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SRI RAM BUILDERS

v.

STATE OF M.P. & ORS.

(Civil Appeal No. 4896 of 2014)

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APRIL 25, 2014.

[SURINDER SINGH NIJJAR AND A.K. SIKRI, JJ.]

Judgments:

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Rule of merger – Held: SLP having been dismissed in limine without recording any reason, judgment of High Court cannot be said to have merged with order of Supreme Court.

Administrative Law:

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Public authority – Chief Secretary of State directed by High Court to settle issue of cancellation of lease in favour of MPRTC – Appellant submitted representation before Chief Secretary – Held: Appellant having not challenged competence of Chief Secretary to decide the issue, cannot be permitted to say that directions issued by Chief Secretary are without jurisdiction.

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Constitution of India, 1950:

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Art. 226 – Writ petition for enforcement of contract with instrumentality of State – Contract between appellant and MPRTC to construct a bus stand-cum-commercial complex on land leased to MPRTC by IDA – Held: Scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State – High Court has rightly observed that appellant can seek appropriate relief by way of a civil suit – High Court in exercise of its jurisdiction under Art. 226 would not normally grant relief of specific performance of a contract.

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Contract:

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Contract between appellant and MPRTC to construct a bus stand-cum-commercial complex on land leased to MPRTC by IDA – Held: At no stage, appellant had any privity of contract with IDA – MPRTC entered into a BOT contract with appellant contrary to the terms and conditions of lease which provided specifically that land shall be used only for bus stand – MPRTC had no legal right to create any further right in favour of appellant with regard to receiving of premium on constructed units sold to third party(ies) – Even otherwise, by efflux of time the said lease period expired on 21.1.2012 — So far as the breach of contract is concerned, appellant will have no cause of action against IDA as there is no privity of contract between the parties – Appellant shall be at liberty to seek its remedies against MPRTC for breach of contract – So far as the specific performance is concerned, the entire purpose of the contract has been frustrated by subsequent events.

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Subsequent Events:

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Contract between appellant and MPRTC to construct a bus stand-cum-commercial complex on land leased to MPRTC by IDA – Subsequently lease in favour of MPRTC expired – Possession of land delivered to IDA – Held: MPRTC would not be in a position to continue with the lease as it is heavily indebted – Property of the Corporation has been attached by various creditors – Even the proposed site where the bus stand-cum-commercial complex was to be constructed is under attachment.

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A lease deed dated 2-11-1981 was entered into between Madhya Pradesh Road Transport Corporation (MPRTC) and Indore Development Authority (IDA). Possession of the land was handed over to MPRTC on 22-1-1982. Initially, the lease was taken by the MPRTC for the purpose of a bus stand. On 8-11- 2001, the Council

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A of Ministers of the State authorized construction of a commercial complex on the land under build, operate and trade (BOT) Scheme. A tender notice was issued on 13.4.2002. The bid of the appellant was found to be the highest. An agreement was entered into between MPRTC and the appellant on 4.2.2004 whereunder the promoters/builders had the right to market the saleable space in the commercial complex and collect premium on such allotment from prospective buyers. On 25.5.2004, MPRTC deposited the lease rental with IDA. A formal lease was executed on 26-5-2004, for 30 years. The leased land (plot) was to be used only for the bus terminal. It was specifically provided that the plot could not be divided. On 18.12.2005, the State Government decided to wind up the MPRTC. However, the proposal of the State Government was not approved by the Ministry of Shipping and Road Transport, Government of India and the State Government was informed of the decision by letter dated 17.11.2008. Meanwhile, when the State Government intended to close down MPRTC, the appellant filed W.P. No. 63 of 2005. On 5.8.2005, the High Court issued direction in the said writ petition, *inter alia*, that the respondent would hand over vacant possession of the premises in question to the appellant. The SLP filed against the directions was dismissed by the Supreme Court. On 2.11.2007, the lease was cancelled by IDA. The cancellation of the lease was challenged by MPRTC, by way of a writ petition, which was disposed of by the High Court on 11.12.2007 by referring the entire issue to the Chief Secretary. The appellant did not challenge the order dated 2.11.2007. It submitted to the jurisdiction of the Chief Secretary by filing a comprehensive representation. The Chief Secretary, on 4.3.2009 decided the matter holding: (I) Order dated 2.11.2007 and notice dated 3.6.2007 for cancellation of lease be cancelled; (II) RTO be ordered to release the land in question for attachment; (III) MPRTC would hand over possession of land in

question to IDA; (IV) The amount received from appellant be returned with interest; and (V) Decision as to use of land would be taken by IDA. The appellant challenged directions III, IV and V of the Chief Secretary in the writ petition before the High Court, which declined to interfere.

