HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 1478/2000

Adarsh Vidya Mandir Society, Outside Amba Pole, Udaipur through its Secretary - Shri Gaj Singh Mehta son of Shri Umrao Singhji Mehta, resident of Bedla Road, Udaipur.

----Petitioner

Versus

1. The State of Rajasthan through Revenue Secretary, Govt. of Rajasthan, Jaipur.
2. The Collector, Udaipur.
3. Madan Gopal Malviya Rajkiya Ayurved Mahavidhyalaya, Amba Mata Scheme, Udaipur.

----Respondent

For Petitioner(s)	:	Mr. Manish Shishodia, Sr. Advocate with Mr. M. Aslam Naushad and Mr. Harshvardhan Singh Rathore
For Respondent(s)	:	Mr. Salman Agha for Mr. Anil Kumar Gaur, AAG

HON'BLE DR. JUSTICE NUPUR BHATI

Order

Reserved on : 24/08/2023

Pronounced on : 31/08/2023

(1) The present writ petition has been filed under Articles 226 and 227 of the Constitution of India with the following prayers:-

> "(i) Allow the above writ petition of petitioner;
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> (ii) quash the impugned order of the Collector, Udaipur (respondent No.2) dated 15.12.99 (Annex. No.10), by issuing a writ of certiorari or any other writ, order or direction after summoning the relevant records from the respondents No.1 and 2;
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> (iii) restrain the respondents from interfernig with the Institution including the primary school run by the petitioner on the land in question in compliance of the impugned order of the Collector dated 15.12.99 (Annexure No.10) by issuing appropriate writ, or direction;

(iv) restrain the respondents from interfering with the use of and from taking possession of the Pattasud land ad measuring 10 bighas 10 Biswas of the petitioner and where the buildings of the petitioner worth about 1.11 crores are standing and where more than about 1300 students are receiving education, by issuing appropriate writ, order or direction;

(v) restore the possession of the land or any part thereof if taken on paper without issuing any notice to the petitioner in compliance of the impugned order dated 15.12.99 (Annex.10) by issuing appropriate writ, order or direction;

(vi) restrain the respondents from taking possession of the aforementioned pattasud and kabjasud land or any part thereof in pursuance of the impugned order dated 15.12.99 (Annex.10) of the Collector, Udaipur (respondent No.2) by issuing ad interim writ, order or direction during the pendency of the above writ petition in terms of the above relief;

(vii) grant such further relief/reliefs which in the facts and circumstancesof this Hon'ble Court may do complete justice to the petitioner; and

(viii) award cost of this writ petition from the respondents to the petitioner."

(3) The the petitioner is an educational institution for teaching Sanskrit, Hindi, English and other subjects which are useful in time and is a registered institution. It was first registered on 08.06.1942 under Section 5 of the Mewar Societies Registration Act and notification was issued in this regard by the then Prime Minister of the Mewar State.

(4) In the year 1942, the then Maharana of Mewar gave land measuring 10 bighas to the petitioner-institution free of cost, however, on the condition that the premises will not be used for any other purposes except for development of education and a patta was issued by the former State of Mewar on 07.10.1943.

(5) On 18.07.1980, the then Collector, Udaipur issued a notice to the petitioner that it was not utilizing 6 bighas and 6 biswas of land and thus, it had committed breach of condition No.3 of the patta issued in its favour and, therefore, the said land was allotted to the respondent No.3 – Ayurved College, Udaipur. Thereafter, the representative of the petitioner approached the Collector and submitted a representation dated 07.08.1980 (Annex.4) requesting him to drop the proceedings. Thereafter, nothing had happened for about 5 years and suddenly an order came to be passed on 30.05.1985 by the Collector pursuant to some order of the State Government (dated 11.06.1980). Since the said order dated 30.05.1985 was passed without affording any opportunity of hearing to the petitioner, the petitioner challenged the same by filing a writ petition being SBCWP No.1767/1985 before this Court, which came to be allowed vide order dated 27.01.1999 and the matter was remanded to the Collector with a direction to decide the matter afresh by a speaking order after giving reasonable opportunity of hearing to both the parties.

