

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**WRIT PETITION No.22568 of 2020**  
**And**  
**CONTEMPT CASE No.1580 of 2021**

**Between:**

M/s. Sunshine Electricals,  
Rep. by its Proprietor, Mr. K.V.R. Babu,  
S/o. Venku Naidu, Aged about 51 years,  
Office at :D.No.12-1-25, GNT Road,  
Nehru Chowk,  
Anakapalli, Visakhapatnam-531001,  
R/o. H.No.12-4-36/8, Lokesh Vari Veedhi,  
Near RTC Complex, Anakapalle,  
Visakhapatnam District

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Petitioner

And

The State of A.P.,  
Rep. by its Principal Secretary,  
Panchayat Raj and Rural Development,  
(RWS & S) Department,  
Secretariat Buildings,  
Velagapudi, Amaravathi,  
Guntur District  
and others

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Respondents

DATE OF JUDGMENT PRONOUNCED : 06.09.2022

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to  
see the fair copy of the judgment? Yes/No

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**VENKATESWARLU NIMMAGADDA, J**

**\* HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

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Velagapudi, Amaravathi,  
Guntur District  
and others

--- Respondents

**! Counsel for the petitioner : Sri Subba Rao Korrapati**

**^Counsel for Respondent Nos.: Learned Government Pleader  
1 and 2 for Panchayat Raj**

**^ Counsel for Respondent No.3: Sri Alapati Vivekananda,  
Learned Standing Counsel  
for NREDCAP**

**< Gist:**

**> Head Note:**

**? Cases referred:**

1. 2011 (5) SCC 697
2. 2015 (14) SCC 685
3. (2004) 3 SCC 553
4. (1981) 3 SCC 238
5. (1989) 2 SCC 116
6. (1996) 6 SCC 22
7. (2000) 6 SCC 293
8. (2015) 7 SCC 728
9. 2019 SCC Online All 2244
10. (2019) 16 SCC 794

This Court made the following :

**THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION No.22568 of 2020**

**And**

**CONTEMPT CASE No.1580 of 2021**

**COMMON ORDER:**

Learned counsel for the petitioner as well as learned counsel for the respondents agreed to pass a common order in both the writ petition as well as in contempt case. Accordingly, this Court is inclined to pass a common order in both the writ petition as well as in contempt case.

2. The present writ petition is filed declaring the inaction of the respondents in releasing the payments due to the petitioner concern, as per the directions of the 2<sup>nd</sup> respondent herein, vide Memo No.24/CPR & RD/LED/2018, dated 19.05.2020 and subsequent letter of the 1<sup>st</sup> respondent vide Letter No.PRR01-PROPPAN(STLT)/5/Pts.III/A2/2020, dated 19.08.2020 in respect of the work executed by the petitioner for conversion of existing conventional streetlights into energy efficient LED street lighting system for conservation of energy in Gram Panchayats in Visakhapatnam District, as per agreement dated 30.10.2017 with the 3<sup>rd</sup> respondent-Corporation herein, as illegal and arbitrary.

3. Heard learned counsel for the petitioner, learned Government Pleader for Panchayat Raj and learned Standing Counsel for 3<sup>rd</sup> respondent-Corporation.

4. Learned counsel for the petitioner submits that the 1<sup>st</sup> respondent took a policy decision and decided to convert the existing conventional streetlights into energy efficient LED street lighting system for conservation of energy and for minimizing the maintenance expenditure incurring under street lighting head in various Gram Panchayats in Andhra Pradesh. Presently, the street lighting system prevailing in the Gram Panchayats of State of Andhra Pradesh is conventional lighting systems based on High Pressure Sodium Vapor lamps, Metal Halide lamps, Florescent Tube Lights and CFL etc. In fact, the LED based street lighting systems offers higher efficiency, better illumination and life expectancy, apart from being environmentally benign. While so, to achieve this object, the 1<sup>st</sup> respondent has entered into MOU with the 3<sup>rd</sup> respondent on 26.03.2016 for survey, supply and installation of LED Fixtures and CCMS through SMART Centre Connectivity including their post installation maintenance over the project for a period of 10 years at specified Gram Panchayats in Andhra Pradesh. The 3<sup>rd</sup> respondent-Corporation is created by the 1<sup>st</sup> respondent.

Hence, it is classified as Government Company and owned by the 1<sup>st</sup> respondent.

