IN THE HIGH COURT AT CALCUTTA

CIVIL APPEALLATE JURISDICTION

(APPELLATE SIDE)

FMA 772 of 2024

State of Mizoram & Others.
vs.
Excel Vincom Private Limited & Anr.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant	:	Mr. Biswajit Deb, Advocate General, Mizoram, Mr. Sayan Dev Kumar, Adv. Ms. Priyakshi Banerjee, Adv. Mr. Sourav Ghosh, Adv. Ms. Priyanka Ghosh, Adv.
For the Respondent	:	Mr. S.N. Mookherjee, Sr.Adv., Mr. Rajarshi Dutta, Adv. Mr. Shaunak Mukhopadhyay, Adv. Mr. Shubrajyoti Mukherjee, Adv. Mr. Neelesh Choudhury, Adv. Ms. Anuradha Poddar, Adv.
Judgment on		13.11.2026

Arijit Banerjee, J. :-

1. This appeal is directed against the judgment and order dated April 2, 2024, whereby a learned Judge of this Court allowed WPA No. 1344 of 2024, being a writ petition filed by the respondents herein. The operative portion of the said judgment and order reads as follows: -

> **"**99. In such view of the matter, WPA No. 1344 of 2024 is allowed on contest, thereby setting aside the impugned cancellation of the tender process in favour of the petitioners by the respondents. As a consequence, the respondents are directed to immediately execute a sale deed in terms of the agreement, pursuant to the said tender, in favour of the petitioners with regard to the subject land at 24, Ashutosh Chowdhury Avenue, Ballygunge, Kolkata– 700 019, within six weeks from date. The respondents shall also co-operate in the registration of the same in favour of the petitioners at the earliest thereafter.**"**

Submission made on behalf of the appellants: -

2. A plot of land situated at 24, Ashutosh Chowdhury Avenue, (formerly old Ballygunge Road), Kolkata- 700 019, was purchased by the Government of Mizoram in the year 1973. The Government of Mizoram constructed a guest house on the said land which was the only Mizoram House in Kolkata till 1998. The entire office of the Government of Mizoram in Kolkata was functioning from the said property.

3. The erstwhile Government of Mizoram decided to demolish the old structure on the said land for the purpose of construction of a new Mizoram House. The old building was demolished in the year 2020. The plan for new construction was sanctioned by the competent authority in the year 2022.

4. On or about May 26, 2023, the General Administration Department (in short 'GAD'), Government of Mizoram floated an 'e-tender-cum-e-auction' notice for selling the said land. In the auction process, the respondent no. 1

herein emerged as the highest bidder. An unregistered agreement for sale was executed on October 6, 2023, between the Government of Mizoram represented by the appellant no. 3 herein and the respondent no. 1, represented by the respondent no. 2.

5. General elections were announced in the State of Mizoram in the month of October, 2023. The new Government took over charge on December 8, 2023, i.e., two months after the agreement for sale was executed by and between the parties.

6. Soon after the sale agreement was executed, the people of Mizoram came to know of the same and started protesting. There was a deep public resentment in the entire State of Mizoram. Several NGOs, civil society members and social organizations raised their protest. Representations were submitted on December 22, 2023, by Kolkata Mizo Students, an organization of the students of Mizoram in Kolkata, to the Chief Minister of Mizoram protesting against the proposed sale of the said property. The grounds taken were that the said property has a historical and heritage significance and has served as a refuge to the Mizo students and professionals residing in Kolkata. A similar representation dated December 27, 2023, was submitted to the Chief Minister of Mizoram on behalf of another social organization called Calcutta Mizo Welfare Association with a request for cancelling the proposed sale of the said land in the larger public interest of the people of Mizoram.

7. The new Government considered the representations and decided to revisit the issue for ascertaining the propriety of the decision and process undertaken for putting the land in question on sale. Several anomalies

surfaced in the decisions making process which were opposed to larger public interest. Hence, the Government of Mizoram decided to cancel the entire E-Tender process on January 4, 2024, in exercise of its power under Clause 3.1.11 of the bid document read with Clauses 5.5 and 6.2 thereof. The tender process was cancelled in larger public interest and the entire money paid by the writ petitioners including the earnest money was refunded.

8. It was submitted that the change of Government was not a reason for cancellation of the sale process. Keeping in view the sentiments of the closely knit Mizo Community in Kolkata and in their interest, the new Government decided to shelve the idea of selling the said land. The erstwhile Government did not adhere to the rules and law relating to the transfer of Government land as provided in Rule 309 of GFR, 2017. Moreover, in principle approval of the Council of Ministers had not been obtained for selling the said Government land. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***MRF Ltd. v. Manohar Parrikar, reported at (2010) 11 SCC 374 - paragraph 108.***

9. It was submitted that the decision taken by the new Government to cancel the agreement for sale of the said property is far from arbitrary and was taken in larger public interest. In this connection, reliance was placed on the decision of the Hon'ble Apex Court in the case of ***Indore Vikas Praadhikaran (IDA) and Another v. Shri Humud Jain Samaj Trust and Another, reported at 2024 SCC OnLine SC 3511 – paragraphs 12 to 14.***

10. It was then submitted that Clause 6.2 of the conditions of e-tender has stipulated that ownership and possession of the property will be transferred only after execution of the sale deed. Hence, ownership of the property has still not been transferred to the respondent no. 1 and the appellants are well within their rights to cancel the entire tender process.

11. Learned Advocate General for the State of Mizoram then submitted that there was an alternative remedy available to the writ petitioners in the form of Clause 14 of the agreement for sale which is an arbitration clause. Hence, the writ petition should not have been entertained. In this connection, reliance was placed on the following decisions: -

(i) Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir and Ors, reported at (2022) 5 SCC 345 - paragraph 10.

(ii) United Bank of India v. Satyawati Tondon and Ors., reported at (2010) 8 SCC 110 - paragraphs 44, 45, 46.

(iii) South Indian Bank Ltd. & Ors. v. Naveen Mathew Philip & Anr., reported at (2023) SCC OnLine SC 435 - paragraphs 11, 13 and 14.

12. It was then submitted that learned Single Judge's interpretation of the relevant clauses of the e-tender, renders Clause 3.1.11 of the tender otiose. Under that clause the tenderer has reserved the right to cancel the entire e-tender – cum e-auction process *at any stage prior to the signing of the sale deed*. In such a case, the amount deposited by the allottee including EMD would be returned and the tendering authority shall not be liable to pay compensation or interest for any loss. The conclusion of the learned Single Judge that the writ petitioners having made necessary payment including

penalty amount and an agreement for sale having been entered into by and between the parties, creating an indefeasible right in favour of the writ petitioners, runs contrary to Clause 3.1.11.

Such a finding of learned Single Judge is contrary to the principle laid down by the Hon'ble Supreme Court and the High Courts that an agreement to enter into an agreement does not conclude the contract and is not enforceable. In this connection, reliance was placed on following decisions: -

(i) Dressar Rand S.A. v. Bindal Agro Chem Ltd., reported at (2006) 1 SCC 751 - paragraph 39.