Dismissing the appeals, the Court

HELD: 1.1. The dismissal of the SLP filed by MPRTC against the order dated 5.8. 2005 in Writ Petition No.363 of 2005 was a dismissal in *limine* without recording any reason. Therefore, the judgment of the High Court cannot be said to have merged with the order of this Court. [para 47] [714-D]

Indian Oil Corporation Ltd. vs. State of Bihar & Ors. 1986 (3) SCR 553 = 1986 (4) SCC 146; *Kunhayammed & Ors. vs. State of Kerala & Anr.* 2000 (1) Suppl. SCR 538 = 2000 (6) SCC 359; and *Gangadhara Palo vs. Revenue Divisional Officer & Anr.* 2011 (3) SCR 746 = 2011 (4) SCC 602 – relied on.

1.2. Even otherwise, the events after the passing of the order dated 5.8.2005 cannot be ignored. The lease to MPRTC was cancelled on 2.11.2007 by the IDA, which was not challenged by the appellant. The said order was challenged by MPRTC in Writ Petition No.6770 of 2007. On 11.12. 2007, the High Court without issuing notice to the appellant, who was impleaded as respondent No.3, disposed of the writ petition. The High Court noticed that two instrumentalities of the State have chosen to bring their disputes in open court. In such circumstances, the High Court was of the opinion that the entire dispute ought to be decided by the Chief Secretary of the State of Madhya Pradesh by holding meetings with the officers of the respective departments. The appellant submitted a detailed representation dated 20.2.2009 before the Chief Secretary, who revoked the order dated 2.11.2007 and

A notice dated 30.6.2007. R.T.O. was directed to release the leased land from attachment. It is noteworthy that the appellant has not chosen to challenge the said two directions. However, the appellant challenged in the writ petition the directions issued in Clauses III, IV and V, but did not challenge the competence of the Chief Secretary to decide the issues. The appellant cannot be permitted to state that the said directions are without jurisdiction. Under the orders dated 4.3.2009 of the Chief Secretary, possession of the land has already been delivered to IDA. Therefore, it would not be possible at this stage to direct that the mandamus granted on 5.8.2005 in Writ Petition No.636 of 2005 shall be enforced. Further, having submitted to the jurisdiction of the Chief Secretary, it would not be open to the appellant to challenge the order dated 11.12. 2007. [para 50 and 60] [716-F-H-; 717-A-G; 723-F-G]

1.3. In the ultimate analysis, the whole controversy boils down to a breach of contract by MPRTC entered into with the appellant. The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State. [para 51] [717-G-H]

Tata Cellular vs. Union of India 1994 (2) Suppl. SCR 122 = (1994) 6 SCC 651 – referred to.

1.4. The High Court has rightly observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Art. 226 of the Constitution would not normally grant the relief of specific performance of a contract.[para 52] [719-F-G]

Ramchandra Murarilal Bhattad vs. State of Maharashtra 2006 (10) Suppl. SCR 106 = 2007

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(2) SCC 588; *Noble Resources Limited vs. State of Orissa* 2006 (6) Suppl. SCR 53 = 2006 (10) SCC 236 – relied on

1.5. At no stage, the appellant had any privity of contract with IDA. MPRTC entered into a BOT contract with the appellant contrary to the terms and conditions of the lease which provided specifically that the land shall be used only for bus stand. MPRTC had no legal right to create any further right in favour of the appellant with regard to the receiving of the premium on the constructed units sold to third party(ies). [para 53] [720-C-D]

1.6. Even otherwise, the possession of the proposed site was delivered to MPRTC on 22.1.1982. The maximum lease period was for 30 years. By efflux of time the said lease period expired on 21.1.2012. It cannot be said that as the entire rent had been paid, MPRTC would be entitled to automatic renewal of the lease for 90 years. The renewal clause in the lease provides that the renewal shall be with the consent of IDA. This consent by the IDA is not a mere formality. Therefore, it cannot be accepted that the term of the lease has to be understood to have commenced from 26.05.2004. [para 53] [720-D-F]

