IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 395 OF 2025

Wipro Limited
A Company registered under the
provisions of the Companies Act, 1956,
having its registered office at Dodda Kannelli,
Sarjapur Road, Bengaluru — 560 035. ....*Petitioner*

: Versus :

1. Maharashtra Airport Development Company Ltd.
A Company registered under the
provisions of the Companies Act, 1956,
having its régistered office at 12" Floor,
World Trade Centre, Cuffe Parade,
Mumbai — 400 005.

2. State of Maharashtra
through Government Pleader,
High Court, Original Side,
Bombay — 400 032. ....*Respondents*

Mr. Rahul Narichania, Senior Advocate *with Mr. Shubharata Chakraborti, Mr. Naozad Golwalla and Mr. Aayush Barat i/b Mr. Mehernosh Humranwala, for the Petitioner.*

Mr. Zulfiq Multani *with Mr. Manoj Kumar Mishra, for Respondent No.1.*

Mr. Atul Vanarse, AGP *for Respondent No.2-State.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Reserved On : 12 August 2025.

Pronounced On : 19 August 2025.

JUDGMENT : *(Per Sandeep V. Marne, J.)*

1) ***Rule.*** Rule is made returnable forthwith. With the consent of learned counsel appearing for rival parties, the petition is taken for final hearing and disposal.

2) Petitioner has filed the present petition in this Court challenging the communication dated 27 May 2015 issued by Maharashtra Airport Development Company Limited cancelling the Letter of Acceptance **(LOA)** dated 5 April 2007 and forfeiting the advance amount of Rs. 10.29 crores.

3) Petitioner-Wipro Limited **(Wipro)** is a global technology services provider and consulting company. With a view to remove the regional disparity in the State of Maharashtra, the State Government decided to develop a composite project named Multi Modal International Passenger and Cargo Hub Airport at Nagpur **(MIHAN)**. The aim of the project was to develop the existing domestic airport at Nagpur into an international passenger and cargo hub airport along with a Special

Economic Zone (SEZ) adjoining the boundary of the airport. Accordingly, the State Government constituted Maharashtra Airport Development Company Limited (MADC) for the purpose of planning, constructing, operating, developing and maintaining aviation infrastructure in the State of Maharashtra. Respondent No. 1 is declared as a Special Planning Authority for the notified area under the provisions of Maharashtra Regional and Town Planning Act, 1966. MIHAN is the flagship project of Respondent No. 1, which is undertaken under the provisions of SEZ Act, 2005 and SEZ Rules, 2006. For implementing MIHAN project, Respondent No. 1 decided to acquire large tract of land near Nagpur Airport and after developing the same, allotment of such developed land was planned for setting up *inter alia* industries.

4) The MIHAN project is proposed to be established in an area of 3,588 Hectares, out of which area admeasuring 1,100 Hectares has been earmarked as a SEZ. As a part of MIHAN project, Respondent No. 1 proposed establishment of State of the Art Multi-tenanted Software Technology Park/Information Technology Park in the SEZ area and designated land admeasuring 500 acres for the same. MADC accordingly decided to involve India's leading software companies such as Wipro, TATA Consultancy Services, Infosys etc. for establishment of their offices under the MIHAN project. Accordingly, Wipro was approached by MADC vide letter dated 20 October 2004 offering

land at concessional rate. After Wipro showed interest in the MIHAN project, a commercial presentation was made by MADC to Wipro offering land area of approximately 100 acres for establishment of IT park at the lease rent of Rs.40/- lakh per acre. After Wipro showed willingness to accept the allotment of land, MADC earmarked a plot of land admeasuring 107.42 acres and communicated to Wipro that out of 160.42 acres of land, land admeasuring 30.24 acres was covered by Zudpi region and land admeasuring 13 acres was under water channels, leaving about 117 Acres of land for the purpose of development of IT park by Wipro. Accordingly, Letter of Acceptance dated 5 April 2007 was issued by MADC to Wipro in respect of land admeasuring 117 acres at the price of Rs.44 lakh per acre on lease basis for the period of 99 years. The consideration was agreed at Rs.51.48 crores out of which 20% of the consideration of Rs.10,29,60,000/- was to be paid in advance and remaining 80% was to be paid at the time of handing over possession of the land. Accordingly, Wipro paid 20% advance amount of Rs.10,29,60,000/- to MADC on 24 April 2007. Petitioner started paying establishment and administrative costs every month of Rs.9,103/- to MADC and paid an amount of Rs.5,26,500/- over the period of time.

5) It is Petitioner's case that the cost estimated for development of IT Park on the allotted land was to the tune of Rs.60 crores. Petitioner contends that there was lack of necessary

facilities such as approach roads, water supply, telecommunication network, power supply layout, transportation and efficient and reliable air connectivity on account of which, Petitioner was not willing to go ahead with development of the project on the allotted land. According to the Petitioner, the necessary infrastructural facilities at MIHAN project were not established as promised. Petitioner further contends that the allotment was accepted by it under a *bonafide* and valid assumption that MADC would provide the requisite and basic infrastructure for development of the project. After waiting for some time, Petitioner wrote to MADC to limit allotment of land to 23 acres proposing to commence operations within 36-48 months. On 22 February 2013, MADC responded agreeing to the request to limit the allotment of land to 23 acres, on condition of commencement of operations within 24 months. MADC, thereafter, sent letter dated 3 December 2014, threatening to terminate LOA and forfeit the part payment. By letter dated 12 December 2014, Petitioner pointed out absence of infrastructure for development of the project. On 27 May 2015, MADC terminated the LOA and forfeited the amount of Rs.10.29 crores paid by the Petitioner.

6) According to the Petitioner, even after termination letter dated 27 May 2015, MADC once again approached the Petitioner with an offer for allotment of land admeasuring 23.40 acres. The Petitioner expressed interest in seeking allotment of the

land vide letter dated 7 February 2018 and made enquiries. According to the Petitioner, the dispute remained under discussions and correspondence, without yielding any positive result. On 13 September 2024, Petitioner addressed notice to MADC alleging wrongful termination of LOA and seeking refund of the amount paid alongwith interest. Petitioner sent one more notice dated 8 November 2024. On 8 November 2024, MADC refuted the claim of the Petitioner. In the above factual background, the present petition is filed by Wipro, challenging the communication dated 27 May 2015 and seeking refund of the part payment made, alongwith the interest.

7) Mr. Narichania, the learned Senior Advocate appearing for the Petitioner, would submit that the MADC has erroneously forfeited the amount of part payment made by the Petitioner for allotment of land. That allotment of land could not be accepted by the Petitioner on account of lack of basic infrastructural facilities. That the amount of Rs.10.29 crores is not paid towards earnest money deposit, and the impugned communication itself accepts that the same is paid towards part consideration. That since the allotment of land has not taken place, Respondent has no authority in law to illegally retain the consideration amount. That the LOA does not contain any stipulation for forfeiture of the part consideration paid by the Petitioner. That in absence of any

forfeiture clause, Petitioner is entitled for refund of the part consideration.

