



**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Extra-Ordinary Jurisdiction)

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**S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.**  
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**W.P. (C) No. 69 of 2016**

The Principal Secretary,  
Department of Commerce & Industries  
Government of Sikkim  
Gangtok, East Sikkim. ... **Petitioner.**

*versus*

M/s. Snowlion Automobile Pvt. Ltd.,  
A company having its Registered Office at  
Tadong, P.O. Tadong & P.S. Gangtok,  
East Sikkim.

Through its Managing Director,  
Whri Mahabir Prasad Agarwal,  
C/o Central Hotel (Beside Old Secretariat),  
Opposite Supermarket, Lal Market,  
NH 10, Gangtok,  
East Sikkim – 737 101. ... **Respondent.**

**Petition under Article 226/227 of the Constitution of India**

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Appearance:

Mr. J. B. Pradhan, Additional Advocate General, Mr. Karma Thinlay, Senior Government Advocate with Mr. Thinlay Dorjee Bhutia, Government Advocate, Mr. Santosh Kr. Chettri and Ms. Pollin Rai, Assistant Government Advocates for the Petitioner.

Mr. Pabitra Pal Chowdhury, Mr. Samir Kumar Ghosh and Mr. B. K. Gupta, Advocates for the Respondent.  
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**J U D G M E N T**  
(26.02.2018)

**Satish K. Agnihotri, CJ**

Invoking the extra-ordinary discretionary jurisdiction of this Court under Article 226 of the Constitution of India, the instant petition is filed, wherein the Petitioner seeks to impugn the Award dated 12.06.2015 rendered by the learned Arbitrator and consequential dismissal Order dated 10.06.2016 passed by the District Judge, East Sikkim at Gangtok, in application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, the Act, 1996), on stated grounds that there was palpable, manifest error causing miscarriage of justice.

**2.** The facts, in brief, relevant for examination and consideration of the lis involved in this petition, are that the Respondent was allotted a plot of land measuring an area of 0.56 acres situated at 5<sup>th</sup> Mile, Tadong, East Sikkim by the State Government, the Petitioner herein, vide letter bearing No.730 dated 24.06.1981 under the terms and conditions of Lease Deed dated 15.02.1989 for a period of thirty years. The Respondent herein was permitted to make development on the land by erecting structure to set up an automobile workshop under the terms of Lease Deed. On expiry of the period of



lease, the lease was not renewed and the State Government, the Petitioner herein, decided to resume the land back. Accordingly, it was communicated by letter dated 17.05.2011. The dispute arose in reference to the arrears of lease rent and proper valuation for the development made and the construction raised thereon. The Respondent herein preferred a Writ Petition being W.P. (C) No. 23 of 2013, seeking recovery of reasonable compensation after proper valuation of the development made thereon. Learned High Court disposed of the Writ Petition on 04.12.2013, holding as under: -

"13. .... Considering the proviso contained in Clause 4(2)(xi), the petitioner shall not be compelled to hand over possession of the land in question and the buildings unless reasonable compensation as mutually agreed upon is paid to the petitioner.

14. The entire exercise of valuation shall be completed within a period of 30 days from today. The petitioner shall give all assistance in ensuring that the order is complied with within the period stipulated."

**3.** Feeling dissatisfied, the Respondent herein preferred a review petition being Review Pet (C) No. 01 of 2014. The said review petition was disposed of on 25.02.2014 in following terms:-

".....

- (i) On the consent of both the parties, Hon'ble Shri Justice A. P. Subba, former Judge of this Court, is requested to act as the Arbitrator in terms of arbitration clause 8 of the lease agreement dated 15-02-1989 to decide the dispute and differences between them on the question of valuation of the developments made on the land by the Petitioner.



