memo no. 2652/HDA/VII-E-142/2001 dated 5th February, 2008 (Annexure P13) and order under Memo No. 1371/HDA/VII-E-142/2001 dated 4th July, 2008 (Annexure P14) both issued by the Chief Executive Officer, HDA, respondent no.3 and direction upon respondent authorities to allow the petitioner-company to deposit the balance land premium in terms of the letter dated 11th September, 2001.

7. Mr. Kallol Kumar Basu, learned advocate appearing for respondent nos. 2 & 3- Haldia Development Authority submitted that by letter dated 11th September, 2001 the authority had proposed to hand over 50 acres of land @ Rs.5.50 lakh per acre provided that the petitioner deposited such land premium within a period of two months from date of issuance of the said letter (Annexure P1, page-37). Such letter can be viewed as constituting a proposal within the meaning of Section 2(a) of the Indian Contract Act, 1872 *(hereinafter referred to as 'Act of 1872')*. Only if an assent had been provided by the petitioner- company in respect of the said proposal, a promise would have been formed and deposition of land premium at the rate mentioned in the said letter would have constituted the consideration for such promise within the meaning of Section 2(d) of

---

[4] ***1993 (66) E.L.T. 574 (Cal.)***
[5] ***204 ITR 276***

the Act of 1872. However, it reveals that the said proposal was not accepted unconditionally as required under Section 7 of the Act of 1872 for a proposal to transform into a promise. As such, the earlier proposal of the respondent authorities never materialized into a promise and, therefore, no contract was formed.

The acknowledgement of receipt of Rs.10,00,000/- on 21st February, 2002 by the authority formed a part of a revised offer whereunder the terms governing the allotment of land remained unchanged but the site plan of the said land was altered. In other words, a revised offer similar to the initial offer dated 11th September, 2001 was made by the authority which meant that the balance land premium ought to have been deposited within the period of two months from date of receipt of the revised order. In view thereof, the deposit of a sum of Rs.1,27,50,000/- on 23rd March, 2002 (Annexure P-7, page-45) could well be considered to form a part of the land premium payable at the applicable rate, as the same was deposited within two months from the date of issuance of the revised offer letter. Thereafter, the petitioner did not make any further payment and as such, the said revised offer did not materialize into promise and/or culminate into a contract. Upon offer made on behalf of the petitioner on 3rd July, 2002 and 4th July, 2002 for transfer of 15 acres of land, the same was accepted and upon full and final payment of the requisite land premium, the said 15 acres of land was allotted to the petitioner-company, as would be evident from the possession certificate dated 25th June, 2004 referred to in paragraph no. 17 of the affidavit-in-opposition.

By letter dated 27th January, 2006 (Annexure P-10, page-59) the said authority had demanded payment of the balance land premium in respect of remaining 35 acres of land out of 50 acres initially offered in September, 2001. This was, by all means, a fresh offer to allow the petitioner-company to gain possession over the remaining 35 acres but the same was turned down by the petitioner-company through its letter dated 2nd February, 2006 (Annexure P11, page-60 and 61). As such, the said offer letter dated 27th January, 2006 also did not materialize into a promise.

Although much has been contended by the petitioner-company of the authority's alleged commitment to ensure supply of electricity and water to the factory premises set up by the petitioner-company but such purported commitment did not find any mention in the original terms of proposal dated 11th September, 2001, revised proposal dated 21st February, 2002 and/ or letter dated 27th January, 2006. Further much reliance has been placed upon the 73rd and 75th Board resolutions (Annexure P-9, page 47 to 51) of the authority by the petitioner-company to bolster their claim that it was due to the delay caused by the said authority in not holding up their end of bargain and in failing to ensure supply of water and electricity to the doorstep of the factory. The aspect of delay could have been relevant only if it could have been shown that the initial offer dated 11th September, 2001 was subsisting and the provision of electricity/water supply formed a part of the reciprocal promises in respect of such offer. Assuming but not admitting that the initial offer was subsisting, the provisioning of the electricity had been completed in the month of August, 2006 as has been admitted by the petitioner-company in its letter dated 2nd February, 2006

(Page 58 of the affidavit-in-opposition), however, non-payment of land premium by the petitioner-company for more than one year from August, 2006, contrary to their own representation that balance will be paid on and from April, 2006, remains unexplained. Moreover, the Board resolution does not amount to communication with or to the petitioner to the effect of acceptance of continuance of any promise. Additionally, commercial difficulty, inconvenience or hardship in performance of the conditions in a proposal can provide no justification in not complying with the same specially when the petitioner-company claims subsistence of the original proposal dated 11th September, 2001. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Joshi Technologies International Inc. versus Union of India and Others***[6].