8) So far as the aspect of delay in filing the petition is concerned, Mr. Narichania would submit that MADC approached the Petitioner with an offer for allotment of smaller portion of land and therefore the Petitioner could not approach this Court immediately after issuance of the impugned communication. That MADC was contemplating allotment of smaller piece of land and adjusting the amount already paid by the Petitioner. That the matter remained under discussion for a long time and the Petitioner decided to adopt legal remedies only after realizing that execution of the project is not viable even on smaller piece of land. That the Petitioner decided to adopt legal remedies after realizing that MADC was whiling away time by sitting on part payment received from the Petitioner. That therefore there is no delay or laches in filing the present petition. That in any case, Respondent No. 1, being an Instrumentality of State, cannot be permitted to act arbitrarily or indulging in unjust enrichment. That Respondent No. 1 has illegally retained the consideration paid by the Petitioner, even though no allotment of land has actually taken place. That there is no question of delay, as MADC never had the entire land admeasuring 117 acres for allotment to the Petitioner. That Affidavit-in-Reply indicates that the land admeasuring only 33.52 acres has been allotted by MADC to other entities.That MADC has received far better rates than the one at which the land was

offered to the Petitioner. That cancellation of allotment in favour of the Petitioner is to advantage of MADC, who has secured better price for the land. That since MADC has not suffered any prejudice, the part payment made by the Petitioner is required to be refunded. In support of his contention that mere delay cannot be a ground for dismissal of writ petition, reliance is placed on Constitution Bench judgment of the Apex Court in ***Ramchandra Shankar, Deodhar and others Versus. State of Maharashtra and others***[1]. In support of the contention that even contractual disputes with State authorities can be adjudicated in writ jurisdiction, reliance is placed on judgment of the Apex Court in ***Unitech Limited and Others Versus. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others***[2] In support of the contention that the amount of consideration cannot be forfeited in absence of forfeiture clause, reliance is placed on judgment of the Apex Court in ***Suresh Kumar Wadhwa Versus. State of Madhya Pradesh and Others***[3]. He has also relied on order passed by the Apex Court in ***M/S. Utkal Highways Engineers and Contractors Versus. Chief General Manager and others***[4], in support of the contention that writ jurisdiction can be invoked for recovery of admitted amount. Mr. Narichania would accordingly pray for setting aside the impugned decision and for refund of consideration of Rs.10.29 crores along with interest. Alternatively, he would submit that Petitioner is willing to accept

1 (1974) 1 SCC 317
2 (2021) 16 SCC 35.
3 (2017) 16 SCC 757
4 SLP (C) No.14350 of 2022 decided on 8 January 2025.

the principal amount of Rs.10.29 crores in the event this Court is not inclined to award interest in favour of the Petitioner.

9) The petition is opposed by Mr. Multani, the learned counsel appearing for Respondent No.1. He would submit that the petition suffers from gross delay and laches and is liable to be dismissed on this ground alone. That a time barred claim is sought to be agitated by filing the present writ petition, which is impermissible in law. He would rely on judgment of the Apex Court in ***S.S. Balu and Others Versus. State of Kerala and Others***[5]. He would press into service the doctrine of acquiescence in support of his contention that Petitioner has acquiesced in forfeiture of earnest money deposit **(EMD)** of Rs.10.29 crore. He would submit that Petitioner has committed breach of terms and conditions of the LOA and that the EMD has rightly been forfeited. He would submit that the amount of Rs.10.29 crores paid by the Petitioner is towards earnest money deposit. In support, he would place reliance on the judgment of the Apex Court in ***Videocon Properties Ltd Versus. Dr. Bhalchandra Laboratories and others***[6]. He would further submit that Petitioner sat over the allotment of land for over 8 years and failed to make balance payment of consideration. That such an act has adversely affected MIHAN project. He would also rely upon judgment of Single Judge of Delhi High Court in ***State Bank of India Versus. Union of India and others***[7] in support of his

[5] (2009) 2 SCC 479
[6] (2004) 3 SCC 711
[7] 2013 SCC OnLine Del 1456

contention that EMD once paid continues to remain the property of recipient in view of forfeiture clause. Mr. Multani would particularly draw our attention to the email dated 2 April 2007, under which the 20% amount was agreed to be forfeited in the event of nonpayment of 80% balance consideration within a period of 30 days. He would therefore submit that Petitioner had agreed for forfeiture of 20% advance payment which is a reason why it never requested for a refund of the same for over 9 long years and acquiesced in its forfeiture. He would place reliance on draft Multi-modal International Hub Airport at Nagpur (Disposal of Land) Regulations, 2014, providing for compulsory payment of EMD for allotment of plots.

10) Mr. Multani would further submit that MADC was always ready and willing to handover possession of entire land admeasuring 117 acres, and it was the Petitioner who did not show interest in taking over possession of land. He would take us through the entire correspondence between the parties to demonstrate as to how multiple opportunities were granted to the Petitioner for making payment of balance consideration. He would submit that even request of the Petitioner for allotment of smaller portion of land was accepted by MADC but the Petitioner ultimately did not pay consideration even in respect of smaller plot of land. He would submit that MADC has suffered huge losses and public interest has suffered as MIHAN project is being

set up by the State Government in public interest. That the conduct of the Petitioner prevented MADC from allotting the land to other entities. That so far MADC has been able to allot only smaller portion of land to three entities and Petitioner is solely responsible for MADC's inability to allot the land to other entities. Mr. Multani would accordingly pray for dismissal of the petition.

11) We have also heard Mr. Vanarse, the learned AGP appearing for Respondent No.2-State.

12) Rival contentions of the parties now fall for our consideration.

13) The dispute involved in the present petition is with regard to the allotment of vast tract of land admeasuring 117 acres in MIHAN SEZ project, which is being implemented by MADC. Petitioner was allotted the said land for development of IT park vide Letter of Acceptance dated 5 April 2007. The allotment has been cancelled vide impugned communication dated 27 May 2015. Petitioner is no longer interested in the allotment of land and has accordingly not made any prayer in the petition seeking allotment of the land in its name. Petitioner is thus not aggrieved by the action of MADC in cancelling the allotment. However, the impugned communication also directs forfeiture of advance amount of Rs.10.29 crores paid by the Petitioner to MADC for the

said allotment. Petitioner is aggrieved by forfeiture of the said amount by the MADC, which is the only grievance raised in the present petition. Therefore, the only issue that arises for consideration is whether forfeiture of advance of Rs.10.29 crores by MADC is valid, and whether Petitioner is entitled for refund of the same ?

14) The first objection raised by MADC to the maintainability of the present petition is delay and laches on the part of the Petitioner in challenging the impugned communication dated 27 May 2015. Petitioner has challenged the impugned communication after about 9 long years by filing the present petition on 24 January 2025. According to MADC, the decision of forfeiture of advance payment has attained finality on account of non-raising of challenge thereto by the Petitioner for a period of over 9 long years. It is contended that if Petitioner was to file a suit seeking refund of the amount of Rs.10.29 crores, the same would be barred by limitation. It is therefore contended that if Petitioner's remedy of suit is barred by limitation, it cannot be permitted to invoke the writ jurisdiction under Article 226 of the Constitution of India for seeking refund of the forfeited amount. In short, it is contended that the relief which is not grantable in a suit cannot be sought by filing a Writ Petition under Article 226 of the Constitution of India.

15) On the other hand, it is contended by the Petitioner that the decision of cancellation of allotment of land, as well as forfeiture of advance amount, did not attain finality as both the issues were under consideration before MADC. Reliance is placed by the Petitioner on letter dated 17 November 2017 issued by MADC to the Petitioner once again offering part of the land. It is Petitioner's contention that the letter dated 17 November 2017 constitutes withdrawal of the forfeiture decision dated 27 May 2015.

16) It appears that after cancellation of the allotment and forfeiture of advance amount vide letter dated 27 May 2015, MADC made a voluntary approach to the Petitioner vide letter dated 17 November 2017 making inquiries as to the plans for development of 23.40 acres land. The letter dated 17 November 2017 reads thus :-

> No. 5779/MIHAN/_____/2017 Date : 17/11/2017
> To,
> M/s. Wipro Technologies,
> Dodda Kannelli,
> Sarjapur Road,
> Banglore-560 035.
>
> Sub: - Development of Plot in Sector 12 of about 23.40 acres in MIHAN SEZ area.
>
> Sir,
>
> This has reference to your application for allotment of plot in MIHAN SEZ area.