1.7. Besides, no application has been filed even for formal renewal by MPRTC. In any event, MPRTC would not be in a position to continue with the lease as it is heavily indebted. The property of the Corporation has been attached by various creditors. Even the proposed site where the bus stand-cum-commercial complex was to be constructed is under attachment. The claim made by the appellant is in the nature of damages for breach of contract and/or the relief of specific performance of contract. So far as the breach of contract is concerned, the appellant will have no cause of action against IDA as there is no privity of contract between the parties. The appellant shall be at liberty to seek its remedies against MPRTC for breach of contract. As regards the specific

A performance, the entire purpose of the contract has been frustrated by subsequent events. The lease has come to an end by efflux of time. This apart, MPRTC is heavily indebted and had sought permission of the State and the Union of India to wind up. Furthermore, there was also a
 B breach of the terms and conditions of the lease on the basis of which it has been terminated in accordance with law. [para 54 and 58] [720-G-H; 721-A-B; 722-H; 723-A]

Maritime National Fish, Limited vs. Ocean Trawlers, Limited (1935) A.C. 524; Boothlinga Agencies vs. V.T.C. Poriaswami Nadar (1969) 1 SCR 65 – held inapplicable.

Pollock and Mulla, 14th Ed.Pgs. 887-889 – referred to.

D 1.8. In any event, these are issues which would involve adjudication of disputed questions of fact which can only be suitably adjudicated in the civil suit as directed by the High Court in the impugned judgment. The appellant shall be at liberty to seek its remedies against MPRTC for breach of contract. [para 59] [723-B-C]

E *Rajasthan Housing Board & Anr. vs. G.S. Investments & Anr. 2006 (7) Suppl. SCR 868 = 2007 (1) SCC 477 - relied on.*

F *Meghmala & Ors. Vs. G. Narasimha Reddy & Ors. 2010 (10) SCR 47 = 2010 (8) SCC 383; DDA vs. Durga Chand Kaushish 1974 (1) SCR 535 = 1973 (2) SCC 825; Ramkishore Lal vs. Kamal Narian (1963) Supp (2) SCR 417 and Sahebzada Mohammad Kamgar Shah vs. Jagdish Chandra Deo Dabhal Deo (1960) 3 SCR 604; Provash Chandra Dalui vs. Biswanath Banerjee 1989 (2) SCR 401 = 1989 (1) Suppl. SCC 487; and State of U.P. vs. Lalji Tandon 2003 (5) Suppl. SCR 77 = 2004 (1) SCC 1; Hardesh Ores (P) Ltd. Vs. Hede and Company 2007 (6) SCR 608 = 2007 (5) SCC 614 – cited.*

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Case Law Reference:

2010 (10) SCR 47	cited	para 30	A
1974 (1) SCR 535	cited	para 32	
(1963) Supp (2) SCR 417	cited	para 32	
(1960) 3 SCR 604	cited	para 32	B
1989 (2) SCR 401	cited	para 33	
2003 (5) Suppl. SCR 77	cited	para 33	
1969) 1 SCR 65	held inapplicable	para 35	C
2006(7) Suppl. SCR 868	relied on	para 39	
2007 (6) SCR 608	cited	para 41	
2000 (1) Suppl. SCR 538	relied on	para 41	D
2011 (3) SCR 746	relied on	para 41	
1986 (3) SCR 553	relied on	para 47	
1994 (2) Suppl. SCR 122	referred to	para 51	
2006 (10) Suppl. SCR 106	relied on	para 52	E
2006 (6) Suppl. SCR 53	relied on	para 52	
(1935) A.C. 524.	Held inapplicable	para 56	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4896 of 2014.

From the Judgment & Order dated 27.09.2012 of the High Court of M.P. at Jabalpur in W.P. No. 2937 of 2009.

WITH

C.A. Nos. 4897, 4898-4899, 4900 of 2014.

R.F. Nariman, P.S. Patwalia, Sushil Kr. Jain, Puneet Jain, Christi Jain, Chhaya Kirti, Pratibha Jain for the Appellant.

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A Dushyant Dave, J.P. Cama, Krishnan Venugopal, Sanjay Kapur, Anmol Chandan, Priyanka Das, Lekha Vishwanath, Ashish Wad, Jayashree Wad, Tamali Wad, Kanika Bawéja (for J.S. Wad & Co.), Mishra Saurabh, V. Shukla, Ankit Lal for the Respondents.

B The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. Leave granted.