The petitioner has also based its argument in relation to interpretation of the terms of the initial offer letter dated 11th September, 2001. Effectively, the writ petitioner has invited this Hon'ble Court to adjudicate questions which squarely fall within the realm of private contractual law. In this regard it is submitted that negotiations and/or communications exchanged between the said authority and the petitioner-company do not give any indication of a concluded contract having a statutory character. Merely because the HDA constituted under Section 17 of the West Bengal Town and Country (Planning and Development) Act, 1979 is one of the parties to a purported contract, does not give rise to sufficient cause for maintaining a writ petition before this Hon'ble Court under Article 226 of the Constitution of India. Moreover, disputes regarding the true meaning,

---

[6] ***(2015) 7 SCC 728***

purport and/or interpretation of covenants in the private contractual realm, must be placed beyond the writ jurisdiction and fall within the domain of a civil court. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Kerala S.E.B versus Kurien E. Kalathil***[7]. Thus, the disputes raised in the writ petition cannot be adjudicated in the writ jurisdiction and same ought to be not maintainable, especially when no public law element is involved. Reliance is also placed on the decision of a Co-ordinate Bench of this court passed in ***Haldiram Ltd. versus The State of West Bengal & Ors***[8].

Further, the initial offer expired on 11th November, 2001 and as such the writ petition seeking relief is hopelessly delayed and displays abject laches on the part of the petitioner-company. When extraordinary jurisdiction is sought to be invoked, the petitioner has to approach the Court within a reasonable period. If it is found that there is delay and laches, in such event the Court ought to dismiss the writ petition on such ground only. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Tridip Kumar Dingal and Others versus State of West Bengal and Others***[9].

Moreover, the petitioner-company tried to make out a case that due to failure of the part of the said authority in arranging for electricity and water supply, the production activities were delayed and as such no revenue could be generated so as to remit land premium within time. However, the petitioner-company deliberately suppressed their own letter

---

[7] ***(2000) 6 SCC 293***
[8] ***(2009)1 CAL LT 158 (HC)***
[9] ***(2009) 1 SCC 768***

dated 6th June, 2008 wherefrom it would be revealed that requirement of electricity and water had been met since August, 2006 but the petitioner-company failed to remit a single farthing for more than one and half years. Thus, the petitioner has not approached this Hon'ble Court with unclean hands and as such the writ petition is liable to be dismissed on the ground of suppression of fact.

Furthermore, the petitioner's claim of possession having been handed over by the said authority without full and final payment in the absence of any possession certificate is incorrect and such claim is essentially a distorted fact. Therefore, any relief granted would be based on distorted facts and would amount to abuse of process of law. To buttress contention, he relied on the decision of Hon'ble Supreme Court passed in ***K.D. Sharma versus Steel Authority of India Limited and Others***[10].

Further it has been argued on behalf of the petitioner-company that once a writ is admitted, it would not be proper to dismiss the same on the ground of availability of alternative remedy relying on *L. Hirday Narain (supra), Gujarat Ambuja Cement Ltd. (supra), Naffar Chandra Jute Mills (supra), Raja Mookherjee (supra).* However, relying on the decision of Hon'ble Supreme Court in State of ***State of Uttar Pradesh and Another verus Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and Other***[11], he submitted that the Hon'ble Court observed that it cannot be laid down as a proposition of law that once the petition is admitted, it could never be dismissed on the ground of alternative remedy.

[10] (2008) 12 SCC 481
[11] (2008) 12 SCC 675

Further in case of *Jamshed Hormusji Wadia (supra)* relied upon by the petitioner-company, the Hon'ble Court held that the State and its instrumentalities have the liberty of revising the rate of rents so as to compensate themselves against loss caused by inflationary tendencies. The said authority by hiking the land premium rate was accounting for inflationary tendencies. Moreover, in the cited decision there was an existing lease agreement which was sought to be renewed whereas in the instant case, no concluded contract had been reached in respect of the balance 35 acres of land and as such it is not applicable.