(6) The Collector, pursuant to the order aforesaid passed by this Court, issued fresh notice dated 05.04.1999 wherein it did not mention anything in respect of which the petitioner was required to show cause as the petitioner was called upon to remain present before him on 19.04.1999. After hearing both the parties, passed the order dated 15.12.1999 observing that the petitioner had no need of land and acquired the same.

(7) Being aggrieved of the order dated 15.12.1999 (Annex.10), the petitioner has preferred the present writ petition.

(8) The present writ petition came up for hearing before this Court and the same was dismissed vide order dated 16.05.2000. The petitioner preferred a special appeal before the Division Bench of this Court being DB SAW No.415/2000, which came to be allowed vide order dated 22.03.2011 and the writ petition was remanded back for deciding afresh. The relevant portion of the order dated 22.03.2011 reads as under:-

> "8. The writ court dismissed the writ petition essentially on two grounds. Firstly, since the writ petitioner did not seek any liberty to file second writ petition while prosecuting the first one i.e. writ petition No.1767/85 in relation to this very dispute and hence the second writ petition i.e. the one out of which this intra court appeal arise is not really tenable. The second ground was that jurisdiction of the writ court under article 227 of the Constitution of India is very narrow and since it is confined to only jurisdictional issues and hence no interference in the order of collector impugned in the writ petition is called for.
> xxx xxx xxx
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> 11. In the light of this discussion, the first ground of rejection cannot sustain and is accordingly set aside. It is held that writ petition filed by the appellant out of which this intra court appeal arises was maintainable independent to that of the first one and it was not necessary for the writ petitioner to have sought any kind of liberty from the writ court in the first round of litigation to file writ petition at a later stage.
> xxx xxx xxx
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> 13. In the light of this discussion, we hold on second ground that writ court was not right in coming to a conclusion that no case of interference due to limited exercise of powers under article 227 of the Constitution is made out.
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> 14. In the light of foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside. The writ petition is remanded to writ court for deciding the same afresh on merits in accordance with law keeping in view our observations made supra. Let the writ petition be now placed for hearing before the writ court as per roaster for its disposal as directed."

(9) Learned counsel for the petitioner made the following submissions:-

(a) That while issuing the notice dated 18.07.1980 (Annex.3), it was alleged that the petitioner had not utilized 6 bighas and 6 biswas of land and thus, violated the condition No.3 of patta (Annex.2), therefore, the State Government has forfeited the land and has permitted to allot the same to the Ayurved University vide order dated 07.08.1980, whereas the condition No.3 does not say so. Condition No.3 of the patta reads as under:-

> "3. किराया नही दे सकेंगे । खिलाफ वर्जी होने की हालत में बिला समायत उजर लागत जमीन व ईमारत जप्त करली जावेगी तो कोई उजर नही कर सकेंगे।"

Thus, it cannot be said that the petitioner had violated the condition No.3 in any manner.

(b) That the order dated 07.08.1980 was passed behind the back of the petitioner and no opportunity of hearing was provided to the petitioner before passing the said order allotting 6 bighas 6 biswas land to the respondent University.

(c) That the petitioner institution is running a school in the name of Maharana Mewar Vidya Mandir wherein more than 1300 students are receiving education and about 55 teachers are engaged. It is also submitted that the petitioner had spent a huge amount for construction of building etc. and thus, it cannot be said that the petitioner had, in any way, violated the condition No.3 of the patta nor any such notice was ever served upon the petitioner.

(d) That the Collector, Udaipur, vide order dated 30.05.1985, while relying upon the inspection made in pursuance of the order

dated 11.06.1980 of the State Government, forfeited 6 bighas 6 biswas of land and allotted to the respondent – University, whereas no opportunity of hearing was afforded to the petitioner while passing the said order and, thus, the petitioner preferred a writ petition (SBCWP No.1767/1985), which came to be allowed vide order dated 27.01.1999 and it was observed as under:-