(ii) Nikhil Adhesives Limited thro' Dharmeshbhai Dhirajbhai Pandya v. Kandla Port Trust, reported at 2011 SCC OnLine Guj 897 - paragraph 16 (c).

(iii) Dharma Naika v. Rama Naika, reported at (2008) 14 SCC 517 - paragraph 26.

13. It was further submitted that the learned Judge erred in holding that the principle of promissory estoppel is attracted in the facts of this case. Such principle could be applied only if the final sale deed had been executed in favour of the writ petitioners. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Haryana Urban Development Authority and Ors v. Orchid Infrastructure Developers (P) Ltd., reported at (2017) 4 SCC 243 – paragraphs 12 to 16, 28 to 30.***

14. It was then argued that even assuming that the doctrine of promissory estoppel applied in this case, once public interest is accepted as the superior equity overriding individual equity, the principle would be applicable only in cases where a period has been indicated for operation of the promise. If

there is supervening public equity, the Government would be allowed to change its stand and would have the power to withdraw from the representation made by it which induced persons to take steps to their detriment. The Government is competent to retract from a promise made, even if no manifest public interest is involved, provided that no one is put in any adverse situation which cannot be rectified. In this connection learned Advocate General relied on the following decisions:

(i) Shrijee Sales Corporation and Anr v. Union of India, reported at (1997) 3 SCC 398.

(ii) Pawan Alloys and Casting (P) Ltd. v. U.P. SEB (1997) 7 SCC 251.

(iii) Union of India v. VVF Ltd., reported at (2020) 20 SCC 57 - paragraphs 21.2, 21.4 and 21.1.

With

SLP (C) 19998 of 2013 and SLP No.CC 1787 of 2014 Barak Valley Cement vs Union of India -Public Interest vis a vis promissory estoppel 2011 (3) SCC.

(iv) Sidhbali Steels Ltd and Ors v. State of Uttar Pradesh, reported at 2011 (3) SCC 193 - paragraphs 32 and 33.

(v) Yamuna Expressway v. Shakuntala Education, reported at (2022) 20 SCC 698 - paragraphs 56 and 57.

(vi) Sales Tax Officer and Anr v. Shree Durga Oil Mills and Anr, reported at (1998) 1 SCC 572 - paragraphs 22, 24.

15. It was submitted that the learned Judge failed to appreciate that in the guise of a writ petition, the respondents herein were seeking the remedy of specific performance which could be done only in an appropriate proceeding filed in a competent Civil Court. In this connection learned Advocate General relied on the following two decisions:

(i) Municipal Council Gondia v. Divi Works & Supplies, HUF and Ors, reported at 2022 INSC 244: (2022) SCC OnLine SC 247 – paragraph 8.

(ii) R. Hemalatha v. Kashthuri, reported at (2023) 10 SCC 725 –paragraphs 19, 22 and 23.

16. It was then submitted that learned Single Judge erred in discarding the pith and substance of the appellants' defence as regards existence of serious anomalies in the entire decision-making process which renders the same void apart from the overwhelming larger public interest involved, compelling the applicants to cancel the tender.

17. Learned Advocate General referred to Sections 17 (1)(A) and 49 of the Registration Act, 1908 and Sections 53A and 54 of the Transfer of Property Act, 1882. I will revert to these provisions later in the judgement, if necessary.

18. Reference was then made to the decision of the Hon'ble Supreme Court in ***R. Hemalatha v. Kashthuri, reported at (2023) 10 SCC 725*** in support of the submission that an agreement for sale which is incomplete, cannot be enforced.

19. Learned Advocate General then cited ***Renaissance Distilleries and Breweries Ltd. v. Government of NCT of Delhi & Ors, reported at 2007***

SCC OnLine Del 1134 in support of his contention that a party who has participated in a tender process is barred from challenging such process subsequently.

20. Finally, learned Advocate General submitted that a party to a contract cannot be allowed to adhere to and abide by some of the terms of the contract which are advantageous to him and repudiate the other terms of the contract which might be disadvantageous to him. One cannot approbate and reprobate at the same time. In this connection reference was made to ***New Bihar Biri Leaves Co. and Ors v. State of Bihar and Ors, reported at (1981) 1 SCC 537, paragraphs 40 and 48***.

Submission made on behalf of the respondents: -

21. Appearing for the respondents/writ petitioners, Mr. S.N Mookherjee, learned Senior Counsel, drew our attention to various clauses of the tender document including clauses 4 (Offer Acceptance), 5 (Payment Schedule) and 6 (Execution of Sale Deed). He then referred to an email dated July 20, 2023, sent by the Tendering Authority to the respondents intimating that the bid of the respondents had been accepted during financial evaluation by the duly constituted committee.

22. Learned Senior Counsel referred to the building plan dated August 25, 2022, sanctioned in favour of GAD and submitted that till date no step has been taken by GAD for making any construction on the concerned land which is lying vacant. GAD never had any real intention of constructing any building on the said land. Mr. Mukherjee also submitted that official documents have been disclosed only for the period till January 30, 2023. For the period between February 1, 2023 and May 2023, no document, note

sheet, etc. has been produced to show any irregularity in the decision of the Government of Mizoram to dispose of the subject property. Under Section 114, Illustration (e), of the Indian Evidence Act, the Court may presume that official acts have been regularly performed. No infirmity in the decision of the Government of Mizoram to sell the concerned property has been demonstrated.

23. It was submitted that the correspondence exchanged between the parties would show that the stage for cancellation of the tender process was long gone. The only thing that remained was execution of the conveyance. The decision to cancel the process was obviously prompted by the change of Government in Mizoram.

24. Mr. Mookherjee, submitted that even if the tendering authority reserves to itself the power to cancel the tender, if such power is exercised arbitrarily, the Courts can intervene, as in the present case. If cancellation of the tender process is bad in law, the Court can strike it down and can pass consequential orders in favour of the successful tenderer. In this connection reliance was placed on the decision of the Hon'ble Supreme Court in ***Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. v. Shishir Realty Private Limited & Ors., reported at (2021) SCC OnLine SC 1141 – paragraphs 64-70.***

25. In support of his submission that availability of an alternative remedy by way of arbitration or civil suit, is not an absolute bar to maintainability of a writ petition, learned Senior Counsel relied on the following decisions: -

(i) ABL International Ltd. v. Export Credit Guarantee Corporation. of India Ltd. and Ors., reported at (2004) 3 SCC 553 – paragraphs 8,11,16,22-23,25,52-53.

(ii) State of U.P. v. Sudhir Kumar Singh and Ors, reported at (2021) 19 SCC 706 – paragraphs 24 to 26.

(iii) Maharashtra Chess Association. v. Union of India and Ors., reported at (2020) 13 SCC 285 – paragraphs 18-25.

(iv) Unitech Ltd. and Ors v. Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors, reported at (2021) 16 SCC 35 – paragraphs 39.5 and 39.7.