> Based on your application and subsequent scrutiny, we have allotted you above plot vide our letter No. MADC/MIHAN/MM/40 did 5 April 2007.
>
> Further as indicated in our allotment letter, the subject plot was allotted for development of IT(Software Development)Unit and the allotment was governed by the Land Disposal Regulations (LDR)& Policy of MIHAN. The same LDR policy also indicates a time limit for development of the plot. However, as of now we have not heard from you about your plan for development of the subject plot.
>
> In view of this, we now request you to kindly let us know the schedule of development for the subject parcel of land immediately.
>
> We would also like to interact with you to understand the issues and to explore whether we can extend any support for the proposed project. In view of this we request you to kindly get in touch with our office, so as to schedule a meeting with our VC & MD at the earliest.
>
> We now await for your response at the earliest.
>
> Thanking you,
>
> For Maharashtra Airport Development Company Ltd.
>
> Sd/-
>
> Advisor (Tech)

17) It appears that after issuance of impugned communication dated 27 May 2015 cancelling allotment of land and forfeiting the advance amount of Rs.10.29 crores, Petitioner did not approach MADC for allotment of land nor made any enquires with the MADC. MADC, on its own, wrote to the Petitioner on 17 November 2017, referring to the Letter of Allotment dated 5 April 2007, and inquired with the Petitioner about the time frame within which it could develop a plot in Sector 12 of about 23.40 acres in MIHAN SEZ area. The letter

dated 17 November 2017 accused Wipro of not intimating its plans for development of the subject plot (plot admeasuring 23.40 acres as referred in the subject letter). MADC offered to interact with Wipro to understand the issues and to explore the possibility of providing support for the proposed project. Wipro was invited for a meeting with Vice Chairman and Managing Director of MADC, who had issued the impugned cancellation and forfeiture letter dated 27 May 2015.

18) The question that arises is if the allotment was already cancelled and advance amount was forfeited, what was the occasion for MADC to make inquiries about time frame within which the plot would be developed. Petitioner therefore is correct in contending that the letter dated 17 November 2017, at least to some extent, had the effect of revocation of letter dated 27 May 2015. This aspect, at this juncture, is noted to consider the objection of delay.

19) The letter dated 17 November 2017 would clearly indicate that the issues of cancellation of allotment or forfeiture of advance amount had not attained finality between the parties and MADC was interested in Wipro taking allotment of smaller portion of land admeasuring 23.40 acres. Petitioner responded to the letter dated 17 November 2017 vide its letter dated 7 February 2018 as under :-

February 7, 2018

To,
Maharashtra Airport Development Company Ltd
Central Facility building, B-Wing(North),
1st Floor, Mihan SEZ, Khapri (Rly),
Nagpur — 441108

Kind Attention: Advisor (Tech)
Ref: Your letter 5779/Mihan/2017 dated 17/11/2017 — for development of Plot in Sector 12 of about 23.40 acres in MIHAN SEZ area.

Dear Sir,

I write to you with respect to the Land in MIHAN SEZ area and regarding your letter dated November 17, 2017. We appreciate your offer to discuss issues related to development of the land allotted to Wipro.

Despite our earnest intent, we were unable to expand our IT/ ITES operations in MIHAN SEZ due to lack of supporting social infrastructure.

We are however keen to discuss and engage with you to understand your plans for Sector 12 and explore opportunities.

Based on mutual convenience we can meet up with your VC and MD and take this forward.

Thanking you,

Yours sincerely,

Sd/-
Raghunandan CB
Vice President Operations
Wipro Limited

20) The Petitioner's response vide letter dated 7 February 2018 would again indicate that the matter of allotment of land by MADC to the Petitioner did not attain finality upon issuance of impugned communication dated 27 May 2015. In

detailed Affidavit-in-Reply filed by MADC it has chosen to maintain silence about this correspondence in the form of letters dated 17 November 2017 and 7 February 2018.

21) In our view, since the MADC voluntarily approached Petitioner by making inquires about its development plans in smaller plot of land admeasuring 23.40 acres in pursuance of original LOA dated 5 April 2007, it becomes difficult to accept that the decision to forfeit the advance amount of Rs.10.29 crores communicated vide letter dated 27 May 2015 could attain finality. In fact, the letter dated 17 November 2017 would clearly create an impression that the advance amount would get adjusted against allotment of smaller portion of land. This is not the first time that MADC was willing to offer smaller plot of land to the Petitioner. Even before issuance of letter dated 27 May 2015, MADC had repeatedly offered smaller piece of land (of which possession could be handed over) to Wipro by adjusting the advance amount already paid. Petitioner had apparently showed disinclination to accept allotment of entire 117 acres of land and had applied for 23.40 acres of land vide letter dated 25 January 2012. MADC had showed willingness not only for allotment of 23.40 acres of land but also for adjustment of the advance amount of Rs. 10.29 crores. This aspect is being dealt with in latter part of judgment. Suffice it is to observe at this juncture that the MADC's offer vide letter dated 17 November 2017 clearly created hope in the mind of

Petitioner that the advance payment made by it was still secured in the form of securing allotment of smaller plot of land.

22) As observed above, Petitioner responded to MADC's proposal vide letter dated 7 February 2018 and requested MADC to convene a meeting for understanding the future plans for Sector 12. It has all along been the complaint of the Petitioner that necessary infrastructural facilities were not made available by the MADC on account of which Petitioner was not willing to take the risk of undertaking large scale investment for development of the project. This is a reason why Petitioner did not immediately accept the offer made vide letter dated 17 November 2017 and called upon MADC to discuss the issues relating to supporting social infrastructure. After addressing letter dated 7 February 2018, it was quite natural for the Petitioner to wait for at least some time for a response by the MADC. The previous history between the parties was such that MADC had reverted with an offer to the Petitioner after 2 years and 5 months from the date of sending communication dated 27 May 2015. It was, therefore, quite natural for the Petitioner not to take immediate precipitative steps by indulging into litigation.

23) What must also be appreciated is the nature of relationship between the parties. The case does not involve usual case of allotment of government land through open tender process

where there are multiple bidders competing against each other. This is a case where MADC had approached Wipro and requested it to set up an IT Park with a view to make MIHAN project more viable. Unfortunately, the development of the IT Park by Wipro could not fructify and it is not necessary to go into the issue as to who was responsible for such non-fructification, as Petitioner is no longer interested in the land in question. Suffice it to observe that the case does not involve eagerness or extreme interest on the part of the Petitioner in seeking allotment of the land. In fact, sequence of events indicates that it was MADC was more interested in Wipro setting up its project to make MIHAN project look more attractive. It was apparently MADC's intention of attracting a giant software companies to the MIHAN project and the allotment of land was made under a hope that a large IT park would get developed creating several job opportunities. The relationship between the parties deserves to be appreciated in the light of the above background. This is a reason why the parties never took adverse stand against each other for 8 long years when the issue of taking over possession of land remained hanging. Though, Wipro did not show interest in taking over possession of the land, MADC never took immediate precipitative steps for cancelling the allotment and waited for Wipro to take its own time in deciding whether to take over possession of entire land admeasuring 117 acres or smaller portion of land admeasuring 30.24 acres. The correspondence indicates that MADC was willing to offer the

smaller portion of land under a sanguine hope of Wipro setting up IT park in MIHAN SEZ. This appears to be a reason why MADC decided to make a fresh approach to Wipro two and half years after cancellation of allotment and forfeiture of advance payment vide letter dated 17 November 2017. Considering the above nature of relationship between the parties, Petitioner-Wipro cannot be held responsible for not initiating the litigation immediately after issuance of impugned communication dated 27 May 2015 as the issue remained under discussion between the parties at least till the year 2018.