In light of his aforesaid submissions, he sought for dismissal of the writ petition.

8. Mr. Amitabra Roy, learned advocate for the State respondents leaves the matter to the discretion of the court since the answering respondent is HDA.

9. Upon hearing the learned advocates for the respective parties, following issues falls for consideration.

(i) Whether the present writ petition is maintainable?

(ii) Whether the order/letter dated 5th February, 2008 (Annexure P-13) and order/letter dated 4th July, 2008 (Annexure P14) both issued by the Chief Executive Officer, Haldia Development Authority, respondent no.3 are arbitrary and unsustainable?

Issue no.(i): Whether the present writ petition is maintainable?

10. The maintainability of the writ petition is challenged precisely on three-fold grounds. *Firstly,* merely because HDA constituted under Section 17 of the West Bengal Town and Country (Planning and Development) Act, 1979 is one of the parties to a purported contract does not give rise to sufficient cause for maintaining a writ petition before this Hon'ble Court under Article 226 of the Constitution of India. *Secondly,* as the initial offer expired on 11th November, 2001 and as such the writ petition seeking relief is hopelessly delayed and displays abject laches on the part of the petitioner-company. *Thirdly*, the disputes regarding the true meaning, purport and/or interpretation of covenants in the private contractual realm, must be placed beyond the writ jurisdiction and fall within the domain of a civil court, which is an alternative remedy available to the petitioner.

10.1. There cannot be any quarrel that in pursuance of the letter dated 7th September, 2001 of the petitioner-company, the Chief Executive Officer, Haldia Development Authority, respondent no.3 on 11th September, 2001 offered allotment of 50 acres of subject land in favour of the petitioner-company for setting up an Aluminum and Steel based industry, on lease basis in consideration of land premium @ 5.50 lacs per acre, on certain terms and conditions as per memo no. 1393/HDA/VII-E-142/01 dated 11th September, 2001. The petitioner-company paid a part of land premium and sought direction upon respondent authorities to allow the petitioner-company to deposit the balance land premium of Rs.96,25,000/- @ Rs.5.50 lac per acre for settlement of 35 acres of land in favour of the petitioner-company on lease. By letter under Memo no. 2652/HDA/VII-E-142/2001 dated 5th February, 2008 (Annexure P-13) the said Authority claimed the land premium @ Rs.15 lac per acre. Indisputably, there is no concluded contract in respect of the subject land measuring 35 acres. Thus, the challenge in the present writ petition is against the enhanced rate of land premium claimed by the HDA and not against terms of any concluded contract. Undeniably, HDA has been constituted under Section 17 of the West Bengal Town and Country (Planning and Development) Act, 1979 and thus is a Statutory Authority.

10.2. In order to dilate the aforesaid aspect further, it would be profitable to consider the observation of Hon'ble Supreme Court in following decisions.

10.3. In ***Federal Bank Ltd. versus Sagar Thomas and Others***[12], in paragraph no.18 held as follows.

> *"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."*

10.4. Further in ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others versus V.R. Rudani and others***[13] the Hon'ble Supreme Court in Paragraph 20 of the Report held as follows:

> *"20. The term 'authority' used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party.*

---

[12] ***(2003) 10 SCC 733***
[13] ***(1989) 2 S.C.C. 691***

> *No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."*

This principle establishes that the scope of Article 226 extends beyond entities that qualify as "State" under Article 12.

10.5. In ***Bareilly Development Authority versus Ajay Pal Singh***[14] the Hon'ble Supreme Court after considering a catena of judgments observed that where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple.

10.6. However, in ***Indore Development Authority versus Smt. Sadhna Agarwal and others***[15] the Supreme Court affirmed and approved the view taken by the Apex Court in *Bareilly Development Authority (supra)*, but it further provided that the High Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, may satisfy itself on the materials on record that the State has not acted in arbitrary or erratic manner.