- (ii) The Learned Arbitrator shall enter into the reference within a period of thirty days from the date of his appointment. Within this period, the parties shall ascertain as to whether Hon'ble Shri Justice Subba is willing to act as an Arbitrator. In the event of his inability, this Court shall be informed so that necessary order may be passed.
- (iii) In order to ensure that the interest of the parties are safeguarded the Learned Arbitrator shall draw up an inventory of the developments that have been made by the Petitioner on the lease hold property by making a visit personally and take other steps including taking photographs, if necessary.
- (iv) Upon drawing up such inventory and collecting necessary evidence, the Petitioner shall handover possession of the leasehold land to the Respondent-Department as undertaken by him.
- (v) The Learned Arbitrator shall ensure that the entire proceeding is completed and the award passed within a period of six months from the date of his entering upon the reference.
- (vi) The order of appointment of the Arbitrator is being passed in view of the consent expressed by both the parties and is, therefore, independent of the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996. However, the proceedings of the arbitration shall be governed by the procedure prescribed under that Act.

The cost of the arbitration shall be borne by the parties."

**4.** In pursuance thereof, Shri Justice A. P. Subba, former Judge of this Court initiated the arbitration proceedings on reference made hereinabove. The learned Arbitrator passed the arbitration Award on 12.06.2015, granting a sum of Rs.3,34,43,444.00 (Rupees Three crore Thirty Four lakhs Forty Three thousand Four hundred and Forty Four) in favour of the Respondent Company, deducting the amount of



Rs.71,87,891.00 already paid earlier to the Respondent, with pendent lite and future interest at the rate of 12% per annum. The dispute does not rest therein.

**5.** Initially, an application under Section 34 the Act, 1996 was filed before the High Court on 27.11.2015, which, it appears, was withdrawn and filed before the Court of the District Judge, East Sikkim at Gangtok, on 04.12.2015, seeking setting aside the Award preferred by the State Government in Arbitration Case No.01 of 2015, along with an application for condonation of delay under provision of Section 34(3) of the Act, 1996. The Learned District Judge, holding that Section 5 of the Limitation Act, 1963 is not applicable to the provisions of limitation enshrined under Section 34(3) of the Act, 1996, dismissed the application on the ground of being barred by limitation, on 10.06.21016.

**6.** Feeling further aggrieved and dissatisfied, the State Government, Petitioner herein, preferred further an appeal under Section 37 of the Act, 1996, in Arb. A. No.01 of 2016 on 13.09.2016, questioning the legality and validity of the Order dated 10.06.2016 passed by the learned District Judge, East Sikkim at Gangtok. Subsequently, the appeal was withdrawn by the State Government, Petitioner herein, on 13.12.2016,



with liberty to take recourse to an appropriate forum, if so advised.

**7.** Thus, this petition under Article 226 of the Constitution of India, seeking quashing of the Award dated 12.06.2015 and consequential dismissal Order dated 10.06.2016 passed by the District Judge, East Sikkim at Gangtok, in Section 34 application preferred against the Award.

**8.** Mr. J. B. Pradhan, learned Additional Advocate General appearing for the State Government, the Petitioner herein, challenges the Award as well as the consequential dismissal Order of the District Judge on the ground that the Award as well the consequential dismissal Order dated 10.06.2016 was manifestly improper, incorrect and based on the erroneous appreciation and wrong interpretation of the legal aspect. Mr. Pradhan would further contend that the Arbitrator has exceeded his jurisdiction by not confining the dispute to the terms of lease dated 15.02.1989. The Arbitrator has examined the compensation, not the reasonable compensation as prescribed under the Lease Deed and also has not considered clause 4(2)(ix) of the Lease Deed which provides that the Lessee shall not erect any building or make any alteration or addition to such building on the plot without



sanction and permission in writing of the Lessor or other authority approved by the Lessor, while assessing the compensation for development made and construction raised on the plot; thus, exceeded his jurisdiction. It is also contended that the District Judge, East Sikkim at Gangtok, has also failed to examine the application under Section 34 of the Act, 1996 made by the State Government, Petitioner herein in its proper perspective. It is further submitted that consideration of the entitlement of the claimant-company for compensation, but not the reasonable compensation, was beyond jurisdiction and terms of reference of the arbitration proceedings and as such, it was a case of palpable, gross, apparent error of law and facts. It is further contended that in such fact situation, this Court is fully competent to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India to correct the error of law and facts.