24) Though provisions of the Limitation Act, 1963 do not apply to proceedings filed under Article 226 of the Constitution of India, the Constitutional Courts have imposed a self-restricting rule of not entertaining the stale claims by applying the principles of delay and laches. This self-imposed rule is a rule of practice, based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case has to be decided on its own peculiar facts. In this regard, the observations by Constitution Bench judgment in ***Ramchandra Shankar Deodhar*** (supra) in paragraph 10 are apposite, which read thus :-

> 10. The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition…

There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. **In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts.** The question, as pointed out by Hidayatullah, C.J., in Tilockchand Motichand v. H.B. Munshi MANU/SC/0127/1968 : [1969]2SCR824 "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit-. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose." Here the petitioners were informed by the Commissioner, Aurangabad Division by his letter dated 18th October, 1960 and also by the Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of 30th July, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional, to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition-and that case was accepted by the Bombay High Court-that the Rules of 30th July, 1959 were the unified rules of recruitment to the posts of Deputy Collector applicable throughout the reorganised State of Bombay. The petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector-whether it is violative of the equal opportunity clause-and since this procedure is not a thing of the past but is still being followed by the State Government, it is but desirable that its Constitutionality should be adjudged when the question has come before the court at the instance of parties

properly aggrieved by it. **It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reasons of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay.** This principle was stated in the following terms by Hidayatullah, C.J., in Tilokchand v. H.B. Munshi MANU/SC/0127/1968 : [1969]2SCR824 :

> "The party claiming Fundamental Rights must move the Court before other rights come into existence. **The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court**."

Sikri, J., (as he then was), also re-stated the same principle in equally felicitous language when he said in S.N. Bose v. Union of India MANU/SC/0506/1969 : [1970]2SCR697: "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years." Here as admitted by the State Government in Paragraph 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystallised to the prejudice of the petitioners No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned Counsel for the petitioners, and that was not controverted by the learned Counsel appearing on behalf of the State Government, that even if the petition were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdar/Tehsildar; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors. Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be

> persuaded to refuse relief solely on the jejune ground of laches, delay or the like.

25) It is also equally well settled position of law that unless delay causes prejudice to the opposite party, the petition need not be rejected only on the ground of delay. The Courts are justified in not-entertaining petitions on the ground of delay where it is observed that the inaction on the part of a party has led the other party change its position and grant of relief in favour of former party would require reversal of position taken by the latter party. In ***Madamsetty Satyanarayana Versus. G. Yellogi Rao and others***[8], the Apex Court has held as under :-

> 12. The result of the aforesaid discussion of the case law may be briefly stated thus : While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a court to refuse such a relief. But as in England so in India, proof of abandonment or waiver of a right is not a pre-condition necessary to disentitle the plaintiff to the said relief, for if abandonment or waiver is established, no question of discretion on the part of the Court would arise. We have used the expression "waiver" in its legally accepted sense, namely, "waiver is contractual, and may constitute a cause of action : it is an agreement to release or not to assert a right"; see Dawson's Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha [(1935) LR 62 IA 100, 108] . It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. **But they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief.**
>
> *(emphasis added)*

[8] AIR 1965 SC 1405

26) In the present case, inaction on the part of the Petitioner in not challenging the impugned communicated dated 27 May 2015 has not induced MADC in altering its position in any manner. Even though MADC has allotted some portion out of 117 acres of land to third parties after 2022, Petitioner is not seeking allotment of the land and therefore there is no question of reversal of position taken by MADC. Petitioner's claim is only for refund of the advance amount. It is also not that the inaction on the part of the Petitioner in initiation of litigation prevented MADC from allotting the land to third parties. As observed above, MADC made a voluntary approach to Petitioner on 17 November 2017 for accepting allotment of 23.40 acres of land. Thus Petitioner's inaction in initiating litigation has not made MADC alter its position in any manner.

27) Reverting to the sequence of events, it is seen that there was some hiatus between the parties after Petitioner showed interest in securing allotment of smaller land of 23.40 acres vide letter dated 7 February 2018. Petitioner's case is that it kept on waiting for response from MADC's side after 7 February 2018. As observed above, MADC had previously displayed the conduct of responding after 2 and half years. Therefore, there is no reason to disbelieve Petitioner's stand that it waited for action on MADC's part after submission of letter dated 7 February 2018. On 24 November 2022, Petitioner finally wrote to MADC referring to correspondence for refund of the advance amount and requested

for a meeting in the second week of December 2022 discussing refund of the amount of advance payment. This email dated 24 November 2022 is produced by MADC along with its Reply, which is silent about MADC's response to the said request. This was then followed by Petitioner sending Advocate Notice dated 13 September 2024. Thus the case does not involve total silence or inaction on Petitioner's part after issuance of the impugned forfeiture letter dated 27 May 2015. Parties not only discussed allotment of smaller plot but also engaged in correspondence for refund.

28) Also of relevance is the fact that when the Petitioner served Advocate's notice dated 13 September 2024 on MADC seeking refund of advance payment with interest, the only response that was received from Advocate of MADC on 10 October 2024 was that MADC would give a detailed reply to the notice dated 13 September 2024 within a period of one month. However, MADC failed to give any such detailed reply, which prompted Petitioner to serve another notice dated 8 November 2024 threatening MADC of institution of litigation. Again, a terse response was received from MADC on 8 November 2024 once again reserving right to issue detailed reply to the initial notice dated 13 September 2024. Thus, beyond repeatedly seeking time to give a detailed reply to the notice dated 13 September 2024, MADC did not deal with the contentions

raised by the Petitioner in the notice dated 13 September 2024. MADC thus did not resist the claim raised by the Petitioner for refund of security deposit on the ground of delay. It is only after the petition is filed that MADC has raised the issue of delay through its Affidavit in Reply dated 2 June 2025.

29) Considering the above position, we are of the view that the cause of action for filing the present petition did continue beyond 27 May 2015. The damage caused to the Petitioner in the form of forfeiture letter dated 27 May 2015 was not complete, even upon service of the said notice. The cause continued as MADC voluntarily came back to the Petitioner with the offer of allotment of smaller land admeasuring 23.40 acres on 17 November 2017. Petitioner also showed interest in allotment of smaller plot by MADC vide response dated 7 February 2018. If the fresh offer made by MADC was to fructify into allotment of smaller land admeasuring 23.40 acres, the advance payment of Rs.10.29 crores made by the Petitioner would be adjusted in the price of the said smaller plot of land. The eagerness on the part of MADC in allotting smaller plot of 23.40 acres is required to be considered in the light of its inability to dispose of the land agreed to be allotted to the Petitioner vide LOA dated 5 April 2007. Though Petitioner's allotment was cancelled on 27 May 2015, it appears that MADC was not able to allot any portion of the land admeasuring 117 acres for the next seven long years. In para-19.20 of its Affidavit in

Reply, the MADC has given details of allotment of three land parcels out of the total land of 117 acres. Para-19.20 of the Reply reads thus :-

19.20. That the Petitioner has no locus to demand cogent description of the present status of the Plot of Land and its current valuation from the Respondent No.1. It is pertinent to note that the following land/s parcels out of the total land of 117 Acres has already been allotted to the following parties-