> "I am of the view that in the present case, the petitioner has not been given reasonable opportunity of being heard before passing the impugned order dated 30.5.85 Annex.12. Once it is established that in a portion of the land in dispute petitioner's school building exists and school is being run upto Primary level, in such a situation, the dispute ought not to have been decided on the basis of inquiry made behind the back of petitioner' society. Inspection of the disputed land should have been made presence of the parties to assess the genuine need of the petitioner-institution. It would be pertinent to note here that the petitioner institution has been established for the purpose of imparting education to little children upto Primary level. The small kids deserve to have a play ground for their physical development at present according to their strength in each class and future needs of students are also deserve to be kept in view. I do not propose to make any observations on merit regarding genuine need of the petitioner-institution otherwise it may prejudice the case of the petitioner before the Collector.
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> As a result of the aforesaid discussion, the instant writ petition is allowed and the impugned order dated 30.05.1985 Annex.12 passed by the Collector, Udaipur is quashed and the case is remanded back to the Collector, Udaipur with a direction to decide afresh by speaking order after giving reasonable opportunity of hearing to the petitioner's society and any of the authority of Madam Mohan Malviya Ayurved College, Udaipur whom he thinks fit and proper."

Pursuant to the order aforesaid, the Collector, Udaipur though issued notice dated 05.04.1999 purporting to give opportunity of hearing but the notice was quite unspecific inasmuch it was not mentioned that on which point the petitioner

had to address nor was apprised about the orders passed by the State Government.

(e) That the main ground for passing the order dated 15.12.1999 (Annex.10) is that the petitioner had violated the conditions of the patta, whereas while issuing notice, no such reason has been assigned. And thus, the impugned order has been passed beyond the scope of notice. It is settled proposition of law that an order travelling beyond the bounds of notice is impermissible and without jurisdiction. In support of his contention, the petitioner placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **UMC Technologies Private Limited Vs. Food Corporation of India** [**AIR 2021 SC 166**].

(f) That once having made the grant, the State Government has no power to have resumed the grant unless its terms had been violated or breach thereof has been committed by the grantee. In the case in hand, no such reason has been assigned nor any such notice was served upon the petitioner and hence, the impugned order is liable to be quashed and set aside. Learned counsel for the petitioner placed reliance upon the judgment of this Court in the case of **UIT & Ors. Vs. Maharana Pratap Smarak Samiti** [**(1982) WLN (UC) 119 (DB)**].

(g) That as the petitioner is running a primary school, thus, for the purpose of giving children, facility of ground for various activities including the sport activities, 6 bighas 6 biswas of land was kept as a play ground and thus, the impugned order is not sustainable.

(h) That the notice dated 18.07.1980 (Annex.3) specifically said that since the petitioner was utilizing 6 bighas 6 biswas of land, it resulted into violation of Condition No.3 as laid down in the patta (Annex.2). However, the condition No.3, as laid down in the patta is that the petitioner cannot let out the land in dispute. Therefore, reason mentioned in the notice dated 18.07.1980 and the Condition No.3, as laid down in the patta, do not relate to each other and thus, the notice has been issued without application of mind.

(i) That the respondents have contended that the land in question is being dealt with by Maharana Mewar Vidhya Mandit and not by the original grantee, i.e. Adarsh Vidya Mandir Society, which is wholly baseless as the Adarsh Vidya Mandir Society is the only institution, which is registered under the relevant provisions of law and the land in question is being owned and possessed by the petitioner exclusively and the institution in the name of Maharana Mewar Vidya Mandir is being run as school on the land in question.

(j) That the respondent No.3 is having sufficient accommodation as it has been allotted 10 bighas of land having total strength of 200 students and staff of 97 persons and for the last two sessions, no fresh admission has been given, whereas the petitioner society is in dire need for the space of providing adequate facility to the students in the school run by it. Thus, the allotment of 6 bighas 6 biswas of land in favour of the respondent No.3 is not required,

(k) That the contention of the respondents that during the pendency of the writ petition, the petitioner-society executed an

agreement dated 12.09.2012 for the land in dispute, which was transferred to Maharana Mewar Education Trust resulting into breach of conditions of the patta (Annex.2) is baseless as the land in dispute was not transferred to Maharana Mewar Education Trust. The Maharana Mewar Educational Trust is only advising, assisting and rendering the necessary guidance to construct, establish, conduct and efficiently manage the school on the land of the petitioner-society. He also submitted that as laid down in Annex.5A, all capital assets of the school belong to the petitioner-society and the Maharana Mewar Educational Trust shall have no right to claim over them and as far as the Manarana Mewar Vidya Mandir is concerned, it is the name of the school of the petitioner-society and is not a separate entity as reflected from Annex.5A.