(v) Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Ors., reported at (2023) 109 GSTR 402 – paragraph 4.

26. Learned Counsel submitted that the Writ Court undoubtedly has the power to quash arbitrary cancellation of a binding contract. As a consequential relief, the Writ Court can direct specific performance of such contract, as the learned Single Judge has done in the present case. In this connection learned Counsel referred to the following decisions: -

(i) Gujarat State Financial Corporation. v. Lotus Hotels (P) Ltd., reported at (1983) 3 SCC 379 – paragraphs 9 to 11.

(ii) ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd., Supra – paragraphs 11,23,27.

(iii) Godavari Sugar Mills Ltd. v. State of Maharashtra and Ors, reported at (2011) 2 SCC 439 – paragraphs 5,6 and 8.

(iv) State of U.P. v. Sudhir Kumar Singh., Supra – paragraphs 21 to 26.

(v) Mihan India Ltd. v. GMR Airports Ltd. & Ors, reported at 2022 SCC OnLine SC 574.

27. Mr. Mukherjee then submitted that the doctrine of promissory estoppel applies in cases of Government tenders. He relied on the decisions in: -

> ***(i) Gujarat State Financial Corporation. v. Lotus Hotels (P) Ltd., Supra – paragraphs 9 to 11.***
> ***(ii) Vice Chairman & Managing Director, City & Industrial Development Corporation. of Maharashtra Ltd. v. Shishir Realty (P) Ltd. and Anr, (2022) 16 SCC 527 – paragraphs 64 to 70.***

28. Learned Counsel then submitted that actions motivated by raging revenge are not permissible under the Constitution of India. A different political party coming into power after an election cannot be permitted to retract from binding commitments made by the previous dispensation without compelling reasons. In this connection reliance was placed on ***Vice Chairman & Managing Director, City & Industrial Development Corporation. of Maharashtra Ltd. v. Shishir Realty (P) Ltd., Supra – paragraphs 61-62.***

29. Learned Senior Counsel finally submitted that it has not been demonstrated that there was any such overwhelming public interest which compelled the Government of Mizoram to cancel the entire tender process on the verge of execution of the conveyance after receiving the full consideration amount and after detailed exchange of correspondence with the respondent company. The two representations relied upon by learned Advocate General for the State of Mizoram do not disclose any such public interest as would justify the Government of Mizoram in cancelling the tender process. Even in a commercial transaction, the State cannot act arbitrarily.

Judgment of learned Single Judge:-

30. The learned Judge, while allowing the writ application, observed, *inter alia*, as follows: -

(i) By the 2018 amendment to Section 20 of the Specific Relief Act, 1963, the previous wide discretion of courts not to grant decrees of specific performance on issues of equity, conduct, etc. has been taken away. The contractual rights of the parties to a contract and the right to enforce the same have been given an upper-hand by such amendment. Hence, from such perspective, the element of public interest has to be extremely strong to upset the contractual rights of the parties.

(ii) Clause 5.5 of the tender document which speaks about issuance of letter of intent (LOI) or letter of award (LOA) not conferring right of ownership, is circumscribed by Clause 5.6 which provides that in case the successful bidder fails to pay the requisite amount as per Clause 4.3, the authority may extend the time limit. If the payments are not made within the extended time, the authority may take necessary action for cancellation of the allotment and forfeiture of the amount deposited by the allottee.

(iii) Even if issuance of LOI/LOA did not confer ownership right in the property, the subsequent acts of receipt of full payment by the Government, execution of sale agreement and preparation of draft conveyance, have created an actionable claim and a vested interest in favour of the writ petitioners regarding the subject property.

(iv) In the present case, not only did promissory estoppel come into play, the same has subsequently taken the shape of contractual rights by the parties entering into an agreement of sale.

(v) The present case does not involve a policy decision but a commercial transaction. There is no ingredient of any public policy to deter the completion of the sale transaction.

(vi) Clause 3.1.11 cannot be interpreted to give an absolute right to the authority to cancel the tender process. Such right cannot be exercised arbitrarily.

(vii) Even in the field of private contract, the State has to Act in a fair, transparent and reasonable manner and cannot arbitrarily cancel contracts. The present right of the writ petitioners is not merely based on a private contract but on an agreement which flows from a public tender, floated in the public domain, by the State of Mizoram.

(viii) The argument of the State of Mizoram that Rule 309 of the GFR pertaining to transfer of land and buildings of the State was not followed is baseless. The tender was floated by the General Administration Department (GAD) of the Government of Mizoram. A corrigendum /addendum dated May 31, 2023, was signed by the Commissioner and the Secretary to the Government of Mizoram, GAD. The Under Secretary and the Deputy Secretary to the Government of Mizoram, both coming within the fold of GAD, have made several communications in pursuance of the tender and the subsequent sale agreement entered into by and between the parties.

Hence, there is no reason why the said tender or the subsequent acts of the Government should be vitiated by any irregularity just because the new regime, after coming to power, raises such issue post facto.

(ix) The State or a Government is an entity in perpetuity. It is not subjected to the vicissitudes and political or populist motivations, which sways with every wind of popular opinion. Thus, the mere populist measures sought to be taken by the new regime cannot be a valid ground for cancelling the valuable rights that have accrued in favour of the writ petitioners in terms of a tender floated by the Government itself, in its previous pre-election Avatar of a different political dispensation.

(x) Certain purported letters by certain social organizations, which arrogate to themselves the interests of the entire populace of the State of Mizoram, have been cited by the respondents. However, the mere opinion of certain bodies of students or others sections of the society cannot displace the action taken by an elected government, which, in the first place, is supposed to represent and reflect the wishes of the polity which has brought it into power.

(xi) The land, it is evident from the admitted position, is a vacant and unused land having no immediate utility whatsoever. The proposed future use of the land does not furnish present public interest of so strong a level that it has to displace the valuable rights that have accrued in favour of the petitioners.

(xii) The very grounds which are now being cited to cancel the entire process were all along available to the State of Mizoram even at the

time of floating of the tender and the subsequent acts done by the parties in pursuance thereof. No change of circumstance has been pleaded or established to indicate that public interest has out-grown the contractual obligations of the State all on a sudden, compelling the Government to cancel the sale process.

(xiii) The official act in floating the tender and the subsequent actions of the Government of Mizoram, have to be presumed to be regularly performed and the burden of proof to displace such presumption lies on the respondents. There is no reason why the presumption under Section 114 (e) of the Evidence Act should not be applied. There is no rebuttal of the presumption in the present case.

(xiv) On a comprehensive appreciation of the facts of the case, there can be no justification on the part of the respondents to cancel the entire tender process seeking shelter under Clause 3.1.11 of the tender document. The impugned act of cancellation of the e-tender and the sale process is arbitrary, unreasonable and motivated by commercial, political and populist interests rather than valid public interest or inequity.

31. In the light of the above observations, learned Single Judge set aside the impugned cancellation of the tender process. The respondents were directed to execute a sale deed in terms of the agreement of sale, in favour of the writ petitioners with regard to the subject land.