Sr. No.	Name of Allotees	Date of Provisional Allotment	Land Alloted	Document/s
1.	Maharashtra Remote Sensing Application Centre (MRSAC) *[Govt. Body]*	22.02.2022	About 6.52 Acres	A copy of the provisional allotment letter sent by Respondent No.1 to MRSAC dated 22.02.2022 is given in ANNEXURE-"22"
2.	State Disaster Management Authority Maharashtra (SDMAM) *[Govt. Body]*	25.02.2022	About 10 Acres	A copy of the provisional allotment letter sent by Respondent No.1 to SDMAM dated 25.02.2022 is given in ANNEXURE-"23"
3.	M/s. GAIL (India) Limited	20.02.2024	17 Acres	A copy of the provisional allotment letter sent by Respondent No.1 to M/s. GAIL (India) Ltd. dated 20.02.2022 is given in ANNEXURE-"24"

30) Thus, the case involves peculiar circumstances in which MADC itself was unable to dispose of the land allotted to the Petitioner. Out of 117 acres agreed to be allotted to the

Petitioner, it appears that MADC has been able to allot only 33.52 acres of land to the three entities, two of whom are arms of Government of Maharashtra, that too after 7 long years of issuance of impugned communication dated 27 May 2015. There can only be two possibilities for this action. *First* possibility could be MADC's voluntary offer for 23.40 acres of land to Petitioner made on 7 November 2017 and Petitioner's positive response to that offer on 7 February 2018. One may infer that MADC kept on mulling allotment of 23.40 acres of land to Petitioner till 2022 when Petitioner finally requested for refund of advance amount. *Second* possibility could be MADC's inability to dispose of the land due lack of interest by other parties in the land. What is more important to note is that out of 117 acres of land allotted to Petitioner, MADC has been able to allot only 33.52 acres of land till now. Balance land is not allotted either because the acquisition is incomplete or because there are no takers for that land. Be that as it may. In the absence of any concrete material on record, it is not necessary to delve deeper into the reasons for non-allotment of balance land out of 117 acres by MADC. Suffice it to observe at this stage that it took about 7 years for MADC to allot 10 acres of land on 25 February 2022 and 9 years to allot 17 acres of land. It does appear that MADC was unable to find takers for the land, allotment of which was cancelled vide impugned communication dated 27 May 2015. This appears to be the reason why MADC made a voluntary approach to the Petitioner on 17 November 2017

for allotment of smaller plot of 23.40 acres. The silence between the parties after 7 February 2018 till 24 November 2022 is required to be appreciated in the light of the above developments where MADC was not able to find takers for the land in question. Therefore, Petitioner was justified in waiting in expectation of MADC either allotting smaller portion of the land or refunding the advance payment.

31) Considering the above circumstances, it would be unjust to dismiss the present petition only on the ground of delay. The facts and circumstances are such that the Petitioner cannot be held guilty of delay and laches. If MADC was not to make fresh offer for allotment of smaller land on 17 November 2017, the Petitioner could have been held guilty of delay and laches in not timely challenging the communication dated 27 May 2015. MADC's voluntary offer on 17 November 2017, Petitioner's response on 7 February 2018 and Petitioner's request for refund on 24 November 2022 offer enough justification for ignoring the delay, if any, particularly considering the nature of relief we propose to grant in Petitioner's favour in the present Petition. We are therefore not inclined to dismiss the petition only on the ground of delay.

32) We now proceed to consider the merits of the petition.

33) Petitioner paid amount of Rs.10,29,60,000/- towards 20% of total consideration of Rs.51,48,00,000/- towards price of 117 acres of land calculated at the rate of Rs.44,00,000/- per acre. Since the transaction of allotment of land has not been completed, the Petitioner has sought refund of advance payment of Rs.10,29,60,000/-. MADC on the other hand has forfeited the said advance amount vide impugned communication dated 27 May 2015. The reasons recorded for forfeiture of the advance amount by MADC in the communication dated 27 May 2015 are as under :-

> **Coming to the proposal of refund of the advance of Rs.10.29 Crores with interest @ 24% p.a. and to terminate the current Agreement as you don't want to hold any land, etc. is contrary to the terms of the Agreement.** There is total failure on your part to comply with any of the terms of the Agreement. Operations of our project are smoothly going on and have been reached to the expected satisfactory norms. **There is no question of refund of advance as well as the interest as claimed by you. On the other hand, the advance paid by you is liable to be forfeited because there is total inaction and avoidance on your part when you have been given repeated chances and opportunities to commence your project as was expected from time to time.** Therefore, your proposal cannot be accepted.
>
> You have made an alternative proposal for taking land to the extent of Rs.10.29 Crores with no firm commitment to commence in next five years. You have already been apprised of total facts wherein from time to time you have been given opportunities to take possession of the lesser land than shown in the letter of acceptance and come forward with the firm commitment. However, you have never responded to the same. This type of "No firm commitment" is not a legal offer nor it can be considered as practical commitment. **Your expectation in the said proposal that MADC should terminate the contract and pay back the advance along with the interest is also contrary to the**

> **terms of the Agreement, nor there is any equitable reason to consider this type of offer in the light of the facts and circumstances stated above.** Therefore, MADC hereby reject your both the offers. MADC reserves its right to recover the interest for withholding of the 80% of the premium without any reason whatsoever.
>
> In the light of the facts and circumstances stated above, the letter of acceptance dtd. 5/4/2007 for allotment of 117 Acres of land is liable to be cancelled and is hereby cancelled. **The advance amount of Rs.10.29 Crores is hereby forfeited.**
>
> *(emphasis and underlining added)*

34) MADC has contended that the amount of Rs. 10.29 crores was paid by the Petitioner towards Earnest Money Deposit (EMD) and what is forfeited is EMD. However, the impugned communication dated 27 May 2025 does not brand the said payment as EMD and repeatedly refers to the same as 'advance payment'.

35) In the impugned communication, MADC has stated that Petitioner's request for refund of advance payment is contrary to the terms of the Agreement, i.e. terms of the agreement. By referring to the terms of LOA, the advance payment of Rs. 10.29 crores has been forfeited. We therefore proceed to examine whether the LOA provided for such forfeiture. It would be apposite to extract the relevant terms and conditions of the LOA dated 5 April 2007 for facility of reference :-

> 2. The price of the land for 117 Acres thus works out to Rs.51,48,00,000/-, out of which you will have to pay 20% of the total consideration i.e. Rs. 10,29,60,000/- towards **advance**

payment for this plot. The remaining 80% amount will have to be paid by you at the time of giving possession of the land. In case net area increases, you will be required to pay additional amount as per the rate in Clause 1 above. A demand note as desired by you indicating the payment details is given as per the Enclosure No.3.

3. As discussed with you from time to time and informed vide various emails, that out of total 160.24 Acres of land, other than the Zudpi jungle and the land presently under water channels, **MADC is having around 30 Acres of land in its possession. The possession of the land in possession can be given to you at any point of time whenever you so desire on payment of remaining 80% of amount for 30 Acre in lump sum or installment which may be fixed by MADC. The possession of remaining land will be given on acquisition by MADC, which is being done by applying urgency clause.**

Delay in Payment:
11. In case the of delay in making the balance 80% payment, an interest @ 15% shall be charged from the due date of the payment.

12. In addition to the price for the land mentioned above, you will have to pay a lease rent of Rs.40/- per acre per year for net area. This lease rent shall have to be paid on or before the 15th of the first month of every year, considering the date of payment of 80% amount as a zero date.

14. MADC promises to give you the functional infrastructure like roads, water supply, sewage disposal and telecommunication network within 24 months from the date of giving possession of the land. In case of failure to do so MADC shall pay penalty for delay. We are intending to have our power plant and supply system and till that comes up, we will assist you in getting power from existing system of Maharashtra State Electricity Distribution Co. Ltd.