(l) That the Collector recorded a finding in the impugned notice dated 15.12.1999 (Annex.10) while mentioning in it that it is proved from the records that the students are getting education of 'Jyotish Vidya' and 'Karamkand' and, therefore, it is reflected that Maharana Mewar Education Trust is only providing assistance etc. in accordance with the agreement entered between them and petitioner society, is in exclusive possession lf and in dispute right from beginning till today.

(m) That during the pendency of the writ petition, the respondents preferred an application seeking permission for developing the garden on the land in question to which a counter affidavit was filed stating therein that more than 1400 students were being imparted education in the school run by the petitioner-society and for that purpose 6 bighas land had already been

developed way back in the year 1993, which was apparent from the order dated 25.05.1993 (Annex.6), passed by this Court.

(10) Per contra, learned counsel for the respondents made following submissions:-

(a) That the notice issued by the Collector is self explanatory and it was well within the knowledge of the petitioner that what is being done in respect of the land in question.

(b) That the enquiry was conducted in legal manner and the order dated 11.06.1980 is not relevant for the purpose of enquiry conducted by the Collector in which the Collector came to the conclusion that the petitioner is not imparting education in Sanskrit.

(c) That the allotment of 6 bighas 6 biswas of land was rightly made to the respondent No.3. The notice dated 05.04.1999 was issued pursuant to the order dated 27.01.1999 passed by this Court in first round of litigation.

(d) That the petitioner has transferred certain land, which amounts to breach of condition and thus, the impugned order has rightly been passed.

(e) That there was no requirement of issuing the notice afresh to the petitioner-society as the initial notice dated 18.07.1980 was in existence and this Court had quashed and set aside only the order dated 30.05.1985 (Annex.12) vide order dated 27.01.1999. Thus, the contention of the petitioner that the respondents initiated the proceedings without issuing a notice and without assigning any reason in the notice issued on 05.04.1999 (Annex.9) affording it opportunity of hearing.

(f) That in the notice dated 18.07.1980 (Annex.3), it has been categorically stated that the petitioner is found guilty of violating the Condition No.3 laid down in patta (Annex.2) and the violation has duly been accepted by the petitioner when the petitioner appeared before the Collector along with its representation dated 07.08.1980 (Annex.4) in which it was submitted that on account of financial paucity, the petitioner-society had sublet a small portion of land in question and if the Government would direct the petitioner to vacate the premises, then the petitioner-society is willing to evict the tenant from the land in dispute. Thus, the notice dated 18.07.1980 has been rightly issued against the petitioner.

(g) That a bare perusal of patta (Annex.2), by which the petitioner-society had been allotted the land in question, would reflect that the land in question was allotted exclusively in the name of Adarsh Vidya Mandir Society. However, the petitioner-society subsequently entered into an agreement dated 29.09.1992 with Vidhya Dan Trust (Maharana Mewar Education Trust, Udaipur), which is de-hors the condition for which the patta (Annex.2) was issued in its favour.

(h) That the petitioner society ought not to have entered into the agreement subsequent to the patta dated 07.10.1943 (Annex.2) with a third party as the land in question was allotted exclusively in favour of Adarsh Vidya Mandir Society and thus, the third party, which is the Trust, is not having the right to run the school at the land in question.

(i) That in the patta dated 07.10.1943 (Annex.2), it is mentioned that the petitioner-society is imparting selfless service for the last two years for Dev Vani Sanskrit but subsequently, the petitioner-society is charging fees from the students and the same is again not in consonance with the purpose for which the patta (Annex.2) was issued.

(j) That the agreement dated 29.09.1992 (Annex.5A) was entered into between the petitioner and the Trust without seeking leave of the Court as during that point of time, the matter was subjudice before this Court as the petitioner had preferred SBCWP No.1767/1985, which came to be decided on 27.01.1999 and thus, the petitioner concealed this important fact and, therefore, the writ petition deserves to be dismissed.