Court's view

32. The short question that arises for determination is whether or not, in the facts and circumstances of the case, the appellant State of Mizoram was

justified in cancelling the entire tender process at the stage when only formal execution of the conveyance remained to be done. Learned Single Judge has held against the appellants. We are required to decide whether there is any such error in the order of the learned Single Judge which would warrant interference by the Appeal Court.

33. The facts of the case would clearly emerge from the correspondence exchanged between the parties. We may notice some of the documents referred to by learned Counsel for the parties: -

(i) Letter of Intent dated August 4, 2023, issued by the Government of Mizoram, GAD, in favour of the respondent company.

(ii) The Nomination email dated August 7, 2023, sent by the respondent company to GAD, Government of Mizoram, furnishing particulars of the nominees in whose names the property would be transferred.

(iii) Letter dated August 25, 2023, under cover of which, the GAD, Government of Mizoram forwarded the 'Sale Agreement format' to the respondent company. The respondent company was called upon to sign the Sale Agreement on non-judicial stamp paper of appropriate value.

(iv) Letter dated September 9, 2023, addressed by Joint Resident Commissioner, Government of Mizoram to the respondents calling upon them to make any suggestion they might have for modification of the draft Sale Agreement.

(v) Letter dated August 10, 2023, written by the Under Secretary to the Government of Mizoram, GAD, to the Joint Resident

Commissioner, Mizoram House, Kolkata requesting the latter to prepare 'Deed of Agreement for Sale' in respect of the subject property.

(vi) Letter dated August 25, 2023, written by the Deputy Secretary to the Government of Mizoram, GAD, to the Joint Resident Commissioner, Government of Mizoram, Kolkata, authorizing the latter 'to execute the sale agreement and sale deed on behalf of Secretary, General Administration Department.'

(vii) Letter dated October 4, 2023, issued by the Under Secretary to the Government of Mizoram, GAD, addressed to the respondent company conveying 'No Objection' of the Government of Mizoram for execution of the Sale Deed between the Government of Mizoram and the respondent company and its nominees in respect of the subject property.

(viii) Agreement of sale dated October 6, 2023, executed by and between the Government of Mizoram and the respondent company.

(ix) E-mail dated October 31, 2023, sent by the respondent company to GAD, Government of Mizoram putting on records that as on that date, a sum of Rs 18,98,82,000 had been paid by the respondent company to the Government of Mizoram through RTGS.

(x) E-mail dated October 30, 2023, sent by the respondent company to GAD, Government of Mizoram, suggesting certain changes in the draft Sale Deed/Conveyance and Mail dated October 31, 2023, sent by GAD, Government of Mizoram to the respondent company

accepting such modifications and asking the respondent company to proceed.

(xi) Draft Sale Deed. In particular clauses 5.1.7 to 5.1.12 of the Draft Sale Deed were highlighted. The said clauses read as follows:

> **"**5.1.7 **Application for Demolition of Existing Structure**: Thereafter, the Vendor, with the intention of constructing a new B+G+3 building on the Said Property after demolishing the existing dilapidated structure present thereat, applied before the Kolkata Municipal Corporation for approval of the said demolition of the existing structure present on the Said Property vide an application dated 25th June, 2018.
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> 5.1.8 **Approval for Demolition of Existing Structure**: Thereafter, the Executive Engineer of the Kolkata Municipal Corporation, by its letter dated 16th July, 2018, approved the demolition of the existing structure on the Said Property as per Rule 20 of Building Rule 2009.
>
> 5.1.9 **Sanction of Plan**: Simultaneously, the Vendor, by an application dated 13th April, 2022, applied for sanction of plan and building permit for construction of the said new B+G+3 building on the said property and obtained the sanction of the same and building permit on 26th August, 2022. ("**Sanctioned Plans**").
>
> 5.1.10 **Existence of Old Dilapidated Structure**: Thereafter, the Vendor initiated the demolition of the existing structure, but it was suspended due to some unavoidable circumstances and a

substantial area of old dilapidated structure is still in existence on or over the said property.

5.1.11 **Presence of Foundation at Said Property**: The Vendor, thereafter, caused to be demolished the existing structure on the said property partially, however the foundation of the said old building, together with some other construction including old outhouses, servants' quarter, darwans' room are still in existence at present.

5.1.12 **Inviting Tender to Sell**: The Vendor now not being interested in constructing the said new building on the Said Property and also with an intention to sell the Said Property for financial gain together with the benefit of the Sanctioned Plans invited tender under the e-tender-cum-e-auction notice vide no.-A.60011/200/2011-GAD (Vol.II) (Tender ID: 2023-SGAD-374-1) dated 10th July, 2023 ("said e-Auction")."

(xii) Letter of Award dated December 1, 2023, issued by Deputy Secretary, GAD, Government of Mizoram, in favour of the respondent company. In the last paragraph of the letter, the respondent company was requested to submit its acceptance of the Letter of Award in writing within 15 days of receiving it and execute formal Sale Deed in accordance with the Land Laws of West Bengal.

(xiii) E-mail dated December 7, 2023, sent by the respondent company to GAD, Government of Mizoram accepting the Letter of Award and also putting on record that the respondent company had paid the balance 50% of the accepted bid amount amounting to Rs.

19,18,00,000 towards the second installment along with penal interest of 1% per month for the extended time limit of 57 days amounting to Rs. 35,86,660.

(xiv) E-mail dated December 8, 2023, sent by GAD, Government of Mizoram to the respondent company stating: 'you will hear from us soon on the execution of Sale Deed and matters regarding TDS.'; and Email dated December 12, 2023, sent by the respondent company to GAD, Government of Mizoram stating: 'We are still waiting response from your end. We request you to expedite the matter.'

(xv) E-mail dated December 14, 2023, sent by the respondent company to GAD, Government of Mizoram putting on record that the entire consideration sum of Rs. 38,29,91,994 (after deducting TDS of Rs. 41,94,666) had been paid through RTGS and requesting to fix an early date for execution of the Sale Deed.

(xvi) Letter dated December 21, 2023, written by the Deputy Secretary to the Government of Mizoram, GAD, the respondent company, the material portion whereof reads as follows: -

> **"**As you are aware, the election to the 9th Legislative Assembly of Mizoram was recently concluded. As the State Government machinery had to concentrate on the election process, many other important issues had to be put on the backburner till the election process was over. Further, the newly formed Government have to be apprised of all ongoing projects and undertakings of the Government before taking further action.

Besides, the festive season of Christmas and New Year has already started in full swing, and this also will slow down the normal functioning of the Government Offices.

Therefore, the process of sale of the said property will also be slightly affected by the said circumstances. We hope to be able to carry forward the process only in the month of January, 2024. You are requested to kindly bear with us in the meantime.**"**

(xvii) The E-mail dated January 2, 2024, sent by the respondent company to GAD Mizoram stating that delay at the end of GAD in executing and registering the sale deed was causing financial loss to the respondent. Request was made to fix a date for execution and registration of the sale deed as soon as possible. In response, by an E-mail dated January 3, 2024, GAD acknowledged receipt of the aforesaid E-mail and stated: - "you will hear from us soon."