36) The entire LOA did not contain any clause for forfeiture of part payment of Rs.10,29,60,000/- and there was a reason for not stipulating the forfeiture clause. The LOA also did

not fix any specific time for payment of 80% balance consideration. Clause-2 provided that *'The remaining 80% amount will have to be paid by you at the time of giving possession of the land'*. The LOA thus did not provide for any particular period during which the balance amount was required to be made. Provisions of Clause-3 of the LOA are vital in which it was indicated that MADC was only possessing 30 acres of land as on the date of issuance of LOA. MADC offered to handover possession of only 30 Acres land on payment of remaining 80% of amount for 30 Acres land. Para-3 of the LOA specifically provided that *'The possession of remaining land will be given on acquisition by MADC, which is being done by applying urgency clause'*.

37) Thus, Clauses-2 and 3 of the LOA when read together would indicate that the entire 117 acres of land was not available in possession of MADC and payment of 80% balance consideration was to be made by the Petitioner only on receipt of possession of 117 acres of land. This is the reason why no specific time was indicated for payment of balance consideration in the LOA. MADC possessed only 30 acres of land as on the date of issuance of LOA and taking over possession of 30 acres of land was left at the discretion of the Petitioner on account of use of the words *'at any point of time whenever you so desire'* in Clause-3 of the LOA. Thus, it was not compulsory for the Petitioner to immediately take over possession of 30 acres of land. Petitioner, at its option, could wait for handing over possession of entire bulk of

117 acres of land. Thus, Petitioner's obligation to make payment of 80% balance consideration arose under the terms of LOA only when MADC offered possession of entire 117 acres of land. This is the reason why the LOA did not contain any stipulation for forfeiture of advance payment.

38) In support of his contention that the parties had agreed for forfeiture of the EMD, Mr. Multani has relied on email dated 2 April 2007 sent by MADC to the Petitioner stating as under :-

> Once the land comes under our possession, MADC would inform Wipro and within 7 days to make the balance payment 80% payment. Which required to be made within 30 days from the date of receipt of the information from MADC. **In the event of non-payment of any amount of the 80% the balance payment the 20% advance payment will be forfeited** and for any delay an interest @ 18% would be charged on the balance payment due and unless otherwise the reason is genuine one to satisfy VC&MD.
>
> *(emphasis added)*

39) By relying on the above email, it is sought to be suggested that the balance 80% amount was agreed to be paid within a period of 30 days from the date of receipt of information from MADC. However, such information was to be given once the land came under the possession of MADC.

40) In our view, reliance by MADC on email dated 2 April 2007, does not make its case any better for two reasons. Firstly, the email dated 2 April 2007 is superseded by the LOA

issued on 5 April 2007. The terms and conditions of transaction between the parties would be governed by the LOA and not by email dated 2 April 2007. In the LOA, there is no condition for forfeiture of 20% advance payment. Secondly, even if email dated 2 April 2007 is to be treated as terms and conditions of the transaction between the parties, the said email provided for making the balance payment within 30 days of receipt of intimation from MADC, which intimation was to be given only after the entire 117 acres of land came in MADC's possession. Thus, even email dated 2 April 2007 contemplated making of balance 80% payment only upon handing over of possession of entire 117 acres of land.

41) Having held that Petitioner's obligation to make balance 80% payment was contingent upon MADC offering possession of entire land parcel of 117 acres, we proceed to examine as to when MADC offered possession of entire land parcel to the Petitioner.

42) Alongwith with its Affidavit-in-Reply MADC has produced series of correspondence that has taken place between the parties after issuance of LOA dated 5 April 2007. It would be useful to take a quick stock of the said correspondence :-

i. By email dated 9 October 2009, MADC called upon Wipro to take joint measurement on the land ready for possession. The email did not indicate that entire 117 acres of land was ready for being handed over to MADC. The email would only mean that the land admeasuring 30 acres could be measured and handed over to the Petitioner. However, under the terms of the LOA, it was optional for the Petitioner to take over 30 acres of land. The fact that the offer for joint measurement was only in respect of 30 acres land is clear from trailing email dated 27 August 2009 in which MADC made a request for release of payment of 305 lakhs for 30.343 acres.

ii. By letter dated 31 October 2009 MADC again requested Petitioner to make full payment towards 30.343 acres i.e. Rs. 3,05,49,200/-. Here the email dated 27 August 2009 and letter dated 31 October 2007 indicates that MADC was willing to adjust the entire advance payment of Rs. 10,29,60,000/- against 30.343 acres of land even though LOA had provided for making 80% payment of the amount for 30 acres in lumpsum. The above correspondence shows that MADC was pushing Petitioner to accept allotment in respect of 30.343 acres of land on account of the fact that it was unable to acquire the balance portion of the land.

iii. On 8 March 2010, Petitioner requested MADC to withdraw/cancel the allotment and refund the advance payment of Rs.10,29,60,000/-.

iv. By letter dated 24 February 2011, MADC reiterated the request for making the balance payment of Rs. 10,91,20,000/- towards allotment of land of 31 acres land, again indicating the fact that MADC was unable to make available the balance portion of land.

v. On 12 September 2011, MADC wrote to the Petitioner contending that it was in complete possession of entire area of 117 acres of land and requested the Petitioner to take over possession on payment of Rs.51.48 crores minus the amount already paid.

vi. On 18 January 2012, MADC wrote to Petitioner accusing it of non-commencement of any activity despite passage of 56 months. MADC threatened the Petitioner with termination of allotment by giving 15 days' time to explain its conduct. Curiously the letter dated 18 January 2012 did not make any reference to earlier letter dated 12 September 2011 nor did the said letter mention that the entire 117 acres of land was available for allotment to the Petitioner.

vii. On 27 August 2012, MADC again requested the Petitioner to take over possession of the land without indicating the exact land which was ready for being offered in possession to the Petitioner. It accused Petitioner of not paying the balance amount of Rs. 48.43 crores despite passage of 5 years.

viii. It appears that by its letter dated 3 January 2012, Wipro had accused MADC of not completing the basic infrastructure. By letter dated 25 January 2012, Petitioner requested MADC to limit the allotment to only 23.40 acres by adjusting the advance payment made by it. MADC had favourably considered the request for restraining the allotment to lesser area. However, since no further interest was shown by the Petitioner, MADC addressed letter dated 31 December 2014 again threatening the Petitioner with the consequences of termination of allotment and forfeiture of the advance payment.

ix. On 22 February 2013, MADC wrote to the Petitioner that Petitioner's request for limiting the allotment to 23.40 acres would be considered only if operations were to be commenced within a period of 24 months.

x. On 12 December 2014, Wipro once again accused MADC of not providing essential infrastructural facilities and

requested for refund of advance payment of Rs.10.29 crores alongwith interest. Alternatively, it requested for allotment of land corresponding to Rs.10.29 crores without any firm commitment to commence operations in five years.

xi. MADC proceeded to cancel the allotment by impugned communication dated 27 May 2015 and forfeited the advance payment of Rs.10.29 crore.

xii. Wipro responded by letter dated 15 June 2015 expressing difficulties in setting up of project in MIHAN. Another letter dated 26 June 2015 was sent by the Petitioner requesting for refund of advance payment.