(11) In rejoinder, learned counsel for the petitioner made the following submissions:-

(a) That the petitioner-society is a registered society and the land in question is owned by the petitioner exclusively and the institution in the name of Mahrana Mewar Vidhya Mandir is being run as school on the land in question, which is not a separate entity and is only name of the school of petitioner society.

(b) That from the conditions mentioned in the patta (Annex.2) it is clear that it is nowhere stated that the land is being allotted only for the purpose of imparting Sanskrit Education. Whereas, it is mentioned that the land is being allotted for imparting education and the petitioner is running school and is imparting education and also has spent huge amount for the same.

(c) That as far as the concession of the petitioner in the representation dated 07.08.1980 (Annex.3) is concerned, the same is nothing but mis-representation and thus, ought to be ignored as the petitioner-society had never sublet the land in question and was having the complete possession over it and utilizing the same for running the school

(d) That the agreement entered into on 29.09.1992 clearly reflected that the name of school of petitioner-society shall be Maharana Mewar Vidya Mandir, which made clear that Maharana Mewar Vidya Mewar is not a separate entity and is the name of the school of the petitioner-society, which is imparting education in the language Sanskrit besides Hindi, English and other subjects.

(e) That the respondents have not placed on record any of the documents showing that the petitioner has violated any of the condition of the patta (Annex.2).

(12) Heard learned counsel for the parties and perused the material available on record.

(13) This Court finds that the submission of the learned counsel for the petitioner that the respondents did not issue notice assigning any reason before affording opportunity of hearing vide communication dated 05.04.1999 is not sustainable as it is apparent that the initial notice dated 18.07.1980 (Annex.3) is still in existence as this Court, vide order dated 27.01.1999 (Annex.7) had allowed the writ petition filed by the petitioner while quashing the order dated 30.05.1985 passed by the Collector on the ground that petitioner had not been afforded a reasonable opportunity of

hearing. The relevant portion of the order dated 27.01.1999 reads as under:-

> "As a result of the aforesaid discussion, the instant writ petition is allowed and the impugned order dated 30.5.85 Annex.12 passed by the Collector, Udaipur is quashed and the case is remanded back to the Collector, Udaipur with a direction to decide afresh by speaking order after giving reasonable opportunity of hearing to the petitioner's society and any of the authority of Madan Mohan Malviya Ayurved College, Udaipur whom he thinks fit and proper.
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> Both the parties including Madan Mohan Malviya Ayurved College, Udaipur are hereby directed to maintain status quo for a period of four months from today and the Collector, Udaipur is directed to decide the matter within a period of three months from the date of receipt of a certified copy of the order passed today."

(14) This Court also finds that there is no iota of doubt that the notice dated 18.07.1980 (Annex.3) is still in existence though the petitioner has not chosen to challenge the notice in the present writ petition and in the notice, it has been specifically mentioned that the petitioner flouted Condition No.3 laid down in the patta dated 07.10.1943 (Annex.2). The notice dated 18.07.1980 is reproduced hereunder:-

> "तत्कालीन मेवाड सरकार द्वारा आदर्श विद्यामंदिर उदयपुर को जिन शर्तों पर भूमि का आवंटन किया गया था उसमें से 6 बीघा 6 बिस्वा भूमि का उपयोग नहीं करने के कारण पट्टे की शर्त नम्बर में अंकित शरायत की खिलाफ वर्जी होने से राज्य सरकार नें उक्त भूमि व ईमारत को जब्त सरकार करके उसको आयुर्वेदिक कॉलेज हेतु चिकित्सा एवं स्वास्थ्य विभाग को आवंटन करने की राज्य सरकार से स्वीकृति हुई है। इस सम्बन्ध में यदि आपको कोई उजर है तो सुनवाई के लिये आप दिनांक 7–8–80 को इस कार्यालय में जिलाधीश के समक्ष उपस्थित होकर जाहिर करे।"

Therefore, the contention of the learned Senior Counsel appearing for the petitioner that the respondent, without issuing a notice and without assigning a reason, passed the impugned order

dated 15.12.1999 (Annex.10) is untenble as a bare look at the notice dated 18.07.1980 (Annex.3) reflects the reason for which the petitioner was required to show cause.