5. Pursuant to achieving the proposed object of the 1<sup>st</sup> respondent, the 3<sup>rd</sup> respondent-Corporation was permitted to act as Nodal Agency on behalf of the 2<sup>nd</sup> respondent herein for conversion of conventional street lighting. Similarly, the 2<sup>nd</sup> respondent also indentified another agency i.e., EESL and entered into an agreement dated 17.07.2017, which is subsequent to the agreement entered by the 3<sup>rd</sup> respondent herein. It is a fact that the agreement between the 1<sup>st</sup> respondent and EESL is allowing payments for installation charges apart from other charges, which are common in respect of the 3<sup>rd</sup> respondent and EESL. Then, the vendors, who were entered into agreements with the 3<sup>rd</sup> respondent to achieve the above said object, have requested vide affidavits dated 03.10.2017 to enlarge the benefit of payment of installation charges in accordance with the terms of agreement entered into between the 1<sup>st</sup> respondent and EESL. The said request was forwarded and to see that it is acceptable to the 1<sup>st</sup> respondent by the 3<sup>rd</sup> respondent herein. Accordingly, the 1<sup>st</sup> respondent issued a Memo dated 18.10.2017 permitting the 2<sup>nd</sup> respondent to enter into a separate agreement with the 3<sup>rd</sup> respondent with

conditions same as that of conditions of agreement with EESL dated 17.07.2017. In view of the same, the agreements with the 3<sup>rd</sup> respondent as well as EESL entered into by the 2<sup>nd</sup> respondent are one and the same.

6. In pursuance of the object, the 1<sup>st</sup> respondent identified the Gram Panchayats in Visakhapatnam and West Godavari Districts in Phase-I and entrusted the same for such conversion to the 3<sup>rd</sup> respondent herein. The 3<sup>rd</sup> respondent issued tender notice dated 01.06.2017 and after completion of entire tender procedure, the 3<sup>rd</sup> respondent-Corporation and petitioner entered into an agreement dated 30.10.2017. As per the agreement, the total value of the work is about Rs.75 Crores in respect of 925 villages. He further submits that as per the terms and conditions of the agreement and with the help of the agencies, the petitioner completed the execution of work in respect of Visakhapatnam District. Then the 5<sup>th</sup> respondent also issued satisfaction letter about the work of the petitioner to the 3<sup>rd</sup> respondent-Corporation and specified Rs.7,56,04, 379/- to be payable out of that only Rs.1,92,01,513/- paid so far. Then the petitioner submitted a representation dated 30.06.2020 to the 2<sup>nd</sup> respondent and another representation dated 30.09.2019 to the 3<sup>rd</sup> respondent seeking payment of due

amount of Rs.9,33,90,066/- but there is no response. Learned counsel for the petitioner also submitted the documents issued by the respondent authorities under which the respondents admitted the amounts and agreement on par of EESL. The 3<sup>rd</sup> respondent addressed a letter to the 2<sup>nd</sup> respondent for entering into an agreement as per the directions of the 1<sup>st</sup> respondent regarding infrastructure development authorities with the 2<sup>nd</sup> respondent dated 23.10.2017. On 19.05.2020 the 2<sup>nd</sup> respondent issued a memo directing respondent Nos.5 to 7 to release of the funds for payment of the dues to the petitioner. Even after specific memo no payments were released, the petitioner having waited for considerable time, then made representations to the concerned authorities and also National Commission for Backward Classes. Pursuant to the letter addressed by the National Commission for Backward Classes, respondent Nos.1 and 2 replied that the 3<sup>rd</sup> respondent submitted bills for an amount of Rs.14.19 Crores towards installation of LED Lights in respect of Visakhapatnam, West Godavari and Krishna Districts. Out of an amount of Rs.14.19 Crores, an amount of Rs.3.60 Crores was already paid to the 3<sup>rd</sup> respondent. So, the total remaining bill to be payable is approximately Rs.11.00 Crores. While so, the 2<sup>nd</sup> respondent

vide Memo dated 19.05.2020 admitted the amount payable to the petitioner in respect of Visakhapatnam District is Rs.6,84,69,937/- as on that date and the same was also confirmed by the 1<sup>st</sup> respondent vide letter dated 19.08.2020. In view of the said admission on the part of the respondents, they are bound to release the payments to the petitioner. As such, the petitioner can invoke the jurisdiction of this Court since it is well settled that the alternative remedy is not effective and efficacious except to invoke a writ jurisdiction when an injustice is caused and rule of law is violated. He further submits that it is also well settled that the writ petition is maintainable in the matter of contracts, when the action of the respondent statutory authorities is in violation of principles of natural justice and is not in accordance with the procedure as contemplated and in the public interest as held by the Hon'ble Apex Court in **Union of India and others v. Tania Constructions Private Limited**<sup>1</sup> and similarly the Hon'ble Apex Court also in **Naseem Ahmed v. State of Uttar Pradesh**<sup>2</sup> held that "in view of the fact that the amount had been admitted by the respondent Government, we feel that said amount should