(xviii) Notification dated January 4, 2024, issued by the Commissioner & Secretary to the Government of Mizoram, GAD, sent to the respondent company under cover of an E-mail dated January 5, 2024, cancelling the entire tender process. The notification reads as follows: -

"The General Administration Department, Government of Mizoram has invited bids for Sale of land at 24, Ashutosh Chowdhury Avenue, Kolkata 700019 through e-tender-cum-e-

auction vide No. A. 60011/200/2011 - GAD (Vol.II) dt. 26.05.2023.

And even though Ms Excel Vincom Pvt. Ltd., Kolkata has been declared the Successful Bidder after the e-tender-cum-e-auction process, and has subsequently deposited 100% of the Bid Amount along with penal interests for delayed payment; the General Administration Department, Government of Mizoram has reconsidered the issue after due consideration of all relevant factors, and has come to the conclusion that disposal of the said Government land at this juncture is against the general interest of the public.

Therefore, the General Administration Department, Government of Mizoram (referred to as the Authority in the Bid Documents), in exercise of its inherent power provided under clause 3.1.11 read with clause 5.5 and/clause 6.2 of the Bid Documents, hereby cancels the bid process in the larger interest of the general public. The entire amount already paid by the bidder, including the Earnest Money Deposit, shall be refunded and the Authority shall not be liable to pay any compensation or interest for any loss that the bidder may incur due to the cancellation of the bid process.**"**

(xix) Letter dated January 11, 2024, written by the respondent company to GAD, Mizoram protesting against the cancellation of the

tender process and requesting for immediate withdrawal of the notification dated January 4, 2024.

34. Learned Counsel for the appellants raised a preliminary point of maintainability of the writ petition. He referred to Clause 14 of the agreement for sale dated October 6, 2023, which is a dispute resolution clause. That clause provides that any dispute that may arise between the parties in relation to the said agreement would, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in the said clause. If conciliation fails, the dispute shall be decided by reference to arbitration of a sole arbitrator to be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the amendments thereof, which will also govern the proceedings in the arbitration. The Supreme Court decisions in ***Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, Supra, United Bank of India v. Satyawati Tandon and Ors., Supra*** and ***South Indian Bank Ltd. & Ors. v. Naveen Mathew Philip & Anr., Supra*** were relied upon for the proposition that where an alternative remedy is available, the Writ Court should generally not entertain an application under Article 226 of the Constitution of India. This proposition of law is very well established. However, it is also well established that availability of an alternative remedy is not a complete bar to the High Court entertaining an application for judicial review. One may refer to the well-known decision in the case of ***Whirlpool Corporation. v. Registrar of Trade Marks, reported at (1998) 8 SCC 1***.

Further, it may be noted that in the three decisions cited by the learned Advocate General, statutory alternative remedies were available. Remedies were prescribed in the concerned statutes. Such is not the case here. Although there is an arbitration clause in the agreement for sale, the same did not and could not denude the High Court of its high prerogative writ jurisdiction. The suggestion of learned Advocate General that the alternative remedy of civil suit for specific performance of the agreement for sale is available to the writ petitioners and, therefore, learned Single Judge should not have entertained the writ petition, also does not impress us. It is well known that a civil suit is a long drawn legal process which may take years together to reach its logical conclusion. A suit can hardly be described as an alternative efficacious remedy. A suit can be filed to enforce any legal right. In our opinion, in all cases, and particularly where no factual dispute is involved, remedy by way of suit cannot be considered to be an efficacious alternative remedy *vis-à-vis* a writ petition where the same is otherwise maintainable in law.

35. On the other hand, on the point of alternative remedy, learned Counsel for the respondents relied on the following decisions:-

(i) ***ABL International Ltd. v. Export Credit Guarantee Corporation. of India Ltd., (Supra).*** In this case at paragraphs 52 and 53 of the judgment, the Hon'ble Supreme Court observed as follows: -

> **"**52. On the basis of the above conclusion of ours, the question still remains why should we grant the reliefs sought for by the

appellants in a writ petition when a suitable efficacious alternate remedy is available by way of a suit. The answer to this question, in our opinion, lies squarely in the decision of this Court in the case of Shrilekha Vidyarthi [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] wherein this Court held: (SCC pp. 235-37, paras 20-22 & 24)

The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity

contrary to the professed ideals in the preamble. Therefore, total exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in the contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful

cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of the State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after

receiving huge sums of money as premium exceeding Rs 16 lakhs. In fact we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when the Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner.**"**

(ii) In ***Maharashtra Chess Association. v. Union of India, Supra,*** it was held that existence of an alternative remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore, does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action in its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.

(iii) In ***Unitech Ltd. v. Telangana State Industrial Infrastructure Corporation., Supra,*** the Hon'ble Supreme Court held that 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. 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 realm of contract. Similarly, the presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases; it needs to be decided on a case to case basis as to whether recourse to a public law remedy can justifiably be invoked.

(iv) In ***Godrej Sara Lee Ltd. v. Excise & Taxation Officer-cum-Assessing Authority & Ors., Supra,*** the Hon'ble Supreme Court observed as follows in paragraph 4 of the judgment: -

> **"**4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded

articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy,

convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.**"**

36. We, therefore, see that existence of an alternative remedy does not affect the High Court's jurisdiction to issue an appropriate writ under Article 226 of the Constitution of India. It is the discretion of the Court whether or not to exercise such jurisdiction in a given fact scenario. Of course, the discretion has to be exercised judiciously. In the present case, the learned Single Judge has found the impugned act of the appellant to be arbitrary and illegal. The learned Judge has quashed such act i.e., the impugned

letter of cancellation of tender and has issued a mandamus directing the appellant to complete the sale of the subject property in favour of the respondent no. 1. We do not find anything wrong with such exercise of discretion by the learned Judge.

37. The next point urged by the learned Advocate General for the State of Mizoram is that the writ petitioners should have filed a suit for specific performance instead of an application under Article 226 of the Constitution of India. In effect, on a writ petition, the High Court has passed a decree for specific performance. This is impermissible in support of this submission, learned Counsel relied on the decision in ***Municipal Council Gondia v. Divi Works and Supplies, HUF and Ors., Supra.*** Reliance was placed on paragraph 8 of the decision which reads as follows:-

> **"**At the outset, it is required to be noted that by the impugned judgment and order the High Court has issued a writ of mandamus virtually granting the relief of specific performance of the contract/work order. From the impugned judgment and order passed by the High Court it appears that the High Court was made to believe that the original writ petitioners had already manufactured the goods which are customized and as per the specifications and the work order. However, it is now found that there are no manufactured goods readily available which can be supplied to the appellant - Council. There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not. Nothing was on record before the High Court that goods were in fact and actually manufactured by

the original writ petitioner No. 1, as per the specifications and the requirements of the Council and as per the work order. In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ petitioner No. 1 and to make the payments as per the work order. Even otherwise, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition under Article 226 of the Constitution of India. The original writ petitioners ought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained.**"**

38. In our opinion, the aforesaid decision does not advance the appellant's case to any extent. In that case there were disputed questions of fact. There was no material on record in support of the case of the writ petitioner. The decision does not lay down any proposition of law that even in a fit case, the Writ Court cannot issue a mandamus directing an authority within the meaning of Article 12 of the Constitution, to honour its solemn undertaking. In this connection one may note the observations of the Hon'ble Supreme Court at paragraphs 9 to 11 of the judgment in ***Gujarat State Financial Corporation. v. Lotus Hotels (P) Ltd., Supra,*** which read as follows:-

"9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure

of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be "other authority" under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the

loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P. [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : AIR 1979 SC 621 : (1979) 2 SCR 641, 662] this Court observed as under : [SCC para 8, p. 425 : SCC (Tax) p. 160]

> "The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

10. Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent.