(15) Upon perusal of the impugned order dated 15.12.1999, this Court finds that there was a specific averment made by the counsel for the State that the petitioner had flouted the Condition No.3 as a portion of the land in question has been sublet and the same was admitted by the petitioner in his representation dated 24.11.1980, submitted before the District Collector but the petitioner has not denied the same as there is no averment in the pleadings or rejoinder in this respect that the representation dated 07.08.1980 (Annex.3) submitted before the District Collector, Udaipur is a mis-representation. The admission of the petitioner in the representation dated 24.11.1980 that the land in question was sublet cannot be considered as a mis-representation and cannot be ignored particularly when the notice dated 18.07.1980 (Annex.3) was issued in the same respect, i.e. subletting of the land in question being in contravention to the condition No.3 of the patta dated 07.10.1943 (Annex.2) and the petitioner having knowledge about all the aspects of his case and the consequences made a clear cut admission in the representation dated 07.08.1980 (Annex.4). Also, thereafter no application/ representation was submitted by the petitioner before the District Collector, Udaipur for ignoring the inadvertent mistake or mis-representation of the facts in the earlier representation about sub-letting a portion of land in question.

(16) Further, the purpose for which the petitioner was allotted the land in question was to impart selfless education as evident from the patta dated 07.10.1943 (Annex.2) to the students but the petitioner was charging fees from the students whichi s not denied by the petitioner-society and thus, the purpose of allotting the land in question is frustrated.

(17) The petitioner's contention that the District Collector, Udaipur passed by the impugned order dated 15.12.1999 (Annex.10) without complying with the order of this Court dated 27.01.1999 (Annex.7) passed in SBCWP No.1767/1985 and without affording any opportunity of hearing is unsustainable as vide communication dated 05.04.1999 (Annex.9), the petitioner was afforded opportunity of hearing and was directed to remain present on 19.04.1999 with all the proofs available with petitioner. This Court, vide order dated 27.01.1999 (Annex.(7), remanded the matter back to the District Collector, Udaipur with a specific direction for deciding afresh by speaking order after giving a reasonable opportunity to the petitioner-society and any of the authority of Madam Moham Malviya Ayurved College, Udaipur. Thus, this Court finds that the respondents have duly complied with the directions given by this Court vide order dated 27.01.1999 (Annex.7).

(18) This Court also observes that the petitioner-society may have invested a huge amount in running the school as contended by it, but this fact cannot be ignored that this Court, while modifying the interim order dated 02.09.1985 in SBCWP No.1767/1985, permitted the petitioner to repair and raise

construction within 6 bighas of land but it was specifically said in the modification order dated 25.05.1993 (Annex.6) that the said construction will be at the risk of the petitioner and will not confer any right on the petitioner and shall be subject to final disposal of the writ petition. The relevant portion of the order dated 25.05.1993 (Annex.6) reads thus:-

> "Considering the facts & circumstances of the case, the stay order initially granted on 2.9.85 and confirmed on 23.11.87 is modified to the extent that the petitioner can repair and raise construction within six Bighas of land, which is already developed but this construction will be at the risk of the petitioner and will not confer any right on the petitioner and shall be subject to the final disposal of the writ petition."

The petitioner-society was conscious of the fact that it has flouted the condition NO.3 of subletting the land in dispute to a third party, as admitted by it in the representation dated 07.08.1980 (Annex.4) submitted before the District Collector, Udaipur. Thus, in such circumstances, no equity can operate in favour of the petitioner-society.

(19) Thus, in view of the fact that the petitioner admitted in representation dated 07.08.1980 (Annex.4) submitted before the District Collector that on account of paucity of funds, the petitioner had sublet the portion of the land in question and is willing to evict the tenant from the same, it is apparent that the petitioner has blatantly violated the condition No.3 as laid down in the Patta dated 07.10.1943 (Annex.2). Therefore, upon violation of the Condition No.3 laid down in the patta dated 07.10.1943 (Annex.2), the respondents were free to forfeit the land in question.

(20) In view of the foregoing discussion, the writ petition is dismissed being devoid of merit.

(21) The stay application and all other pending applications, if any, also stand dismissed.

(DR. NUPUR BHATI),J

-skm/-