C 2. The Civil Appeal 4896 of 2014 arising out of S.L.P. (C) No. 35001 of 2012 impugning the judgment of the M.P. High Court at Jabalpur rendered in Writ Petition No. 2937 of 2009. The Writ Petition has been disposed of along with Review Application MCC No. 99 of 2009 and MCC No. 893 of 2008 as well as Contempt Petition No. 469 of 2008. The writ petition has been disposed of with certain directions. Whereas the D aforesaid Contempt Petition and the two Review Petitions have been disposed of in view of the order passed in Writ Petition No. 2937 of 2009.

E 3. The relevant facts leading to the filing of the aforesaid SLP are as follows:-

F 4. In 1979, Respondent No.2 / Madhya Pradesh Road Transport Corporation (hereinafter referred to as "MPRTC") proposed to construct a bus stand at Vijay Nagar, Indore. To this end, an Agreement for Lease dated 2nd November, 1981 was entered into between the Transport Corporation and Respondent No.5/ Indore Development Authority (hereinafter referred to as "IDA"), by which the land belonging to IDA, admeasuring 10 acres situated at Vijay Nagar, Indore (hereinafter referred to as "proposed site") was agreed to be G allotted to the Transport Corporation, initially, for 30 years. In pursuance of the Lease Agreement, possession of the proposed site was handed over to the MPRTC.

H 5. The Council of Ministers, State of Madhya Pradesh, vide order dated 8th November, 2001, authorised the Transport

Corporation to construct a commercial complex on the land A
owned by it or allotted to it on lease, under a Build, Own-
Operate and Transfer ("BOT") Scheme through open tenders.
The revenue generated from the said project(s) was to be used
to discharge the liability of the MPRTC. On 13th April, 2003, a
notice inviting bids for selection of a developer under the BOT B
Scheme was issued and published in the leading newspapers.
In response to this notice, a total number of ten applications
were received; and out of those ten applications, five were
found to have satisfied the eligibility criteria. Appellant was
placed at Sr. No.1 in the list of the candidates satisfying the C
eligibility criteria. Thereafter, a Special Committee was
constituted for the scrutiny of tenders received for construction
of the bus stand/commercial premises under the B.O.T.
Scheme. On 3rd July, 2003, the Special Committee
recommended that since the premium amount offered by the D
bidders was less, further negotiations be held with all the
qualified bidders. Accordingly, the Special Committee held
negotiations with the qualified bidders on 7th July, 2003,
wherein the Appellant's bid for the B.O.T. Scheme was found
to be the highest.

6. MPRTC, after scrutiny of the financial bid and the
proposal submitted by the Appellant for B.O.T. scheme,
approved its bid vide Acceptance Letter dated 3rd October,
2003. In the Acceptance Letter, the Appellant was directed to
deposit 25 per cent amount of the total premium amount of F
Rupees One Crore Sixteen Lac Thirty Seven Thousand Seven
Hundred and Fifty (Rs.1,16,37,750/-) within 15 days of the
issuance of the Acceptance Letter. Accordingly, Appellant
deposited the first installment of Rs.1,16,37,750/-. The appellant
also have to pay a further sum of Rs.7,33,320/- demanded by G
MPRTC as consultancy fees.

7. In pursuance of the Acceptance Letter, an Agreement
dated 4th February, 2004 was entered into between the
Appellant and the MPRTC. This agreement *inter alia* provided H

A that the tender document with scope of work general conditions, special conditions, general specifications, list of brands and offer price bid shall form part of the agreement.

B 8. The MPRTC issued a work order dated 16th March, 2004 to the Appellant for demolishing the existing structure on the land; to be replaced by the commercial complex. On 11th May, 2004, the State Government issued a notification, in exercise of powers under Sections 35(2) and 35(3) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "Adhiniyam"), by which out of 10 C acres of land at Vijay Nagar which had been earmarked for the bus stand (proposed site), 3.59 acres of land was permitted to be used for commercial purposes.

D 9. On 14th May, 2004, the Appellant requested the MPRTC to hand over the possession of the proposed site, so that the structure existing thereon could be demolished and new bus stand-cum-commercial complex could be constructed, in accordance with the terms and conditions of the tender/ agreement.