11. Jit Ram Shiv Kumar v. State of Haryana [(1981) 1 SCC 11 : AIR 1980 SC 1285 : (1980) 3 SCR 689] which slightly differs from the view taken by this court in the aforementioned decision at any rate would not help the appellant because it only lays down that the principle of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under the law. Even then, it was held that when the officer authorised under a scheme enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to regulate the officer to act according to the scheme and the agreement or the representation. The officer cannot arbitrarily on his mere whim ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of a person which had acted upon such representation and put himself in a disadvantageous position. On this point, both the decisions concur and the ratio would govern the decision in this appeal. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is not held to its promise, the respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case.**"**

39. One may also note the decision of the Hon'ble Supreme Court in ***ABL International Ltd. v. Export Credit Guarantee Corporation. of India Ltd., Supra***. It was held that firstly, 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. Secondly, merely because some disputed questions of fact arise for consideration, the same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. Thirdly, a writ petition involving a consequential relief of monetary claim is also maintainable.

40. In ***Godavari Sugar Mills Ltd. v. State of Maharashtra, Supra,*** one of the questions that fell for determination by the Hon'ble Supreme Court was whether the writ petition filed before the High Court was for 'recovery of money' and therefore, not maintainable? The Hon'ble Supreme Court held that the writ petition did not relate to a simple money claim. It required adjudication in regard to the allegations of arbitrariness on the part of the State Government and its officers in the exercise of their statutory functions. Primarily, therefore, the writ petition was of a public law character and, therefore, maintainable. It was further held that if a right has been infringed - whether a fundamental right or a statutory right – and the aggrieved party comes to Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that an existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realised by the Government without the authority of law.

41. Once the State or an instrumentality of the State is a party to a contract, it has an obligation in law to act fairly, justly and reasonably, which is the requirement of Article 14 of the Constitution of India. If the

State or its instrumentality acts in contravention of the aforesaid requirements of Article 14, a Writ Court can issue suitable directions to set right the impugned arbitrary action. When the State acts contrary to public good and public interest, unfairly, unjustly or unreasonably, in its **contractual**, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution of India.

42. In ***ABL International Ltd. v. Export Credit Guarantee Corporation. of India Ltd., Supra***, the Hon'ble Supreme Court, after referring to several of its earlier decisions, held that once the State or an instrumentality of the State is a party to a contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. If the State or its instrumentality acts in contravention of the aforesaid requirements of Article 14, a Writ Court can issue suitable directions to set right the impugned arbitrary action. When the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution.

43. In the present case the learned Single Judge has rightly held that the cancellation of the tender process is arbitrary. As a consequential relief the learned Judge directed the appellant State to honour its obligation under the agreement of sale entering into by and between the parties. We see no infirmity in such order of the learned Judge.

44. It was urged on behalf of the appellants that Rule 309 of GFR, 2017 was not followed by the Government while taking a decision to sell the

subject property. Hence, the decision was bad and the entire process should be nullified.

We are unable to accept such contention. Whether or not the Government followed its financial rules, is an internal matter for the Government of Mizoram. A third party dealing with the Government is entitled to proceed on the basis that official acts of the Government have been regularly performed. The Court is also entitled to presume that official acts of the Government have been regularly performed, as is provided in Section 114, illustration (e) of the Evidence Act, 1872.

45. It does appear to us that this is a case of 'regime revenge'. The Government cannot renege on a promise made and acted upon by a citizen to his detriment, only because there is a change in regime. In this connection one may refer to the decision of the Hon'ble Supreme Court in the case of ***Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. v. Shishir Realty Private Limited & Ors., Supra,*** and in particular paragraphs 61 and 62 of the judgment, which read as follows:-

> **"**61. In the present case, it was argued by the respondents that with the change in the executive head in Cidco, enquiry was initiated against the allotment made in favour of the respondent M/s Metropolis Hotel during the tenure of the earlier executive head. Even the inquiry, that was conducted against the respondent lessees stood vitiated as no proper notice or hearing was given to them before passing the impugned order. Additionally, from the above analysis it is clear that the change of

usage and the subsequent division was well within the statutory limitations. Therefore, the earlier undertakings taken by the appellate authorities cannot be set aside with the change of person in power, without any rhyme or reason. After all one cannot change the rules of the game once it has started.

62. From the contradictory submissions asserted before this Court and the concessions given regarding practice of Cidco to allow change in land use in other cases, clearly points to a "regime revenge". Such conclusion reached herein is further buttressed by the fact that no inquiry or disciplinary proceedings were initiated against the earlier Vice-Chairman, whose orders have been annulled. Such phenomenon is clearly detrimental to the constitutional values and the rule of law.**"**

46. It was also argued that a mere agreement of sale does not create any proprietary interest in favour of the proposed purchaser. In the present case the writ petitioners have not acquired any title in respect of the subject property. Only upon execution of the conveyance the title to the property would pass to the writ petitioners. Therefore, at any point of time prior to execution of the conveyance/sale deed and registration thereof, the appellant was and is entitled to cancel the entire sale process.

We are unable to agree with such contention. It is of course true that until a registered deed of conveyance is executed in favour of the purchaser, title to the property which is the subject matter of sale, does not pass from the vender to the purchaser. However, that does not mean that the vender can go back on his promise to sell a property, recorded in a duly executed

Agreement of Sale, at his own sweet will. That will be a breach of contract on the part of the vendor entitling the intending purchaser to seek specific performance of the contract of sale before a Court of law. Otherwise, contractual/commercial deals will become completely uncertain.