9. Referring ***Rohtas Industries Ltd. and Another vs. Rohtas Industries Staff Union and Others***<sup>1</sup>, it is urged by Mr. Pradhan that an award can be upset if an apparent error of law stains its face, in a Writ Petition under Article 226 of the Constitution. To bolster his submission, learned Additional Advocate General further refers and relies on ***Miss Maneck***

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<sup>1</sup> (1976) 2 SCC 82



***Gustedji Burjarji vs. Sarafazali Nawabali Mirza<sup>2</sup>, Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others<sup>3</sup> and Surya Devi Rai vs. Ram Chander Rai and Others<sup>4</sup>.***

**10.** Contrasting, Mr. Pabitra Pal Chowdhury, learned Counsel appearing for the Respondent, would submit that the Award is perfect and legally sound and as such, this petition deserves to be dismissed as not maintainable on the sole ground that the Petitioner has availed and failed in efficacious statutory remedy by preferring an application under Section 34 of the Act, 1996 before the Court of District Judge and further an appeal under Section 37 of the Act, 1996 before this Court. The State Government, Petitioner herein, has exhausted its remedy, raising ground of alleged error in law and facts. Mr. Chowdhury would further contend that the Arbitrator was appointed by consent Order dated 25.02.2014 rendered in Review Pet. (C) No.01 of 2014, wherein it was clearly directed that the Arbitrator was to decide the dispute and differences between them on the question of valuation of the developments made on the land by the Petitioner, i.e. the Respondent herein. The allegation of making developments or erecting structure without permission of the authorities is not

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<sup>2</sup> (1977) 1 SCC 227

<sup>3</sup> (1998) 8 SCC 1

<sup>4</sup> (2003) 6 SCC 675





an issue in this petition, but the issue before the Arbitrator was how much reasonable compensation, the Respondent herein, was entitled to for the developments made on the plot or structure erected thereon. The learned Arbitrator has carefully, legally examined the issue and came to a proper conclusion by assessing the compensation and awarding the same.

**11.** Referring to a passage in ***Surya Devi Rai*** (supra), it was contended that the High Court would not assign to itself the role of an appellate court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court in the exercise of certiorari jurisdiction under Article 226 of the Constitution of India.

**12.** Heard learned Counsel for the parties, examined the pleadings and documents appended thereto carefully.

**13.** On studied examination, it is apposite to examine the ambit and scope of extra-ordinary jurisdiction of this Court under Article 226 of the Constitution. In the facts of the case, the Petitioner-State has preferred an application under Section 34 of the Act, 1996 to set aside the Award impugned herein, which was dismissed being barred by limitation. Thereafter, an



appeal preferred under Section 37 of the Act, 1996, was withdrawn. This Court, on consideration, framed the following question of law in this petition:-

“Whether the High Court is competent to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, when the alternate statutory remedy as provided is availed by the party, however, belatedly and the case could not be considered on merit, as pleaded by the petitioner?”

**14.** Indisputably, this Court has discretionary extraordinary jurisdiction under Article 226 to correct the manifest, palpable error of law or facts which stare on the face of it.

**15.** The Constitution Bench of the Supreme Court in **G. Veerappa Pillai vs. Raman and Raman Ltd.<sup>5</sup>**, examining the ambit and scope of jurisdiction under Article 226 of the Constitution, held as under:-

“ 20. Such writs as are referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.”