10.7. Bearing in mind the aforesaid principle since the challenge in the present writ petition is against the enhanced rate of land premium claimed by the Authority, which is a decision of the authority and not against any terms concluded contract, hence writ petitions are maintainable against orders passed by statutory authorities in exercise of their statutory functions. The legality, validity and maintainability of the order/decision of

---

[14] ***AIR 1989 SC 1076***
[15] ***(1995) 3 SCC 1***

statutory authority can always be made subject matter of judicial review, albeit, within the well-recognized limitations applicable to the process of judicial review.

10.8. Although much have been argued on behalf of Authority relying on *Kurien E. Kalathil (supra)* and *Haldiram Ltd (supra)* that the writ petitioner has invited this Hon'ble Court to adjudicate questions which squarely fall within the realm of private contractual law and must be vouched before the civil court, however, as it is found that admittedly there is no concluded contract between the petitioner-company and HDA, hence such proposition does not apply to the facts of this case. Since the present case is not concerning adjudication of any contractual obligation but a challenge to the claim of enhanced rate of land premium, hence the aspect of availability of alternative remedy cannot stand in the way of the writ petitioner to press its prayer under writ jurisdiction. Although it is settled position of law that it cannot be laid down as a proposition of law that once the petition is admitted, it could never be dismissed on the ground of alternative remedy as observed by Hon'ble Supreme Court in *Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti (supra),* however, the said proposition is not relevant to the facts and circumstances of this case.

10.9. With regard to the second ground of challenge to the maintainability of the writ petition of delay and laches it would be appropriate to analyze the chronology of events which stands undisputed, in order to examine such ground. The initial offer was made on 11th September, 2001, however, subsequent thereto letter of communication was made on 13th September, 2001 by the petitioner-company acknowledging the offer and requesting respondent no. 3 to re-consider and reduce the land premium rate in appreciation of the fact that huge fund would be required for filling up and development of 50 acres of land which was considered in the 71st Board Meeting of HDA held on 4th October, 2001 and rejected. The petitioner-company on 28th December, 2001 sent two demand drafts totalling to Rs. 10 lacs in favour of the respondent no.3 as a token booking amount for the scheduled land. Indisputably a revised offer was made whereunder the terms governing the allotment of land remained unchanged but the site plan of the said land was altered as per letter of HDA dated 23rd February, 2002. On 26th March, 2002, the petitioner-company deposited Rs.1,27,50,000/-. Respondent no.3 informed the petitioner-company on 9th July, 2002 that 15 acres of land being part of 50 acres of land was allotted to the petitioner-company for the purpose of establishment of an Export Oriented Unit and a registered lease deed was executed by and between the parties on 13th July, 2004. On 27th January, 2006 HDA demanded payment of the balance land premium in respect of remaining 35 acres of land out of 50 acres initially offered in September, 2001. The petitioner-company informed to respondent no.3 *vide* letter dated 2nd February, 2006 of its inability to make payment. By letter under Memo no. 2652/HDA/VII-E-142/2001 dated 5th February, 2008 (Annexure P13) the said Authority claimed the land premium @ Rs.15 lac per acre. The petitioner-company by its letter dated 6th June, 2008 informed respondent no.3 that the remaining balance payment could not be made due to inordinate delay in commissioning of the project. By its letter under Memo No. 1371/HDA/VII-E-142/2001 dated 4th July, 2008, the Chief Executive

Officer, respondent no.3 asked the petitioner-company to deposit the land premium amounting to Rs.4,28,75,000/- within 15 days from the date of issue of the said letter failing which Haldia Development Authority will evict the petitioner-company from the land measuring 35 acres occupied by the petitioner-company. The writ petition has been filed thereafter on 16th July, 2008. Thus, although the initial offer was made on 11th September, 2001 yet considering the entire conspectus of the cause of action it appears that the grievance of the petitioner arose upon issuance of letter dated 5th February, 2008 and 4th July, 2008 by the Authority concerned. Therefore, it cannot be said that there is delay in filing of the writ petition. Hence, the argument advanced on behalf of the said Authority relying on the decision of Hon'ble Supreme Court in *Tridip Kumar Dingal (supra)* that the writ petition is liable to be dismissed on the ground of delay alone cannot be accepted in the backdrop of the facts noted hereinabove.

