

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(C) No. 3971 of 2016**

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1. Mr. Manmohan Verma, son of Late Govardhan Das Verma, resident of 4F, Ashok Nagar, Dhansar, PO Dhansar, PS Bankmore, Dist. Dhanbad
2. Pre-Stressed Udyog (India) Pvt. Ltd. a company incorporated under Companies Act, 1956, having its registered office at 4F, Ashok Nagar, Dhansar, PO Dhansar, PS Bankmore, Dist. Dhanbad, through its authorized signatory Manmohan Verma, son of Late Govardhan Das Verma, resident of 4F, Ashok Nagar, Dhansar, PO Dhansar, PS Bankmore, Dist. Dhanbad

...Petitioners

**Versus**

1. State of Jharkhand, through Secretary, Urban Development Department, Government of Jharkhand, PO & PS Dhurwa, Dist. Ranchi
2. Commissioner, North Chota Nagpur Division, Hazaribagh, PO, PS & Dist. Hazaribagh
3. Mineral Area Development Authority, through its Managing Director, having its office at Luby Circular Road, Dhanbad, PO, PS and Dist. Dhanbad
4. M/s APCON Homes (P) Limited, a company incorporated under the Companies Act, 1956, having its registered office at Babu Bazar PO Gardanibag, PS Gardanibag, Dist. Patna (Bihar) and its branch office at Police Line, Hirapur, PO, PS & Dist. Dhanbad through its Director Shri Dheeraj Kumar Singh, son of Sri Amarendra Narayan Singh, resident of Chandra Vihar Colony, PO, PS & Dist. Dhanbad

... Respondents

**CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**

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For the Petitioners	: Mr. Rahul Gupta, Advocate Mr Rohitashya Roy, Advocate Mr. Tarun Kr. Mahato, Advocate
For the Respondent-State	: Mr. Rajiv Anand, GA IV Mrs. Rakhi Rani, JC to GA IV
For the Respondent No. 3	: Mr. Rupesh Singh, Advocate Mr. Amrendra Pradhan, Advocate

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**07/28.02.2017** Petitioners' grievance is that the respondent no. 4-developer has made illegal constructions which have been condoned by the respondent-Mineral Area Development Authority, illegally. The petitioners seek quashing of orders dated 29.04.2016 and 04.05.2014/24.05.2014.

2. In so far as challenge to order dated 04.05.2014/24.05.2014 is concerned, the writ petition fails in view of the fact that the said order was challenged by the petitioners in appeal in which order dated 29.04.2016 has been passed. The appellate order is not an order dismissing the appeal as not maintainable and therefore, in the present proceeding challenge to order dated 29.04.2016 alone survives. After availing remedy of appeal, the petitioner cannot challenge legality of order dated 04.05.2014/24.05.2014 in the present proceeding.

3. Mr. Rahul Kumar Gupta, the learned counsel for the petitioners submits that the original order dated 04.05.2014/24.05.2014 proceeds on a premise as if the Ordinance of 2011 covers the illegal constructions made thereafter whereas, the said Ordinance was intended to regularize the constructions which were made in excess of the sanctioned map/plan prior to the date when the Ordinance was promulgated on 09.05.2011.

4. The petitioner no. 2 - Pre-Stressed Udyog (India) Pvt. Ltd. is the owner of the land in respect of which a Development Agreement dated 25.01.2010 was executed with respondent no. 4- M/s APCON Homes (P) Limited. Petitioner no. 1 is the authorised signatory of the petitioner no. 2. In the writ petition a grievance against order dated 04.05.2014/24.05.2014 has been raised in respect of the illegal constructions made by respondent no. 4. The petitioners plead that map was sanctioned on 14.05.2010, whereunder only five floors were to be constructed over the land comprised in different Khata numbers, admeasuring 7 kathas and 4 2/3 chhatak land at Maouza-8, Seraidhela, P.S-Seraidhela, district-Dhanbad. Vague averments appear in other paragraphs of the writ petition alleging illegal constructions made by respondent no. 4 over the said land. The Development Agreement which was executed on 25.01.2010 contains a Clause under which the owner granted the developer right to develop the property, more particularly mentioned in the Schedule appended to the Development Agreement. Under

Clause 4 to the Development Agreement the developer is to develop the said property ensuring the construction to the maximum permissible Floor Area Ratio (F.A.R).

5. A reading of different covenants under the Development Agreement would disclose that the owner cannot recile from the agreement and it is bound to execute conveyance deed in respect of 64% share of the developer. In order dated 04.05.2014/24.05.2014 passed in Town Planning Case No. 046 /11-12, the Managing Director, Mineral Area Development Authority, Dhanbad has opined that the sanctioned F.A.R. which was 2.79, on deviation came to 3.28, which has been condoned and the excess construction has been regularised on payment of penalty. Now, a question arises whether in view of the specific stipulations under the Development Agreement dated 25.01.2010 the developer had a right to get the excess construction regularised or not. Answer to this question would definitely depend on interpretation of different Clauses under the Development Agreement dated 25.01.2010. It is by now well settled that once a question involving interpretation of a contract is raised jurisdiction of the Writ Court is ousted. Moreover, in view of the aforesaid facts, what was the intention of the parties when they entered into the Development Agreement dated 25.01.2010 and whether what has been reduced in writing would govern the rights and objections of the parties or not are the questions, answer to which cannot be inferred in the present proceeding. This can be decided only when the parties lead evidence, oral as well as documentary in support of their claim, in civil suit. *[Rajasthan State Industrial Development and Investment Corp. Vs. Diamond and Gem Development Corp. Ltd. reported in (2013) 5 SCC 470]*

6. In the context of the plea taken by the petitioners that the order of regularisation on the face of the Ordinance dated 09.05.2011 is illegal, suffice would be to indicate that it is not every wrong order which must be interfered in exercise of jurisdiction under Article 226 of the constitution of India. In my considered

opinion, the petitioners have failed to establish a legal right in themselves and a corresponding duty in the respondent-authority which the respondent-authority has neglected to perform, as a consequence of which the petitioners have suffered a legal injury [*Rai Shivendra Bahadur Vs. Governing Body of the Nalanda College, Bihar Sharif and Ors.* reported in *AIR 1962 SC 1210*]. In the writ petition there is not even a whisper as to any legal injury suffered by the petitioners; financial loss, loss of reputation, prospect of being implicated in a criminal case or in a case for violation of provisions under the MADA Act etc. Besides the above, jurisdiction of the High Court to issue writ of Certiorari does not extend to the matters which involve disputed questions of law.

7. Considering the aforesaid facts, I am of the opinion that the writ petition challenging order dated 29.04.2016 is not maintainable and accordingly, it is dismissed.

**(Shree Chandrashekhar, J.)**

Amit/