E 10. On 27TH May, 2004, a lease deed was executed in favour of MPRTC by the IDA upon payment of Rs. 24,27,052/- by the Appellant. This payment was made by the Appellant in order to let the Transport Corporation pay its arrears to IDA. Subsequently on 24th June, 2004, IDA gave a No Objection F Certificate ("NOC") to the MPRTC for the proposed BOT project. Also, the Deputy Director, Town and Country Planning granted approval to the MPRTC for the construction of the Bus Stand and Commercial Complex.

G 11. On 28th June, 2004, Writ Petition No. 801 of 2004 came to be filed by one Suresh Seth, before the Indore Bench of the High Court of Madhya Pradesh, assailing the Notification dated 11th May, 2004. By this notification, as observed earlier, reservation of land use of 3.59 acres was changed by the State H Government. The High Court, vide order dated 9th September,

2004, sought reports from the State Government as well as the MPRTC and IDA. In their respective reports, the State Government, MPRTC and IDA stated that the said BOT project was in public interest and justified the Notification dated 11th May, 2004.

12. Meanwhile on 6th January, 2005, the Joint Director, Town and Country Planning sanctioned the detailed site plan of proposed BOT project. The Appellant also applied the Municipal Corporation, Indore for sanction of the building plan, but the same was not granted on the ground that Writ Petition No. 801 of 2004 was pending before the High Court.

13. On 23rd February, 2005, IDA issued a certificate indicating therein that in respect of the proposed B.O.T. Project, premium as well as 15 years' lease rent had already been deposited. On the basis of the above, the IDA indicated that there shall be no objection, if land in question is mortgaged with any bank, financial institution or the Government.

14. In the meanwhile, there was a move by the State Government for closure of the MPRTC. In this context, the Government of India granted no objection to the State Government on 23rd March, 2005, subject to the condition that the State Government shall ensure and be fully responsible for ensuring compliance of any existing/future order(s) passed by various Courts, including Tribunals, in any/all matters relating to MPRTC.

15. The Appellant filed Writ Petition No. 636 of 2005 in the High Court seeking a direction to the MPRTC to immediately hand over possession of the land in question to the Appellant and grant permission to demolish the existing structure. On 5th August, 2005, the Writ Petition No. 636 of 2005 was disposed of by the High Court with the following directions:

- i. "That petitioner shall deposit the entire balance amount within a period of one month alongwith

- A interest @ 18% per annum, w.e.f. July 2004 when
the 2nd installment became due
- B ii. Upon depositing entire amount the respondent shall
handover the vacant possession to the petitioner,
within two weeks, with a permission, to demolish
the structure as per the agreement. Respondent
shall also pursue the matter with the Municipal
Corporation to handover all part of the premises,
which is in their occupation.
- C iii. Respondent shall deposit the map for sanction
before the competent authorities immediately, if not
submitted, so far. In case the map has already been
submitted the respondent shall give the authority to
the petitioner, to pursue the matter before the
D competent authorities for obtaining the permission
and shall extend all the assistance for the purpose
of obtaining permission.
- E iv. After taking possession, the petitioner shall
construct and hand over the construction property
to the respondent as per terms of the tender notice/
agreement.
- F v. The competent authorities shall consider the
application of the respondent for permission and
shall grant the permission in accordance with law.”

G The Appellant deposited Rs.2,95,03,752/- towards
premium and a further sum of Rs.27,53,536/- towards interest
to the MPRTC, in terms of the aforesaid order. Thereafter,
again, the Appellant requested the Respondents herein to hand
over the possession of the proposed site to the appellant. A
Notice was issued by the appellant to the MPRTC dated 12th
September, 2005, requesting to hand over possession of the
land, in terms of the directions of the High Court dated 5th
H August, 2005.

16. At that stage, the Principal Secretary, Transport Department/Respondent No. 2 herein, recorded a note dated 15th September, 2005, questioning the justification for constructing bus stand and observed that the construction was not in public interest particularly when a decision had been taken by the State Government to wind up the MPRTC. Soon thereafter, the MPRTC filed Special Leave Petition No. 20038 of 2005 before this Court challenging the order dated 5th August, 2005 passed by the High Court. This SLP was dismissed by this Court vide order dated 7th October, 2005.