43) The above correspondence would indicate that MADC was never in a position to handover entire land parcel of 117 acres and was pushing Wipro to accept possession of 30 acres of land and was ready to adjust the advance payment of Rs.10.29 crores against land value of 30 acres. In one stray letter dated 12 September 2011 MADC has claimed possession of entire area of 117 acres. However, the correspondence after 12 September 2011 creates a serious doubt about the ability and willingness of MADC to handover entire 117 acres of land to the Petitioner. MADC's two letters 18 January 2012 and 27 August 2012 that followed letter dated 12 September 2011 did not make any reference to the said letter and did not accuse Petitioner of not making payment of

balance consideration despite offering possession of entire land vide letter dated 12 September 2011. The pleadings raised by MADC about letter dated 12 September 2011 are also curious. In its reply, while referring to the letter dated 12 September 2011, MADC has not pleaded that the entire 117 acres of land was acquired by September 2011 and ready for being allotted and handed over to the Petitioner. The pleadings with reference to letter dated 12 September 2011 in the reply are as under :-

> Further, vide letter dated 12.09.2011, the Respondent No.1 had again informed the Petitioner that the payment of Rs. 10,29,60,000/- was actually in the nature of earnest money and further informed the Petitioner that in case of Petitioner's default, the Respondent No.1 would have no option left but to terminate the contract with all of its consequences, as cited below:

Thus, the letter dated 12 September 2011 is produced along with the reply to highlight the aspect of failure to make the payment by Petitioner and there is no statement in the reply while referring to the said letter that the entire land of 117 acres was acquired or was available for possession by the Petitioner.

44) It also appears that by letter dated 29 January 2012, Petitioner had requested for allotment of land of 23.40 acres and MADC showed willingness to restrict such allotment to 23.40 acres vide letter dated 22 February 2013 subject to the condition of Petitioner undertaking to commence operations within 24 months. WIPRO apparently did not give any such commitment and again

approached MADC vide letter dated 12 December 2014 seeking refund of entire advance amount of Rs.10.29 crores or in the alternative for allotment of land equivalent to the amount of Rs.10.29 crores. It therefore becomes to difficult to hold on the basis of one stary letter dated 12 September 2011 that MADC was in a position to handover possession of entire land parcel of 117 acres. The parties thereafter started discussing allotment of lesser portion of land admeasuring 23.43 acres. Thus, the time for making balance 80% payment for entire land parcel of 117 acres never really arrived.

45) MADC has however cancelled the allotment by impugned communication dated 27 May 2015 by accusing Petitioner of not complying with the terms and conditions of the LOA. As observed above, LOA never fixed any time limit for paying balance 80% consideration except by stray letter dated 12 September 2011, there is nothing on record to indicate that MADC offered possession of entire land parcel of 117 acres to the Petitioner. Even if it is assumed that letter dated 12 September 2011 constitutes offer for possession of 117 acres of land, parties thereafter started discussing allotment of lesser portion of 23.43 Acres. Considering the above position, in our view, Petitioner cannot be entirely blamed for not paying balance consideration of 80% in respect of 117 acres of land.

46) Petitioner is no longer interested in allotment of the land. Even though we are not in full agreement with MADC's decision to cancel the allotment, Petitioner is no longer insisting for revival of the allotment. The only prayer that is pressed in the present petition is for refund of advance payment alongwith interest.

47) It is sought to be contended on behalf of MADC that amount of 10.29 crores was paid towards Earnest Money Deposit and that MADC was entitled to forfeit the same. As observed above, there is no forfeiture clause in the LOA. The LOA does not use the word EMD for describing the amount of Rs. 10.29 crores and brands it as 'advance payment'. Though it is sought to be orally argued that Rs.10.29 crores was paid towards EMD, MADC has itself referred to the said payment as *'advance payment'* in numerous correspondence including forfeiture letter. We therefore reject MADC's contention that Rs.10.29 crores were paid as EMD. Therefore, it is not necessary to discuss the ratio of the judgment of the Apex Court in ***Videocon Properties Ltd.*** (supra). We are not impressed by reliance of MADC on draft Land Disposal Regulations, 2014. The said Regulations were in draft format and were not even in force at the time when the impugned communication was issued. Subsequent finalisation of the Land Disposal Regulations in 2018 is of little consequence as the 2018

Regulations cannot retrospectively apply to the cancellation letter dated 27 May 2015.

48) As observed above, there is no forfeiture clause in the LOA. Right to forfeit is a contractual right and unless the contract provides for right of forfeiture, there cannot be unilateral forfeiture. Therefore, it is impermissible in law to forfeit the advance payment made by the Petitioner in absence of a forfeiture clause in the LOA. Provisions of Section 74 of the Indian Contract Act, 1872 are relevant here, which provides thus :-

> **74. Compensation for breach of contract where penalty stipulated for.** —
>
> When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
>
> Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.
>
> Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.
>
> Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Thus, parties to contract can agree to specify a sum to be paid in case of breach of contract and upon breach being proved, the party who complains of breach is entitled to receive the said specified amount whether or not any actual damage is caused. However, for claiming such sum, it is necessary that there is a contractual clause between the parties. In absence of such a clause in the contract, it is impermissible to retain amount paid towards advance payment. Thus, forfeiture cannot be resorted to unless the contract explicitly provides for the same.

49) The law in regard to impermissibility to forfeit the security deposit in absence of a forfeiture clause is well settled. In ***Suresh Kumar Wadhwa*** (supra) is apposite in which it is held in paras-23 to 29 as under :-

> 23. **Reading of Section 74 would go to show that in order to forfeit the sum deposited by the contracting party as "earnest money" or "security" for the due performance of the contract, it is necessary that the contract must contain a stipulation of forfeiture.** In other words, a right to forfeit being a contractual right and penal in nature, the parties to a contract must agree to stipulate a term in the contract in that behalf. **A fortiori, if there is no stipulation in the contract of forfeiture, there is no such right available to the party to forfeit the sum.**
>
> 24. The learned author-Sir Kim Lewison in his book "The Interpretation of Contracts" (6th edition) while dealing with subject "Penalties, Termination and Forfeiture clauses in the Contract" explained the meaning of the expression "forfeiture" in these words:

> "A forfeiture Clause is a Clause which brings an interest to a premature end by reason of a breach of covenant or condition, and the Court will penetrate the disguise of a forfeiture Clause dressed up to look like something else. A forfeiture Clause is not to be construed strictly, but is to receive a fair construction."(See page 838)

25. The author then quoted the apt observations of Lord Tenterden from an old case reported in (1828) Moo. & M. 189 Doe d Davis v. Elsam wherein the learned Lord while dealing with the case of forfeiture held as under:

> "I do not think provisos of this sort are to be construed with the strictness of conditions at common law. These are matters of contract between the parties, and should, in my opinion, be construed as other contracts" (see pages 840).

26. Equally well settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms/conditions, which are part of the contract. Likewise, a party to the contract has no right to unilaterally "alter" the terms and conditions of the contract and nor they have a right to "add" any additional terms/conditions in the contract unless both the parties agree to add/alter any such terms/conditions in the contract.

27. Similarly, it is also a settled law that if any party adds any additional terms/conditions in the contract without the consent of the other contracting party then such addition is not binding on the other party. Similarly, a party, who adds any such term/condition, has no right to insist on the other party to comply with such additional terms/conditions and nor such party has a right to cancel the contract on the ground that the other party has failed to comply such additional terms/conditions.

28. Keeping in view the aforementioned principle of law, when we examine the facts of the case at hand then we find that the public notice (advertisement), extracted above, only stipulated a term for deposit of the security amount of Rs. 3 lakhs by the bidder (Appellant) but it did not publish any stipulation that the security amount deposited by the bidder (Appellant herein) is liable for forfeiture by the State and, if so, in what contingencies.