47. It was argued that the appellant State has reserved its right to cancel the tender process at any point of time prior to the property in question being conveyed to the successful tenderer by execution of a registered sale deed. In our opinion, this is putting the appellants' case too high. It is true that the relevant clauses in the tender documents reserve the right to the appellant State to cancel the entire tender process prior to execution of conveyance; however, such right cannot be exercised arbitrarily or unfairly or unreasonably, vis-a-vis a citizen. Just as Article 14 of the Constitution of India enjoins on the Government the duty to act fairly, reasonably and not arbitrarily vis-a-vis a citizen, in the discharge of the Governmental duties, even in commercial matters the Government has a duty to act fairly, reasonably and not arbitrarily. In the present case, we find no valid or acceptable ground for the Government to cancel the tender process. From the correspondence exchanged between the concerned Government department and the writ petitioners, we find that great pains were taken by the parties to finalise the deal. The entire consideration amount along with the penalty money was deposited by the writ petitioners which was accepted and appropriated without any demur, protest or reservation. After detailed deliberations, the clauses of the agreement for sale were finalised. All formalities were complied with. Only the conveyance remained to be executed. We can see from the correspondence exchanged that execution of

the sale deed was deferred only in view of the upcoming State elections. Once the elections resulted in change of the ruling party, the government performed a complete *volta face* and cancelled the tender. The purported reason cited was greater public interest.

48. In our considered opinion, the appellants have not been able to demonstrate any such public interest or interest of the residents of Mizoram as would justify the Government of Mizoram acting in breach of its solemn contractual obligations. There is no doubt that private interest must give way to public interest. However, such public interest must be overwhelming and demonstrable.

49. Two letters constitute the fulcrum of the appellant's case of extreme public interest warranting cancellation of the entire tender process. The two letters dated December 22, 2023 and December 27, 2023, are reproduced herein:-

"

Date: December 22, 2023

To,

The Hon'ble Chief Minister
Government of Mizoram
Office & Bungalow
PPQ8+F3F,
MacDonald Hill,
Zarkawt, Aizawl,
Mizoram 796001

Subject-Prayer for retrieval of Ballygunge Mizoram House

Respected sir,

Greetings on behalf of the Kolkata Mizo Students.

Ballygunge Mizoram House, Kolkata has served as a refuge for the Mizo students, families, and professionals residing in Kolkata. The premises

deeply hold significant sentimental values and emotions for the closed-knit Mizo Community.

Sadly, it has been learnt that the process of selling off of the entire premises is in its final stage. However we the Kolkata Mizo Students believe that selling off of the plot in Ballygunge is against larger public interest. Moreover, it has a historical and heritage significance within the periphery of Central Kolkata and it also stands as a foundation of cultural representation.

We hope you will intervene, settle the issue, and act accordingly so that these merits of ours remain intact.

Yours sincerely,

(JOSHUA THANGLALROPUIA)

General Secretary,

Kolkata Mizo Students 2023-24

AND

" Dated, Kolkata the 27 December, 2023

To,
The Hon'ble Chief Minister
Government of Mizoram.

Subject: Prayer to cancel selling of land belonging to Govt of Mizoram at Ballygunge, Kolkata.

Sir,

Greetings on behalf of Calcutta Mizo Welfare Association. As you are aware, the process of selling of Land belonging to Government of Mizoram at Ballygunge, Kolkata is going on and upon inquiring, we have learned that the process has not reached its final stage. As such,

we would like to kindly draw your attention regarding our prayer to cancel the entire process on behalf of the Mizo community here in Kolkata.

It may be noted that from the outset of the intent to sell the land, it greatly saddened the hearts of the Mizo community not only here in Kolkata but Mizo's as a whole. The connection between the people and this land goes a long way as it has served as a refuge for comfort for generation of Mizos travelling across the country, many things can be said at length regarding the sentimental attachment this land holds in the hearts of the people. Hence, effort have been made to persuade the Government not to sell the land in various ways but to no avail.

With the formation of a new Government, your Government, our hopes have been greatly renewed. The welfare executive committee, after closely studying the situation at hand, believes that there is still a ground for cancellation of the process of selling of Ballygunge land, as it has not reached its final stage. As your Government strive to stand for the people, we the people, the Calcutta Mizo Welfare Association request you to cancel the entire process of selling the land at all cost. We hope and pray that this request will materialise in your hand.

Thanking you

(RICHARD LALREMPUIA RALTE COLNEY)
SECRETARY

CALCUTTA MIZO WELFARE ASSOCIATION"

50. In our opinion, the said two representations do not demonstrate any such overwhelming public interest as would be a justification for cancelling the entire tender process which was on the verge of being carried to its logical conclusion. We agree with the learned Single Judge that cancellation of the tender process was an arbitrary act on the part of the appellant. Execution of the agreement for sale and payment of the entire consideration money by the writ petitioners, created in their favour, at least in equity, a right of having the property in question conveyed to them. The appellant came under a corresponding obligation. The only way the appellant could wriggle out of such contractual obligation was by establishing overwhelming public interest. It has failed to do so. Hence, the learned Judge was perfectly justified in directing the appellant to execute the sale deed in respect of the subject property in favour of the writ petitioners.

51. It was argued by the learned Advocate General representing the appellants that the principle of estoppel does not apply to governmental acts or representations.

52. The law appears to be quite different. In the case of ***Gujarat State Financial Corporation. v. Lotus Hotels (P) Ltd., Supra,*** it was held that the principle of promissory estoppel would estop an Article 12 authority from backing out of its obligation arising from a solemn promise made by it to a citizen. In ***Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. v. Shishir Realty Private Limited & Ors., Supra***, it was held that the principle of promissory estoppel generally applied to the Government. In that case it was held that it

would not be enough for the Government to merely state that public interest requires that the Government should not be compelled to carry out the promise. It is imperative that the Government when seeking exoneration from liability of enforcing contract, must satisfy the Court as to how public interest overrides the necessity of enforcing the contract. When the Government seeks to relieve itself from the application of the principle of promissory estoppel, the Government or a public authority is bound to place before the Court the material, the circumstances or grounds on which it seeks to resile from the promise made or obligation undertaken by insistence of enforcing the promise, to demonstrate how the public interest would be jeopardized as against the private interest.

53. We may further note that it is not the case of the appellants that the deal for selling the subject property to the writ petitioners was finalised at an under value, i.e., at a consideration lower than the current market rate or that the State exchequer would suffer in any manner if the Government is directed to honour its obligation under the agreement of sale. Hence, no prejudice would be caused to the appellant if it is directed to stick to the bargain that it has struck with the writ petitioners.

54. Before concluding, let us advert to some of the decisions cited on behalf of the appellants. Learned Advocate General for the State of Mizoram relied on the observations of Hon'ble Supreme Court at paragraph 108 of the reported judgment in ***MRF Ltd. v. Manohar Parrikar, Supra,*** which read as follows:-

> **"**108. The appellants contended before this Court that another Division Bench of the High Court in its earlier judgment of 21-1-

> 1999 had held that the Notification dated 1-8-1996 was clarificatory and that it did not create any extra financial liability on the State Government requiring approval of the Cabinet in compliance with the Business Rules before it was brought into force. In our opinion the said notification cannot be treated as mere clarificatory. It is a notification issued purportedly in terms of a government decision. It was a decision finalised at the level of the Minister of Power alone and was taken in violation of the Rules of Business framed under Article 166(3) of the Constitution of India. The decision cannot be called a government decision as understood under Article 154 of the Constitution, though it may satisfy the requirements of authentication. Nevertheless, mere authentication as required under Article 166(2) of the Constitution did not make it a government decision in law nor would it validate a decision which is void ab initio. The validity of the notification will have to be tested with reference to the constitutional provisions and the Business Rules and not by their form or substance. Therefore, this contention of the appellants is liable to be rejected.**"**

This decision does not advance the appellants' case to any extent. It has not been demonstrated by the appellants as to how the decision of the Government to sell the subject property was taken in breach of any Business Rule of the Government. As discussed above, it was a conscious and well considered decision of the Government. In any event, any alleged irregularity in the internal affairs of the Government should not adversely

affect or defeat the accrued rights of a citizen under a binding contract entered into by him/it with the Government.