17. Possession of the proposed site still not having been delivered, the Appellant filed Contempt Petition No. 466 of 2005 (renumbered as Contempt Petition No. 469 of 2008) before the High Court of Madhya Pradesh. In this Contempt Petition, the Appellant moved an application for injunction on 11th November, 2005 (I.A. No. 1060 of 2005) restraining the MPRTC from handing over the possession of the proposed site to the State Government for establishing the Regional Transport Office. The High Court on 14th November, 2005, directed MPRTC to maintain status quo and not to handover the possession of the proposed site or to create any 3rd party interest. In spite of the aforesaid order, the possession of the proposed site was handed over by the MPRTC to the Transport Department on 16th November, 2005, for opening the R.T.O. A test centre for driving licences has been established on the land meant for the commercial complex.

18. In the meantime, State of Madhya Pradesh moved an application, MCC No. 1072 of 2005, before the High Court, seeking recall of the order dated 5th August, 2005 passed in Writ Petition No. 636 of 2005. The MPRTC also filed MCC No. 5 of 2006, seeking identical relief, i.e. recall of order dated 5th August, 2005. It was claimed that a decision had been taken by the M.P. State Government to wind up MPRTC. On 23rd March, 2005, MPRTC had been issued a notice of demand for recovery of Rs.2387/- crores as Tax dues. The property

A earmarked for the commercial complex, was one of the
 properties seized by the State Authorities on 19th July, 2005.
 Since the possession was already taken by the State, no
 direction for delivery of possession to the Appellant could have
 been issued on 5th August, 2005. These facts could not be
 B placed before the High Court, as the State was not impleaded
 as a party in Writ Petition No. 636 of 2005.

19. Thereafter, Appellant moved I.A. No. 7064 of 2006 in
 the Contempt Petition before the High Court to implead the
 Transport Department - Respondent No. 2 herein, as a
 C respondent in the Contempt Petition. This I.A. was allowed by
 the High Court by order dated 6th October, 2006. During the
 course of hearing of this Contempt Petition, Appellant moved
 another I.A. No. 6906 of 2007, seeking a direction to the
 respondents to place on record the following:

D “1(a) On what date and which inward number the order of
 the government directing the RTO, Indore to attach the
 MPSRTC Property at Indore was received by RTO, Indore
 pursuant to which the so called attachment dated 9.7.2005
 E was made.

1(b) On what date, by which letter number and under what
 dispatch number the fact of attachment and acquisition of
 property/land was sent by RTO, Indore to the State
 Government (Original Letters, original dispatch register).
 F And on what date, by which the inward number this
 information was received.”

According to the Appellant, the respondents could not
 furnish the said information to the Court, despite having sought
 G a number of opportunities in that regard.

20. Meanwhile on 2nd November, 2007, the IDA cancelled
 the lease of the MPRTC for violation of the lease terms by
 running the RTO. Cancellation of the lease was challenged by
 the MPRTC through Writ Petition No. 6770 of 2007 in the High
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Court of Madhya Pradesh. On 11th December, 2007, the High Court without issuing notice to the Appellant, who was impleaded as Respondent No.3, disposed of the Writ Petition with the following observations:-

“When two instrumentalities of the State, such as in the present case, choose to bring their disputes in open court, the loss is of the general public. The public confidence in the credibility of the State Govt. and its various wings/ functionaries and its instrumentalities comes at stake.

In these circumstances, I do not find that this Court should continue with the proceedings in the present Petition. I deem it appropriate to request the Chief Secretary, State of Madhya Pradesh, to take up the matter at his level and after holding a meeting with the Principal Secretary, Transport Department, Principal Secretary, Housing and Environment Department and the Managing Director of the M.P. Road Transport Corporation Ltd. take such further action, as may be deemed appropriate, in the facts and circumstances of the case. However, the Chief Secretary shall ensure that the officers of the State Government and various other instrumentalities of the State Government are not allowed to bring out their inter se disputes in public in future”.

21. On 17th November, 2008, the Central Government, Department of Transport & Highways informed the State Government of Madhya Pradesh that the request for permission for closure of MPRTC under the provisions of the Road Transport Corporation Act, for which earlier no-objection had been given, was being declined keeping in view the decision of Ministry of Labour & Employment, and that it would now have to continue its current operations.

22. The Appellant submitted representation dated 20th February, 2009, wherein attention of the Chief Secretary was drawn to the pendency of the review petitions filed by the State

A of Madhya Pradesh and the MPRTC; and the Contempt
 Petition filed by the Appellant and the order passed therein,
 whereby status quo was ordered to be maintained.