29. In our opinion, a stipulation for deposit of security amount ought to have been qualified by a specific stipulation providing therein a

> right of forfeiture to the State. Similarly, it should have also provided the contingencies in which such right of forfeiture could be exercised by the State against the bidder. It is only then the State would have got a right to forfeit. It was, however, not so in this case.
>
> *(emphasis added)*

50) Even in a case where the amount is paid as EMD (which is not the case here), the Apex Court has held that the forfeiture clause must be clear and explicit. In cases where the amount is paid towards part payment of consideration and even if there is a forfeiture clause in the contract, the same would not apply for forfeiture of such part payment of consideration. In ***Satish Batra Versus. Sudhir Rawal***[9], it is held as under :-

> 15. **The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit**. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. **It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.**
>
> *(emphasis added)*

51) In our view therefore, there are two reasons why MADC cannot retain the amount of 10.29 crores paid by the Petitioner. Firstly the said amount is not paid towards EMD or security deposit and secondly, there is no clause in the LOA for forfeiture of the said amount. In absence of a specific clause for

[9] (2013) 1 SCC 345

forfeiture, in our view, the action of MADC in forfeiting the advance payment of Rs.10.29 crores is clearly unjustified.

52) MADC is a public authority and is expected to act fairly. Failure of transaction between the parties has not really caused any loss or prejudice to MADC. MADC has not pleaded cause of any loss in monetary terms in its Affidavit-in-Reply. On the contrary, the Affidavit-in-Reply indicates that MADC has allotted some portion of land to other entities at much higher rate. MADC had agreed to allot land to the Petitioner at the rate of Rs.44 lakhs per acre, whereas the land admeasuring 6.52 acres appears to have been allotted to Maharashtra Remote Sensing Application Centre for Rs.9.10 crores which works out roughly to Rs.1.39 crores per acre. Similarly, land admeasuring 10 acres is allotted to State Disaster Management Authority on 25 February 2022 for Rs.13.96 crores which works out roughly to Rs.1.40 crores per acre. MADC has also allotted land admeasuring 17 acres to M/s. GAIL (India) Limited for Rs.38.50 crores which works out to approximately Rs.2 crores per acre. Thus, failure of transaction with the Petitioner has enabled MADC to allot the land at much higher cost to other entities. It is not that other entities were in queue for allotment of the land and the Petitioner deprived MADC from allotting the land to other entities. Despite cancellation of Petitioner's allotment in 2015, MADC has been able to allot only 33 acres of land out of 117 acres to the other entities.

In our view therefore, conduct of the Petitioner has not resulted into any loss or prejudice to MADC.

53) Ordinarily, remedy under Article 226 of the Constitution of India cannot be permitted to be exercised to settle contractual disputes between the parties, even if one of the parties to the contract is a State Authority. However, there are well recognised exceptions to this usual rule. In ***ABL International Ltd. and another Versus. Export Credit Guarantee Corporation of India Ltd. and others***[10]**,** the Apex Court has held that writs under Article 226 are maintainable for asserting contractual rights against State or its instrumentalities. Referring to the judgment in ***ABL International Ltd.***, the Apex Court has held in ***Unitech Limited*** (supra) as under :-

> **38.** Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing, learned Senior Counsel appearing on behalf of the State of Telangana and TSIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. Learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out a contractual matter cannot be availed of Under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction Under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.
>
> **39.** A two judge Bench of this Court in ***ABL International Ltd. v. Export Credit Guarantee Corporation of India*** MANU/SC/1080/2003 : (2004) 3 SCC 553 [ABL International] analyzed a long line of precedent of this

[10] (2004) 3 SCC 553

Court6 to conclude that writs Under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined Under Article 12 of the Indian Constitution.

39.1 Speaking through Justice N. Santosh Hegde, the Court held:

> 27. ...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.

This exposition has been followed by this Court, and has been adopted by three-judge Bench decisions of this Court in State of UP v. Sudhir Kumar and Popatrao Vynkatrao Patil v. State of Maharashtra.

39.2. The decision in ABL International, cautions that the plenary power Under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction Under Article 226 is not excluded in contractual matters.

39.3. Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration Clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies Under Article 226.

39.4. If the state instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution would lie. This principle was recognized in ***ABL International***:

> 28. However, while entertaining an objection as to the maintainability of a writ petition Under Article 226 of the Constitution of India, the court should bear in mind the fact that

> the power to issue prerogative writs Under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions 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. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corporation v. Registrar of Trade Marks [MANU/SC/0664/1998 : (1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.
> (emphasis supplied)

39.5. Therefore, while exercising its jurisdiction Under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction Under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority.

39.6. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction Under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration Clause does oust the jurisdiction Under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

39.7. The jurisdiction Under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal

54) In ***M/s. Utkal Highways Engineers and Contractors*** (supra), the Apex Court has held in para-8 as under :-

> 8. Be that as it may, the High Court has not dealt with the merits of the writ petition. Moreover, it is not an inviolable rule that no money claim can be adjudicated upon in exercise of writ jurisdiction. Non-payment of admitted dues, inter alia, may be considered an arbitrary action on the part of respondents and for claiming the same, a writ petition may lie. Further, throwing a writ petition on ground of availability of alternative remedy after 10 years, particularly, when parties have exchanged their affidavits, is not the correct course unless there are disputed questions of fact which by their very nature cannot be adjudicated upon without recording formal evidence.

Thus, there cannot be an absolute bar in entertaining a writ petition seeking refund of advance payment made to an instrumentality of a State. There are no disputed questions of fact in the present case, which can be decided only on law point of permissibility to forfeit advance payment made by Petitioner in absence of forfeiture clause in the contract.

55) In our view, therefore Petitioner's prayer for refund of the advance payment of Rs.10,29,60,000/- appears to be reasonable. However, we are not inclined to award any interest to the Petitioner considering the time taken by it to file the present petition. Considering the peculiar facts and circumstances of the present case, it would be equitable if MADC refunds advance payment of Rs.10,29,60,000/- to the Petitioner without any interest.

56) We are inclined to order refund of the advance payment to the Petitioner considering the peculiar facts and circumstances of the present case as discussed above. Grant of such equitable relief would cause no prejudice to either of the parties. On the other hand, if MADC is permitted to retain the advance amount, the same would amount to unjust enrichment as MADC has already allotted 33 acres of land to other entities at much higher rate. MADC is an instrumentality of State and is expected to act fairly. It is not set up with the objective of doing business of land development and disposal. MADC's objective is to harness the potential of the Vidharbha region and to remove the development backlog of the region. It is with this objective that MADC pursued the proposal with Wipro for setting up its IT park in the SEZ to attract large number of jobs for the youths in the region. The transaction unfortunately could not go through. If MADC was to suffer any financial losses, this Court would have been loathe in ordering refund of the advance payment. However, since MADC has been able to dispose of some part of the allotted land at much higher rate of upto Rs. 2 crore per acre as compared to the rate of Rs. 44 lakh per acre by the Petitioner, refund of advance amount paid by Petitioner would balance the equities between the parties. If the MIHAN project has indeed progressed, and if the entire 117 acres of land is acquired by MADC, the balance land is available with MADC to be allotted to other entities at much higher rates. Therefore, no prejudice has been

suffered by MADC on account of any actions of the Petitioner. We are not directing MADC to pay any interest to the Petitioner which would provide some solace to MADC, which would enable it to utilize the said amount for over 18 years without any interest. In our view therefore ends of justice would meet if the advance amount is directed to be refunded to the Petitioner without any interest. It is however clarified that the direction for refund of advance payment is being granted in the light of peculiar facts of the present case.

57) We accordingly proceed to pass the following order :-

(i) MADC is directed to refund amount of Rs.10,29,60,000/- to the Petitioner within a period of six weeks without any interest.

(ii) Writ Petition is partly allowed to the above extent. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.] [CHIEF JUSTICE]