10.10. So far as the third ground of thrust to maintainability of the writ petition pertaining to availability of alternative remedy is concerned, it has been vociferously argued on behalf of the said Authority that effectively, the writ petitioner has invited this Hon'ble Court to adjudicate questions which squarely fall within the realm of private contractual law. Disputes regarding the true meaning, purport and/or interpretation of covenants in the private contractual realm, must be placed beyond the writ jurisdiction and fall within the domain of a civil court. Reliance has been placed on the decision of Hon'ble Supreme Court *Kurien E. Kalathil (supra)* and thus, the disputes raised in the writ petition cannot be adjudicated in the writ jurisdiction and same ought to be not maintainable, especially no public law element is involved.

The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion. In spite of availability of alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; (iii) where the orders or proceedings are wholly without jurisdiction or the *vires* of the Act is challenged. ***(See Harbanslal Sahania versus Indian Oil Corporation Limited[16]).***

Bearing in mind the aforesaid proposition, let me revert back to the facts of the case. It has already been found that the challenge in the present writ petition is against the enhanced rate of land premium claimed by the Authority, which is a decision of the authority and not against terms of any concluded contract, hence writ petition is maintainable against orders passed by statutory authorities in exercise of their statutory functions. Therefore, the argument on behalf of the authority that disputes regarding the true meaning, purport and/or interpretation of covenants in the private contractual realm, must be placed beyond the writ jurisdiction and fall within the domain of a civil court, is misconceived and plea of availability of alternative remedy in civil court being a bar in maintaining a writ petition is unacceptable.

10.11. In light of the above discussion, this Court is of the opinion that the present writ petition is very much maintainable.

---

[16] (2003) 2 SCC 107

<u>Issue no.(ii): Whether the order/letter dated 5th February, 2008 (Annexure P-13) and order/letter dated 4th July, 2008 (Annexure P14) both issued by the Chief Executive Officer, Haldia Development Authority, respondent no.3 is arbitrary and unsustainable?</u>

11. The principle dispute revolves around an offer letter of the said Authority dated 11th September, 2001. For better analysis and appreciation of the instant issue, it would be profitable to reproduce the relevant offer letter as hereunder:

"Office of the
Chief Executive Officer
Haldia Development Authority
P.O. Durgachak, Haldia, Midnapore
<u>West Bengal – 721 602</u>

<u>Memo No. 1393/HDA/VII-E-142/01</u> ***<u>Dated the 11th September, 2001.</u>***

From : Chief Executive Officer
Haldia Development Authority

To : M/S Hindustan Seals Limited,
8/1, Lalbazar Street, Bikaner Building (3rd Floor),
<u>Kolkata – 700001</u>

Sub: <u>Offer of land measuring 50.0 acres for setting up of an aluminum and steel based industry.</u>
Ref: <u>Your letter no. NIL dated 07.09.2001.</u>

Sir,

With reference to the above, we are pleased to provisionally offer you 50.0 acres of land at mouza Bhuniaraychak (122), P.S. Sutahata Dist. Midnapore. As regards the allotment of land the following terms may please be noted:

1. *The land will be given on 90 (ninety) years lease basis and is renewable also.*
2. *The land premium rate is Rs.5.50 lakhs (Rs.five lakhs fifty thousand) only per acre and token rent @ Rs.0.25% of the total land premium per year will have to be paid, which will be enhanced @ Rs.5% annually, subject to the approval of the Board of Haldia Development Authority.*
3. *This offer letter is valid for 2 (two) months from the date of issue of this letter.*
4. *You have to deposit 50% of the land premium as an acceptance of this offer letter.*
5. *The possession of land will be delivered after completion of the full land final payment of land premium.*
6. *Payment have to be made in favour of Chief Executive Officer, Haldia Development Authority by Demand Draft/Bankers Cheque payable at Haldia only.*
7. *In case you fail to establish your project within the stipulated time and as per terms and conditions of agreement and if you pray for refund of the advance premium, the subject shall be decided by the Board of HDA which shall be final and binding on all concerned.*

8. Final terms and conditions will be settled during execution of lease deed.

Thanking you,

Yours faithfully

Chief Executive Officer
Haldia Development Authority"