B 23. In spite of the aforesaid representation, Respondent
 No. 1 held the meeting on 4th March, 2009 as directed by the
 High Court, wherein it was *inter alia* decided as under:

C “I. Order dated 02.11.2007 and notice dated
 30.06.07 for cancellation of lease of the land in
 question of the Transport Corporation by the I.D.A.
 be cancelled.

II. R.T.O. be ordered for releasing the land by the
 Transport Department for attachment.

D III. The M.P. Road Transport Corporation shall
 hand over land in question to I.D.A.

IV. The amount which has been received by the
 Transport Corporation from Sh. Ram Builders shall
 be returned along with interest to Sh. Ram Builder.

E V. Decision with respect to further use and
 management of the land shall be taken by I.D.A.”

F 24. Aggrieved by Clause (III), (IV) and (V) of the aforesaid
 decision, Appellant preferred Writ Petition No. 2937 of 2009
 before the High Court of Madhya Pradesh. It was *inter alia*
 contended that the directions in aforesaid clauses were in
 violation of order dated 5th August, 2005 of the High Court and
 in violation of the principles of natural justice.

G 25. The High Court disposed of the Writ Petition on 27th
 September, 2012 with the following observations:-

H “15. The order dated 5.8.2005 passed in Writ Petition No.
 636/2005 directing the corporation to deliver possession
 of site to the petitioner cannot be implemented after the

lease deed was cancelled by the IDA. It is this cancellation which became the subject matter of writ petition No.6770/2007 and the writ petition was decided vide order dated 11.12.2007 by another Single Judge Bench directing the Chief Secretary for resolving the dispute. As already mentioned above, the petitioner did not challenge the order dated 11.12.2007 and submitted a detailed representation dated 20.02.2009 to the Chief Secretary. The impugned decision taken by the Chief Secretary is in pursuance of the directions given by the High Court in Writ petition No. 6770/2007 in which the petitioner was also a party. There is, thus, no violation of the principles of natural justice. The decision reached by the Chief Secretary directs that the entire amount paid by the petitioner be returned to it with interest. The decision does not fix the rate of interest but we feel that 9% will be the proper interest having regard to all the circumstances. In view of the direction to return the amount with interest, as decided by us, there would be apparently no loss to the petitioner. The respondents are directed to return the amount with interest within four months from today. If the petitioner still feels that there has been a breach of contract, it can pursue the remedy of specific performance or damages before a competent civil court. We, therefore, decline to interfere with the decision of the Chief Secretary except fixing the rate of interest, as indicated above."

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26. In view of the aforesaid directions, the High Court also disposed of the Contempt Petition No. 469 of 2008, Review Application Nos. MCC No. 99 of 2009 and MCC No. 893 of 2008 without any further directions.

27. We have heard the learned counsel for the parties.

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28. Mr. R.F. Nariman and Mr. P.S. Patwalia, learned senior counsel, appearing for the appellant submitted that the reasoning adopted by the High Court in Paragraph 15 of the impugned judgment, which has been reproduced above, was

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A not even supported by the respondents. The first reason given by the High Court is that the Order dated 5th August, 2005 in Writ Petition No. 636 of 2005 can not be implemented after cancellation of lease deed by the IDA. This, according to the learned senior counsel, is without any basis as by the order
B dated 22nd February, 2009, the Chief Secretary had cancelled the lease deed. Therefore, the order dated 2nd November, 2007 having been nullified, the lease in favour of MPRTC revived. This would also revive the application of MPRTC to cull the agreement with the appellant. The second reason given by
C the High Court, according to Mr. Nariman and Mr. Patwalia is that the order dated 11th December, 2007 passed in Writ Petition No. 6770 of 2007 was not challenged by the appellant, can not be supported in law. It is pointed out by the learned senior counsel that the aforesaid writ petition was filed by
D MPRTC challenging the order of cancelling the deed in its favour by the IDA. The appellant was not at all involved in the aforesaid *lis*. In any event, the High Court had not passed any order on merits. It had merely left it for the Chief Secretary to decide the issue. Therefore, no cause had arisen to the
E appellant to challenge the order dated 11th December, 2007. It is further pointed out that the Chief Secretary in fact decided the substance of the writ petition. Substance of the grievance raised in the writ petition was decided in favour of MPRTC by setting aside the order of cancellation of the lease by the IDA. It is pointed out by the learned senior counsel that IDA has not
F challenged the order of the Chief Secretary cancelling the direction of IDA with regard to the cancellation of the lease.