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<sup>1</sup> 2011 (5) SCC 697

<sup>2</sup> 2015 (14) SCC 685

be paid without entering into any arbitration, etc. and therefore the amount shall be paid to the appellant within four months from today after deducting taxes etc.” In support of his case, he also relied upon the judgment of the Hon’ble Apex Court in ***ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.***<sup>3</sup>. He also submits that apart from the judgments of the Hon’ble Apex Court, this Court also granted reliefs together with interest in W.P.No.2369 of 2018 dated 23.09.2019 and another W.P.No.496 of 2020 dated 13.08.2020. Therefore, the respondents are liable to pay the amounts as admitted by them as stated above.

7. Learned counsel for the petitioner further submits that as per the counter affidavit of the 3<sup>rd</sup> respondent, the 3<sup>rd</sup> respondent specifically and categorically admitted that the amount payable to the petitioner upto 30.06.2020 is Rs.8,42,61,256.56 out of which, an amount of Rs.3,03,79,110/- was paid and balance quarterly bill amount of Rs.5,38,82,146/- is to be received from respondent Nos.1 and 2. But the 2<sup>nd</sup> respondent in his counter affidavit admitted total amount payable in respect of Visakhapatnam District upto December,

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<sup>3</sup>(2004) 3 SCC 553

2019 is Rs.6,62,00,643/- to the 3<sup>rd</sup> respondent herein and out of the said amount upto December, 2019, Rs.3,04,13,963/- was paid and remaining Rs.3,57,88,868/- was paid after the orders of this Court and pleaded the entire amount due to the petitioner as per Memo dated 19.05.2020 has been paid. He also submits that the difference of amount between the 3<sup>rd</sup> respondent as well as the 2<sup>nd</sup> respondent is Rs.2,83,02,463.41 ps. towards infrastructural developmental costs/installation of lights, which was admitted by the 1<sup>st</sup> respondent vide Memo dated 18.10.2017. Pursuant to said memo, respondent Nos.2 and 3 are entered into an agreement for such payment on 23.10.2017. Therefore, the respondents are liable to pay an amount of Rs.4,83,86,491/- upto June, 2020. In view of the categorical admission on the part of the 3<sup>rd</sup> respondent in its counter affidavit, the contention of the respondents that the writ petition is not maintainable since alternative remedy is available as per clauses of the agreement entered into between the 3<sup>rd</sup> respondent and the petitioner dated 30.10.2017 are cannot be sustained as held by the Hon'ble Apex Court as well as this Court that wherever there is an admission of amounts or admission of facts on the part of official respondents the writ

jurisdiction is always available to the aggrieved party. In view of the settled law, this writ petition is liable to be allowed.

8. Learned Government Pleader for Panchayat Raj appearing for respondent Nos.1 and 2 submits that the present writ petition is not maintainable since the petitioner is available effective alternative remedy by way of initiation of arbitration proceedings as per Clauses 19(1), 19(2) and 19(3) of the agreement dated 30.10.2017 entered into between the petitioner as well as the 3<sup>rd</sup> respondent herein. Moreover, there is no privity of contract between the petitioner and respondent Nos.1 and 2. Even though there is no privity of contract between the petitioner and respondent Nos.1 and 2, but wantonly respondent Nos.1 and 2 arrayed as party respondents in the writ petition. The other contention of learned Government Pleader is that the prayer of the petitioner in the writ petition is only declaring the inaction of the respondents in releasing the payments due to the petitioner as per the directions of the 2<sup>nd</sup> respondent vide memo dated 19.05.2020 and subsequent letter of the 1<sup>st</sup> respondent dated 19.08.2020, as illegal and arbitrary. As per the said memo, the 2<sup>nd</sup> respondent instructed the 5<sup>th</sup> respondent to take steps for payment of bills due in favour of the petitioner as well as others. As per the said memo, the