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<sup>5</sup> AIR 1952 SC 192



**16.** Again, in ***T. C. Basappa vs. T. Nagappa and another<sup>6</sup>***, the Supreme Court, while examining a petition preferred under Article 226 of the Constitution wherein decision of the election tribunal was under challenge, held as under:-

" 7. One of the fundamental principles in regard to the issuing of a writ of 'certiorari', is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin L. J. thus summed up the law on the point in - 'Rex v. Electricity Commissioners', 1924-1 KB 171 at p. 205 (C) :

"Whenever any body or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The second essential feature of a writ of 'certiorari' is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of 'certiorari' the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person, vide per Lord Cairns in - 'Walsall's Overseers v. L. & N. W. Rly. Co.', (1879) 4 AC 30 at p. 39 (D)."

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<sup>6</sup> AIR 1954 SC 440



17. Again, in ***Hari Vishnu Kamath vs. Ahmad Ishaque and others***<sup>7</sup>, wherein the decision of the election tribunal was in challenge, the Supreme Court reiterated scope of proceedings under Article 226 of the Constitution, as under:-

“ 23. It may therefore be taken as settled that a writ of ‘certiorari’ could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.  
.....”

18. This view was consistently followed and in ***Rohtas Industries Ltd.*** (supra), the Supreme Court reiterated and observed as under:-

“ 12. Should the Court invoke this high prerogative under Article 226 in the present case? That depends. We will examine the grounds on which the High Court has, in the present case, excised a portion of the award as illegal, keeping in mind the settled rules governing judicial review of private arbitrator’s awards. Suffice it to say, an award under Section 10A is not only not invulnerable but more sensitively susceptible to the writ lancet being a quasi-statutory body’s decision. Admittedly, such an award can be upset if an apparent error of law stains its face. The distinction, in this area, between a private award and one under Section 10A is fine, but real. However it makes slight practical difference in the present case; in other cases it may. The further grounds for invalidating an award need not be considered as enough unto the day is the evil thereof.”

<sup>7</sup> AIR 1955 SC 233



**19.** In ***Whirlpool Corporation*** (supra), the Supreme Court explained the power to issue prerogative writs under Article 226 of the Constitution as under:-

“ 14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

**20.** In ***Surya Dev Rai*** (supra), the Supreme Court examined the difference between Articles 226 and 227 of the Constitution of India, holding, *inter alia*, as under:-

“ 12. In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an appellate court and step into reappreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.



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38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No.46 of 1999 with effect from 1-7-2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a



grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but



cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

**21.** In **L. K. Verma vs. H.M.T. Ltd. & Anr.**<sup>8</sup>, the Supreme Court, while examining the provisions of sub-rule (3) of Rule 14 of the U.P. Factories (Safety Officers) Rules, 1984, wherein appeal was maintainable before the State Government, viewed the scope of proceedings under Article 226 of the Constitution in lieu of appeal, held as under:-

“ 20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 1 SCC 1, Sanjana M. Wig (Ms.) v. Hindustan Petroleum Corpn. Ltd., (2005) 8 SCC 242, State of H.P. and Others v. Gujarat Ambuja Cement Ltd. and Another (2005) 6 SCC 499].”

**22.** Further, the Supreme Court in **Shalini Shyam Shetty and Another vs. Rajendra Shankar Patil**<sup>9</sup>, re-

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<sup>8</sup> AIR 2006 SC 975

<sup>9</sup> (2010) 8 SCC 329





examined the power of jurisdiction of the High Court under Article 226 and Article 227 of the Constitution and held as under:-

“ 48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.”

**23.** On studied examination of the afore-mentioned authoritative judicial pronouncements made by the Supreme Court time to time on the issue of the scope of jurisdiction of High Court in exercise of power under Article 226 of the Constitution, it is manifest that the jurisdiction of the High Court entertaining a Writ Petition is not affected in spite of alternative statutory remedies, particularly, wherein it is shown that the tribunal judicial authority had exercised its power



having no jurisdiction or had exercised its jurisdiction without any legal foundation. It is for the party invoking extra-ordinary jurisdiction to demonstrate that there has been (i) a breach of principles of natural justice; or (ii) procedure required for decision has not been adopted, or (iii) to seek enforcement or infringement of violation of fundamental rights; or (iv) proceedings taken or order passed thereon are wholly without jurisdiction, or (v) proceeding itself is an abuse of process of law.