11.1. Upon bare reading of the aforesaid offer letter, it manifests that the subject land was proposed to be given for lease of 90 years, which is renewable. The land premium was fixed @ Rs.5.50 lac per acre with a token rent @ 0.25% of the total land premium per year which was to be enhanced @ 5% annually subject to approval of the said Authority. The offer letter was made valid for two months from date of its issuance i.e. 11th September, 2001. Further the petitioner-company had to deposit 50% of the land premium as an acceptance of the offer letter and the possession of the land was to be delivered after completion of the full and final payment of the land premium. Thus, the total land premium was fixed at Rs.2,75,00,000/-. On 13th September 2001 the petitioner-company sent a letter to the said Authority acknowledging the offer and agreed to the terms and conditions stipulated therein and requested respondent no. 3, Chief Executive Officer to re-consider and reduce the land premium rate in appreciation of the fact that huge fund would be required for filling up and development of 50 acres of land. The prayer for reduction of land premium made in the aforesaid letter by the petitioner-company was discussed and duly considered in the 71st Board Meeting of Haldia Development Authority held on 4th October, 2001 wherein it was resolved as follows *"board resolved in view of the fact that construction of infrastructure such as approach road, water supply and availability of power line upto the factory* *gate involves huge cost, it is not possible to reduce the land premium rate".* Subsequent thereto, by letter dated 28th December, 2001, the petitioner-company sent two demand drafts totalling to Rs. 10 lacs in favour of the respondent no.3 as a token booking amount for the scheduled land and also requested to handover the possession of plot of land by 31st December, 2001 so that the company may proceed with soil testing, land filling and construction activity. Thus, since after the prayer for reduction of land premium of the petitioner-company was turned down by the said Authority, the petitioner-company tendered the token booking amount requesting for handing over of the subject land, it can well be construed that the petitioner-company accepted the land premium fixed by HDA. There was no dispute raised thereafter with regard to the land premium fixed in respect of the subject land.

11.2. Indisputably a revised offer was made whereunder the terms governing the allotment of land remained unchanged but the site plan of the said land was altered as informed by the said Authority *vide* letter under Memo no. 2831 dated 21st February, 2002 and the Authority in its said letter also acknowledged the receipt of Rs. 10,00,000/-. Thereafter, on 26th March, 2002, the petitioner-company deposited Rs.1,27,50,000/- by a cheque in favour of respondent no.3 on account of land premium in addition to earlier payment of Rs.10,00,000/-. As per the offer letter the same was made valid for a period of two months meaning thereby that the validity was for two months from the date of revision of the plan on 21st February 2002. Though 50% of the land premium was paid but remaining was not paid within the period of validity of two months. Although the petitioner-company has raised the issue that the said Authority did not provide supply of electricity and water to the factory premises set up by the petitioner-company and resulted in delayed execution of their project but needless to mention that the payment of land premium was never subject to providing such infrastructure as is evident from the original terms of proposal dated 11th September 2001. The revised proposal dated 21st February 2002 also did not contain any change in the terms and conditions which subjected the payment of balance amount of land premium to providing of infrastructure. By letter dated 9th July, 2002, 15 acres out of 50 acres offered land was allotted to the petitioner-company for establishing Export Oriented Unit. Though on 18th April, 2003 a letter of communication was made by petitioner-company to the said Authority for arranging for power supply at the site of the petitioner-company yet since 9th July, 2002 the petitioner-company did not take any endeavour to make payment of remaining amount of the land premium for almost more than three years. Ultimately the said Authority on 27th January 2006 issued a letter of reminder for depositing the remaining land premium of Rs. 96,25,000/- within seven days otherwise the offer letter shall be treated as cancelled. Though the petitioner-company acknowledged that the balance land premium of Rs.96,25,000/- is due at their end but addressed their inability to make payment as commissioning of the project was inordinately delayed as per schedule for the reasons of lack of power and water supply. Such payment was not made even after a lapse of almost two years of issuance of reminder by HDA. The amount was tendered only on 18th January, 2008. It is pertinent to reiterate that there is no alteration/change in the original terms and conditions in the meantime subjecting payment of remaining balance amount of the land premium to providing power and water supply. Thus, it is found from the original offer letter, revised offer letter and from subsequent events as above, that neither of those clause contains any terms that the payment of land premium was subject to providing infrastructure to the petitioner-company namely power and water supply by HDA. In the aforesaid conspectus, it is seen that no plausible reason is coming up from the side of the petitioner-company in not tendering the remaining amount of land premium within the validity period of the offer letter or within the period stipulated in the letter of reminder. Despite the balance land premium remaining unpaid for long, the petitioner-company was given opportunity to pay the balance land premium within a stipulated period of seven days but it has failed to make payment in response to the said letter. Hence, there cannot be any manner of doubt that despite getting opportunity to make payment, the petitioner-company did not do so without any rhyme or reason. Once the petitioner-company acknowledged and accepted the offer it was incumbent upon it to honour such offer and proceed in accordance with the terms and conditions of the offer letter which clearly stipulated that the offer letter would be valid for two months. Such payment therefore has to be made with the period of validity of the offer letter. Although upon non-compliance of the terms of the offer letter by not paying the balance amount within the schedule time period the offer letter deemed to have stood invalidated, yet a last opportunity was given to the petitioner-company to make payment *vide* letter dated 27th January, 2006, or else the offer letter would be treated as cancelled, which has also not been complied with. In reply, the petitioner-company *vide* its order dated 2nd February, 2006 disclosed its inability to make payment of balance land premium and committed to pay the same from April, 2006. However, no endeavour was taken to make good such commitment. There cannot be any dispute that by its own letter dated 6th June 2008 at page 59 of the affidavit-in-opposition of respondent no.3 dated 5th September, 2008, the petitioner-company has admitted that the power supply was made available from August, 2006. There is iota of materials showing that as a *bonafide* action the petitioner-company tendered the balance amount soon thereafter. It appears that on the plea of non-availability of power and water supply the petitioner-company did not make payment which is unacceptable, since the payment under the offer letter was not conditioned upon availability of power and water supply. Furthermore, while accepting the offer made in the said letter the petitioner-company had the prior knowledge of the condition of the land and the infrastructure available thereat and as such plea of non-availability of power and water supply cannot be a ground to delay full and final payment under the offer letter. This court finds substance in submission of Mr. Basu, learned advocate for the said Authority relying on *Joshi Technologies International Inc.(supra)* that commercial difficulty, inconvenience or hardship in performance of the conditions in a proposal can provide no justification in not complying with the same specially when the petitioner-company claims subsistence of the original proposal dated 11th September 2001.