amount due as on December, 2019 is Rs.6,84,69,937/- out of the said admitted amount, an amount of Rs.3,04,13,963/- was paid prior to the writ petition and an amount of Rs.3,57,88,868/- was paid to the 3<sup>rd</sup> respondent after filing of the present writ petition. Therefore, the entire amount as admitted vide Memo dated 19.05.2020 as prayed by the petitioner and the same was complied with and for further dues, which may arise after filing of the writ petition, are not admitted by the 2<sup>nd</sup> respondent and regarding infrastructural developmental charges, which are claiming by the petitioner, is never admitted by respondent Nos.1 and 2 and there is no privity of contract even between the petitioner and 3<sup>rd</sup> respondent. Therefore, the extraordinary jurisdiction of this Court is not amenable regarding disputed facts between the parties. In support of his case, he relied upon the judgments rendered by the Hon'ble Apex Court, which are as under:

1. In ***Divl. Forest Officer v. Bishwanath Tea Co. Ltd.***<sup>4</sup>, the Hon'ble Apex Court held at para No.9 as under:

“9. Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being

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<sup>4</sup>(1981) 3 SCC 238

specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the civil court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a civil court where a suit for specific performance of contract or for damages could be filed. This is so well-settled that no authority is needed. However, we may refer to a recent decision bearing on the subject. In *Har Shankar v. Deputy Excise & Taxation Commissioner* [(1975) 1 SCC 737] the petitioners offered their bids in the auctions held for granting licences for the sale of liquor. Subsequently, the petitioners moved to invalidate the auctions challenging the power of the Financial Commissioner to grant liquor licences. Rejecting this contention, Chandrachud, J. (as he then was), speaking for the Constitution Bench at p. 263 observed as under: (SCC p. 746, para 16)

“Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.”

Again at p. 265 there is a pertinent observation which may be extracted: (SCC p.747, para 21)

“Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.”

This apart, it also appears that in a later decision, the Assam High Court itself took an exactly opposite view in almost identical circumstances. In *Woodcrafts Assam v. Chief Conservator of Forests* [AIR 1971 Ass 92] a writ petition was filed challenging the revision of rates of royalty for two different periods. Rejecting this petition as not maintainable, a Division Bench of the High Court held that the complaint of the petitioner is that there is violation of his rights under the contract and that such violation of contractual obligation cannot be remedied by a writ petition. That exactly is the position in the case before us. Therefore, the High Court was in error in entertaining the writ petition and it should have been dismissed at the threshold.”

2. In ***Bareilly Development Authority v. Ajai Pal Singh***<sup>5</sup>,

the Hon’ble Apex Court held at para No.22 as under:

“**22.** There is a line of decisions 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

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<sup>5</sup> (1989) 2 SCC 116

so as to compel the authorities to remedy a breach of contract pure and simple — *Radhakrishna Agarwal v. State of Bihar* [(1977) 3 SCC 457], *Premji Bhai Parmar v. Delhi Development Authority* [(1980) 2 SCC 129] and *DFO v. Biswanath Tea Company Ltd.* [(1981) 3 SCC 238]”

3. In ***State of U.P. v. Bridge & Roof Co. (India) Ltd.***<sup>6</sup>, the Hon’ble Apex Court held at para Nos.15, 16, 18 and 21 as under:

“**15.** In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).

**16.** Firstly, 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

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<sup>6</sup> (1996) 6 SCC 22

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. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.

**18.** Accordingly, it must be held that the writ petition filed by the respondent for the issuance of a writ of mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law. (See the decision of this Court in *Asstt. Excise Commr. v. Issac Peter* [(1994) 4 SCC 104] where the law on the subject has been discussed fully.) The writ petition ought to have been dismissed on this ground alone.

**21.** There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to

supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 — whether for issuance of mandamus or any other writ, order or direction — was misconceived for the reasons mentioned supra.”

4. In ***Kerala State Electricity Board v. Kurien E. Kalathil***<sup>7</sup>, the Hon’ble Apex Court held at para No.11 as under:

“**11.** 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

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<sup>7</sup>(2000) 6 SCC 293

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.”

5. In ***Joshi Technologies International Inc. v. Union of India***<sup>8</sup>, the Hon’ble Apex Court held at para Nos.69.4, 70.4, 70.6, 70.8 and 71 held as under:

“**69.4.** Money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

**70.4.** Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

**70.6.** Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

**70.8.** If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke

the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

**71.** Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded.”

6. In **Ipjacket Technology India Private Limited v. M. D. Uttar Pradesh Rajakiya Nirman Nigam Ltd.**<sup>9</sup>, the Hon’ble Apex Court held at para No.24 as under:

“**24.** We may gainfully refer to the judgment in the case of *Joshi Technologies International Inc.* (supra) wherein the entire legal position in this regard has been taken note of and summarized in the following terms:—

“69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that

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<sup>8</sup> (2015) 7 SCC 728

<sup>9</sup> 2019 SCC OnLine All 2244

under the following circumstances, “normally”, the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.”