**24.** For the afore-stated contingencies, the High Court is fully competent to exercise its extra-ordinary discretionary jurisdiction under Article 226 of the Constitution to correct gross, palpable error of law or facts, to stave off miscarriage of justice.

**25.** Applying the well-settled principle to the facts of the case, it is established that the learned Arbitrator had entered into arbitration reference pursuant to the Order dated 25.02.2014 rendered by the High Court in Review Pet. (C) No.01 of 2014. The High Court, on the consent of both the parties, appointed the Arbitrator in terms of arbitration clause 8 of the Lease Deed to decide the dispute and differences between them on the question of valuation of the developments made on the land by the Petitioner. The



reference is not circumscribed to any condition, namely, only those developments which have been made with permission or approval of the Lessor or its authority. The clause 4(2)(ix) of the Lease Deed prescribes that the Lessee shall not erect any building or make any alteration or addition to such building on the industrial plot without sanction or permission in writing of the Lessor or its authority. The clause 4(2)(xi) prescribes that if the lease is not renewed on the termination of the lease period, reasonable compensation, as mutually agreed upon by the parties, will be paid to the Lessee by the Lessor on development of land and construction of buildings. Sub-clause (2)(ix) and sub-clause (2)(xi), if read together, contemplate the erection of building or making any alteration or addition to such building with sanction or permission. However, if some developments on the land and construction of building are made without permission, that does not deprive the Lessee, the claimant, of the reasonable compensation as agreed upon between the parties.

**26.** The High Court, while examining the Writ Petition as well as Review Petition, has not restricted the valuation of the development on the land and for the erection of the building or alteration done, with permission or sanction of the Lessor only.



**27.** Be that as it may, on a detailed examination, it may be a simple error of law or of facts. However, the pre-condition for exercising extra-ordinary jurisdiction under Article 226 of the Constitution is gross or palpable error on the fact of it. It has clearly been held in a catena of decisions that the high prerogative writ under Article 226 may be issued not to correct mere error but the error which is manifest, palpable and gross leading to miscarriage of justice. The Court is not required to delve deep into the issue on re-appreciation or re-examination of evidence.

**28.** In this case, indisputably there is no gross failure of justice or grave injustice on the basis of alleged jurisdictional error. Thus, exercise of extra-ordinary jurisdiction of High Court under Article 226 of the Constitution is not warranted.

**29.** Further, the State Government, the Petitioner herein, has availed the remedy of Section 34 of the Act, 1996 and also Section 37 of the Act, 1996, by preferring an appeal against the Order passed by the District Judge, which was subsequently withdrawn. Needless to state that the Arbitration and Conciliation Act, 1996 was enacted with the sole object of expeditious disposal of the contractual disputes. The Act provides for statutory remedies under Section 34 and Section



37 to seek redressal of grievances, if any, in the Award on the grounds prescribed therein.

**30.** In the case on hand, as aforestated, the Petitioner-State has already availed the efficacious remedy as provided under statute. In such an event also and further the Petitioner-State has failed to demonstrate that there was any infringement of fundamental rights or violation of principles of natural justice or the procedure required for decision was not adopted or the proceeding was taken and/or order was passed without any jurisdiction on abuse of process of law, to invoke jurisdiction under Article 226 of the Constitution of India.

**31.** Resultantly, the petition is dismissed as not maintainable.

**32.** No order as to costs.

**Chief Justice**  
**26.02.2018**

pm Approved for Reporting : Yes/~~No~~.  
Internet : Yes/~~No~~.