11.3. Moreover, from paragraph no.23 of affidavit-in-opposition, it appears that the rate of land premium of Rs.15 lacs per acre has been accepted by other companies namely (i) *M/s. Modern India Con-cast Ltd.,* (ii) *M/s. Rohit Ferro Tech Ltd.,* (iii) *M/s. Mortex Alloys Pvt. Ltd.* and (iv) *M/s. Dhunsheri Polycarbonate Ltd.*

11.4. In *Jamshed Hormusji Wadia (supra),* the Hon'ble Supreme Court observed as follows.

> *"**18.** In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can — and rather must — also save themselves from negative balances caused by the cost of maintenance, payment of taxes and costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains."*

11.5. Bearing in mind the aforesaid observation, since it is found that other companies have also accepted the rate of land premium of Rs.15 lacs per acre, therefore, the enhanced rate at Rs.15 lacs per acre as made by the authority towards counter offer to the petitioner-company cannot said to be lacking in rationality or is discriminatory.

11.6. In the aforesaid backdrop, letter under Memo no. 2652/HDA/VII-E-142/2001 dated 5th February, 2008 (Annexure P-13) asking the petitioner-company to deposit land premium at an enhanced rate of Rs. 15 lacs per acre amounting to Rs. 4,28,75,000/- within a specified period and letter under Memo No. 1371/HDA/VII-E-142/2001 dated 4th July, 2008 (Annexure P14) for eviction of the petitioner-company from the subject land, both issued by the Chief Executive Officer, Haldia Development Authority, respondent no.3 is not arbitrary since several opportunity was given to the petitioner-company to make payment of the balance amount at the earlier rate of land premium offered which has not been complied and availed of by the petitioner-company without any credible and acceptable reason. Further the petitioner-company has also not lived upto its commitment to make payment of balance land premium.