9. Learned Standing Counsel for respondent No.3 submits that he adopted the arguments of learned Government Pleader for Panchayat Raj and contended that the amount, which was claimed by the petitioner as per Memo dated 19.05.2020, is paid and the claim of the petitioner regarding infrastructural developmental charges so far not finalized and it is only a disputed fact between the parties. He further submits that the contention of the petitioner that the 6<sup>th</sup> respondent is admitted the amount payable to the petitioner is Rs.8,42,61,256.56 ps., which includes Rs.2,83,02,463/-, is towards infrastructural developmental charges/for installation of lights is not received

by this respondent. Even though it was admitted in counter affidavit but this respondent clarified in its additional counter affidavit that the petitioner is due to the Corporation an amount of Rs.1,56,68,405/- towards CCMS Boxes out of that they have not deducted an amount of Rs.29,33,296/- deposited by respondent Nos.1 and 2 and therefore, the amount admitted by the 2<sup>nd</sup> respondent in its Memo dated 19.05.2020 i.e., Rs.6,64,46,338/- was paid to the petitioner after deduction of service charges to this Corporation in 14 installments. As such, the present writ petition is liable to be dismissed.

10. Having regard to the contentions made by learned counsel for the petitioner as well as learned counsel for the respondents and the material placed before this Court, this Court is of the considered view that the contention of the petitioner that once the 3<sup>rd</sup> respondent-Corporation admitted by sworn affidavit before the Court regarding payments to be payable to the petitioner is amounts to admission on the part of the 3<sup>rd</sup> respondent and the extraordinary jurisdiction of this Court can be exercised in view of such admission made by the 3<sup>rd</sup> respondent is sustainable. The another contention of the petitioner that for payment of infrastructural developmental charges is accepted by respondent Nos.1 and 2 and issued a

memo directing the 2<sup>nd</sup> respondent to enter into an agreement to that effect with the 3<sup>rd</sup> respondent is complied with and accordingly, an agreement was entered on 23.10.2017. In view of the agreement entered into between respondent Nos.2 and 3, the 3<sup>rd</sup> respondent admitted such amount in its counter affidavit regarding infrastructural developmental charges to be payable to the petitioner. Therefore, such contention of the petitioner is sustainable. The other contention of the petitioner that when there is an admission on the part of the respondents regarding any contract and its payment, the extraordinary jurisdiction of this Court is very much available is also sustainable as held by the Hon'ble Apex Court in the following judgments:

**1.** In *Naseem Ahmad's* case (2 supra), the Hon'ble Apex Court held at para Nos.3 and 4 as under:

**“3.** It is an admitted fact that Rs 8,81,085 (Rupees eight-lakhs eighty-one thousand and eighty-five only) were payable to the appellant by the respondent Government and the said fact is very clearly admitted in the Letter dated 14-7-2010, written by the Executive Engineer, Lower Division, East Yamuna Canal, Muzaffarnagar. From the said amount certain deductions are to be made, which are in the nature of certain taxes including business tax, etc.

4. In view of the fact that the amount had been admitted by the respondent Government, we feel that the said amount should be paid without entering into any arbitration, etc. and therefore, the said amount shall be paid to the appellant within four months from today after deducting taxes, etc. and along with the payment, details with regard to the deductions made shall also be given to the appellant by the respondent.”

2. In ***ABL International Ltd.’s*** case (3 supra), the Hon’ble Apex Court held at para Nos.16, 17, 19, 27 and 55 as under:

“16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of *Gunwant Kaur v. Municipal Committee, Bhatinda* [(1969) 3 SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner’s right to relief

questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.”

**17.** The above judgment of *Gunwant Kaur* [(1969) 3 SCC 769] finds support from another judgment of this Court in the case of *Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council* [(1970) 1 SCC 582] wherein this Court held: (SCC p. 587, para 13)

“Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.”