55. Dressar Rand S.A. v. Bindal Agro Chem Ltd., Supra was relied upon by learned Advocate General. In that case the Hon'ble Supreme Court held that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. It is not intended to bind either party ultimately to enter into any contract. In the present case there is a binding contract. In ***Nikhil Adhesives Limited v. Kandla Port Trust, Supra***, again what was in issue was a letter of intent. Referring to its earlier decision in ***Dressar Rand S.A. v. Bindal Agro Chem Ltd., Supra***, the Hon'ble Supreme Court held that the question whether a letter of intent is merely an expression of an intention to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. In ***Dharma Naika v. Rama Naika, Supra,*** what fell for consideration of the Hon'ble Supreme Court were various provisions of **The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978**. The Hon'ble Supreme Court held on an interpretation of that statute that in order to protect the Scheduled Castes and Scheduled Tribes community, 'transfer' has been defined in that Act to include an agreement for sale under the Act so that even if an agreement for sale is executed by a Scheduled Caste and Scheduled Tribe and possession is delivered to the vendee, it would be open to the authority under Section 5 of that Act to take steps for resumption of the land from the vendee. I do not see the relevance of this decision in the present factual context of this case.

56. Learned Advocate General relied on the decision in ***Haryana Urban Development Authority v. Orchid Infrastructure Developers (P) Ltd., Supra,*** in support of his submission that unless there is acceptance of bid and issuance of allotment letter, no concluded contract comes into existence. Hence, no suit for declaratory relief or mandatory injunction would be maintainable at the instance of the highest tenderer. The highest bidder has no right to have his bid accepted by the tendering authority. No vested right accrues in his favour until a formal contract is executed between the parties. The facts of this case are completely different from the facts of the present case where a binding contract came into existence between the parties.

57. Learned Counsel referred to the decision in ***Shrijee Sales Corporation. v. Union of India, Supra,*** to argue that the principle of estoppel cannot be invoked against the Government to compel the Government to do something which will be against public interest. In the present case the appellants have failed to demonstrate any public interest justifying cancellation of the sale agreement.

58. The decision in ***Union of India v. VVF Ltd., Supra*** was relied upon in support of the proposition that generally public interest requires that the State be held bound by the promise held out by it. However, this does not preclude the State from withdrawing the benefit prospectively if public interest so requires. Again, no public interest could be shown by the appellants in the present case.

59. The decision in ***Sidhbali Steels Ltd and Ors Vs State of Uttar Pradesh, Supra,*** was relied upon to argue that if it can be shown by the

Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the members of promissory estoppel cannot be invoked. The Government can change the policy in public interest. The doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. For the same proposition, reliance was placed on ***Yamuna Expressway Vs Shakuntala Education, Supra***.

The decision in ***Sales Tax Officer and Anr v. Shree Durga Oil Mills and Anr, Supra,*** was relied upon for the proposition that the determination of applicability of promissory estoppel against the Government hinges upon balance of equity for public interest. In case there is a supervening public equity, the Government would be allowed to change its mind; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Once public interest is accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period had been indicated for operation of the promise.

These two cases have no manner of application to the facts of the present case. We have not found any public interest or public equity that could prompt the appellant State to cancel the tender process.

60. ***Renaissance Distilleries and Breweries Ltd. v. State (NCT of Delhi), supra,*** was relied upon to argue that a participant in a tender process is precluded from challenging such process subsequently. This decision has no manner of application to the facts of the present case. The writ petitioners did not challenge the tender process at all. On the contrary, they want the tender process to be carried to its logical conclusion.

61. Paragraphs 19, 22 and 23 of the decision of the Hon'ble Supreme Court in ***R. Hemalatha v. Kashthuri, Supra,*** was referred to by learned Advocate General. In paragraph 19, Section 17 of the Registration Act, 1908, has been reproduced. In paragraph 22, Section 49 of the Registration Act has been extracted. In paragraph 23 it has been held that as per the proviso to Section 49, an unregistered document affecting the immovable property and required by the Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, or as evidence of any collateral transaction not required to be effected by registered document. I fail to understand, with due respect to the learned Advocate General, how this decision helps the appellant.

62. The decision in ***Indore Vikas Praadhikaran (IDA) v. Shri Humud Jain Samaj Trust, Supra,*** was relied upon by learned Counsel for the appellants in support of the proposition that firstly, while exercising power of judicial review, the Court does not sit as an Appellate Court over the decision of the Government but merely reviews the manner in which the decision was made; secondly, no vested right is created in favour of the highest bidder until the bid is accepted by the competent authority in

relation to the property in question; and thirdly, the Government could validly retain power to accept or reject even the highest bid in the interest of public revenue. In the present case, I have found the decision making process to be completely arbitrary. A discernible vested right was created in favour of the writ petitioner company, as discussed above. It is not even the case of the appellants that cancellation of the tender process including the resulting agreement of sale was necessary in the interest of public revenue.

63. In view of the aforesaid, in a nutshell, we see that the Mizo Government took a conscious decision to dispose of the subject property. From the records disclosed before us, it appears that the property is not in use. A tender process was initiated. The writ petitioners participated in such a process and emerged as the highest bidder. They deposited the entire consideration amount along with the applicable penalty money. Such payment was received by the appellant without any reservation. There was copious exchange of correspondence between the parties. An agreement of sale was executed by and between the parties after the clauses of such agreement were finalised following detailed deliberations. At this juncture, in view of the imminent elections, the Government told the writ petitioners that the execution of conveyance would be deferred till after the election. The election resulted in a change of Government. The new dispensation, without even entering into a dialogue with the writ petitioners, unilaterally cancelled the tender process including the agreement of sale. We find no justification for such an act on the part of the appellant. The impugned action of the appellant was unfair, unjust, arbitrary and flagrantly violative of the guarantee under Article 14 of the Constitution of India. The appellants have

not been able to demonstrate any public interest, far less overwhelming public interest, which could justify cancellation of the tender process. The decision of the Government to cancel the entire process appears to us to be a clear case of regime revenge.

64. In view of the aforesaid we see no reason to interfere with the judgment and order under appeal. Accordingly, the appeal stands dismissed. There will be no order as to costs. Time for the appellant to carry out learned Single Judge's order is extended by 8 (eight) weeks from date.

65. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Apurba Sinha Ray, J.) **(Arijit Banerjee, J.)**