12. It has been strenuously argued on behalf of the petitioner-company relying on *Jamshedji Hormusji Wadia (supra)* that the State and its instrumentalities have to be just, fair and reasonable in all their activities including those in the field of contracts. The State and its authorities playing the role of the landlord or tenant cannot be heard or seem causing displeasure or discomfort of Article 14 of the Constitution. However, in the light of above discussion as it has already been found that there is no arbitrariness in the action of Chief Executive Officer, Haldia Development Authority, respondent no.3 in issuing the letters under challenge, such observation in the above decision cannot come in the aid of the petitioner-company.

13. It has been categorically contended in the writ petition that the petitioner-company virtually got physical possession of the 50 acres of vacant land from the date of acceptance of the offer of its allotment. Mr. Basu, learned advocate for said Authority relying on *K.D Sharma (supra)* argued that petitioner's claim of possession having been handed over by the said authority without full and final payment in the absence of any possession certificate is incorrect and such claim is sincerely distorted fact and therefore, any relief granted would be based on distorted facts. Be that as it may, from the letter under challenge dated 4th July,2008 it is found that the said Authority requested the petitioner-company to deposit land premium amounting to Rs.4,28,75,000/- within fifteen days from the date of issuance of the letter otherwise HDA will evict the petitioner-company from HDA's land. Such contention in the impugned letter clearly indicates that the Authority accepts the fact that the petitioner-company is in possession of the subject land though admittedly no possession letter has been issued in the favour of the petitioner-company. Hence, the argument that statement made in the writ petition that the petitioner-company is in possession of the subject land is distorted fact does not stand to reason and at the same time the ratio of the aforesaid decision does not apply to the facts of the case. It is, however, pertinent to note from the above fact that the petitioner-company continued in possession of the subject land from the date of acceptance of the offer letter without making payment of the balance land premium which in the opinion of this court is illegal. It is settled proposition that a person who seeks equity must do equity.

14. It has been vociferously argued on behalf of the said Authority that the petitioner-company deliberately suppressed their own letter dated 6th June, 2008 wherefrom it would reveal that requirement of electricity and water had been met since August 2006 and thus has not approached this Hon'ble Court with unclean hands and as such the writ petition is liable to be dismissed on the ground of suppression of fact. In this context it is relevant to note that the petitioner-company in paragraph 14(a) has disclosed the existence of the aforesaid letter and craved leave to produce the same at the time of hearing and as such there is no such material suppression and therefore the argument advanced in this regard by the learned advocate for the said Authority falls short of merit.

15. It has been vociferously contended on behalf of HDA that with the expiry of the stipulated period the offer stood extinguished but such contention cannot be sustained for the simple reason that HDA accepted rent for the subject land in respect of the offer letter and has also asked for payment of balance amount by its letter of reminder dated 27th January, 2006 within certain period or else the offer should be treated as cancelled which presupposes existence of the offer on the date of issuance of such letter of reminder.

16. In view of the above discussion the impugned letter dated 5th February, 2008 (Annexure P-13) and 4th July, 2008 (Annexure P14) of Chief Executive Officer, Haldia Development Authority, respondent no.3 are held to be not arbitrary and thus does not call for interference.

17. Admittedly, in compliance to order dated 18th July, 2008 of Co-ordinate Bench of this court, petitioner-company deposited the balance amount of Rs.96,25,000/- as per offer letter dated 11th September, 2001.

18. Accordingly, petitioner-company is directed to deposit the remaining amount of the enhanced land premium of Rs.3,32,50,000/- (Rs.4,28,75,000/- less Rs.96,25,000/-) in favour of Haldia Development Authority within a period of six weeks from date of this order. Failing compliance as above, the Haldia Development Authority shall be at liberty to take steps for eviction of the petitioner-company from the subject land to the extent of 35 acres in accordance with law. In the event of eviction of the petitioner-company from the land-in-question, the said Authority shall refund the amount of land premium received by it from the petitioner-company over and above the value of 15 acres of land of Rs.82,50,000/-, together with interest @ 7% per annum from the respective dates of payment of the amount till the date of actual refund.

19. With the aforesaid direction, the writ petition being **WPA 15313 of 2008** stands disposed of.

20. Interim order, if any, stand vacated.

21. All connected applications, if any, stand disposed of.

22. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)