**19.** Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

**27.** From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

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

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

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

**55.** In *Bal Krishna Agarwal (Dr) v. State of U.P.* [(1995) 1 SCC 614 this Court held: (SCC p. 618, para 10)

“10. Having regard to the aforesaid facts and circumstances, we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternate remedy under Section 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than 5 years. Since the question that is raised involves a pure question of law and even if the matter is referred to the Chancellor under Section 68 of the Act it is bound to be agitated in the court by the party aggrieved by the order of the Chancellor, we are of the view that this was not a case where the High Court should have non-suited the appellant on the ground of availability of an alternative remedy. We, therefore, propose to go into the merits of the question regarding inter se seniority of the appellant and Respondents 4 and 5. We may, in this context, mention that Respondent 4 has already retired in January 1994.”

**3.** In *Surya Constructions v. State of Uttar Pradesh*<sup>10</sup>,

the Hon’ble Apex Court held at para Nos.3 and 4 as under:

“**3.** It is clear, therefore, from the aforesaid order dated 22-3-2014 that there is no dispute as to the amount that has to be paid to the appellant. Despite this, when the appellant knocked at the doors of the High Court in a writ petition being Writ Civil No. 25216 of 2014, the impugned judgment dated 2-5-2014 [*Surya Construction v. State of*

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<sup>10</sup> (2019) 16 SCC 794

*U.P.*, (2014 SCC OnLine All 6071)] dismissed the writ petition stating that disputed questions of fact arise and that the amount due arises out of a contract. We are afraid the High Court was wholly incorrect inasmuch as there was no disputed question of fact. On the contrary, the amount payable to the appellant is wholly undisputed. Equally, it is well settled that where the State behaves arbitrarily, even in the realm of contract, the High Court could interfere under Article 226 of the Constitution of India (*ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [(2004) 3 SCC 553])

4. This being the case and the work having been completed long back in 2009, we direct Uttar Pradesh Jal Nigam to make the necessary payment within a period of four weeks from today. Given the long period of delay, interest @ 6% p.a. may also be awarded.”

11. In view of the foregoing discussion, the Writ Petition is disposed of with a direction to the respondents to pay the remaining balance amount as per the counter affidavit of the 3<sup>rd</sup> respondent herein within a period of six (6) weeks from the date of receipt of a copy of this order.

12. C.C.No.1580 of 2021 is filed by the petitioner complaining that the order of this Court dated 16.08.2021 is not complied with by the respondents. Hence, the respondents are liable for punishment under Sections 10 and 12 of the Contempt of Courts Act, whereas the respondents filed detailed counters,

wherein they specifically and categorically stated that the interim order of this Court dated 16.08.2021 has been complied with and therefore, the contempt case may be closed.

13. For better appreciation, it is appropriate to extract the order of this Court dated 16.08.2021 hereunder:

“On instructions, the learned Government Pleader for Panchayat Raj appearing for respondent Nos.1 and 2 submits that up to 04.08.2021, Rs.1,15,09,168/- was paid to respondent No.3, which is payable to the petitioner in turn by respondent No.3. Payment of remaining amount is under process.

Sri Alapati Vivekananda, learned counsel for respondent No.3, submits that no instructions with regard to the payment received by respondent No.3 and sought time.

In view of the above, respondent No.3 is directed to release the amounts in favour of the petitioner which they have received from respondent Nos.1 and 2 forthwith. Respondent Nos.1 and 2 are directed to take steps to release the balance amount payable to the petitioner within a reasonable period but not beyond two weeks from today.”

14. The counters filed by the 2<sup>nd</sup> respondent as well as the 3<sup>rd</sup> respondent which contended that as per the directions of this Court that is to release the balance amount pursuant to the Memo dated 19.05.2020 issued by the 2<sup>nd</sup> respondent, under which the 2<sup>nd</sup> respondent directed the other respondents to take steps for payment of Rs.6,64,46,338/-, the said amount has

been paid in two occasions before filing of the writ petition and after filing of the writ petition.

15. In view of the payment of amount by the respondents as prayed by the petitioner in his prayer, and the petitioner is not quantified the amount payable other than the amount mentioned by the 2<sup>nd</sup> respondent in its Memo dated 19.05.2020, therefore, it cannot be said that the respondents did not comply with the orders of this Court in the absence of quantifying of amount to be received by the petitioner. Therefore, the interim order of this Court dated 06.08.2021 has been complied with.

16. Accordingly, the Contempt Case is closed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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**VENKATESWARLU NIMMAGADDA, J**

Date: 06.09.2022

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**Note:** L.R. copy to be marked

**THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION No.22568 of 2020**  
**And**  
**CONTEMPT CASE No.1580 of 2021**

**Date: 06.09.2022**

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