29. Learned senior counsel further submitted that the Chief Secretary was expected to take a decision in accordance with law, i.e., in accordance with the order of the High Court that has become final and binding and not contrary to that. Furthermore,
G the order of the Chief Secretary on directions (III), (IV) and (V), which affect the rights of the appellant was challenged in the writ petition in which the impugned judgment has been passed.
H According to the appellant, the decision Nos. (I) and (II) were

correct and, therefore, there were no occasion to challenge the same. The directions (III), (IV) and (V) are contrary to Directions (I) and (II) and were beyond the scope of the controversy raised in Writ Petition No. 6770 of 2007, which had been referred to the Chief Secretary by the High Court. The order of the Secretary has been passed without issuing any notice to the appellant, even though in the writ petition, the appellant was impleaded as Respondent No. 3. It is pointed out by the learned senior counsel that by way of abundant caution, the appellant has challenged the order dated 11th December, 2007, passed in Writ Petition No. 6770 of 2007 in S.L.P.(C) No. 36887 of 2012.

30. Next it was submitted by the learned senior counsel that the actions of Madhya Pradesh Road Transport Corporation (Respondent No.3) are in gross contempt of the orders dated 5th August, 2005, which have not been purged till date. The aforesaid order has become final after the dismissal of SLP (C) No. 20038 of 2005 on 7th October, 2005. It is submitted that the Review Petition MCC No. 99 of 2009 filed on 2nd January, 2006 after dismissal of the aforesaid SLP on 7th October, 2005 is an abuse of process and not maintainable. In support of this submission, learned senior counsel relies on *Meghmala & Ors. Vs. G. Narasimha Reddy & Ors.*¹ (Paras 25 and 26). Similarly, the Review Petition MCC No. 893 of 2008 is not maintainable for the same reason. In any event, the Review Petition was not decided on merits, which was disposed of in view of the impugned order passed in the Writ Petition with regard to the cancellation of the lease.

31. Thereafter, very detailed submissions have been made on the construction of the lease deed. However, it must be noticed here that the manner in which these submissions have been advanced before us bear no resemblance to the manner in which these submissions were made before the High Court.

1. (2010) 8 SCC 383.

A 32. Mr. R.F. Nariman has also submitted that the term of
 lease has to be understood to have commenced from
 26.05.2004, when the IDA executed a formal lease in favour
 of MPRTC. Further, learned senior counsel submitted that the
 possession of the site in terms of the lease cannot be held to
 B be given on 22.1.1982, when the agreement to lease was
 executed. It was further submitted that where a literal reading
 of the lease leads to an absurdity, the court has the power to
 read it reasonably. Such a reasonable reading, according to
 Mr. Nariman, would support the aforesaid submission, i.e. the
 lease commences from 26.05.2004. In this context, learned
 C senior counsel rely upon the following cases: *DDA vs. Durga
 Chand Kaushish*²; *Ramkishore Lal vs. Kamal Narian*³ and
*Sahebzada Mohammad Kamgar Shah vs. Jagdish Chandra
 Deo Dabhal Deo*.⁴ These cases reiterate the well established
 D principles of law relating to the construction of deeds, which are
 as follows: first, that the intention of the parties to a grant must
 be ascertained first and foremost from the disposition clause.
 Second, clear disposition by an earlier clause will not be
 allowed to be cut down by a later clause; and third, that a deed,
 being a grantor's document, has to be interpreted strictly
 E against him and in the favour of the grantee.

33. Mr. Nariman also submitted that the Respondents
 cannot rely upon Clause 5E of the Agreement to Lease, after
 the execution of the Lease Deed. Substantiating this, it was
 F submitted that the Renewal Clause in the Agreement to Lease
 stood superseded by the express terms of the Lease Deed
 dated 26.05.2004. In this context, he relied upon *Provash
 Chandra Dalui vs. Biswanath Banerjee*⁵ and *State of U.P. vs.
 Lalji Tandon*.⁶

- G _____
2. (1973) 2 SCC 825..
 3. (1963) Supp (2) SCR 417.
 4. (1960) 3 SCR 604.
 5. (1989) Supp (1) SCC 487 (Para 14).
 - H 6. (2004) 1 SCC 1 (Para 13).

34. Further according to Mr. Nariman, the terms of the Agreement to Lease cannot be relied upon when a specific provision has been provided in the Lease Deed itself, which provides for extension of the lease. Clause (1) of the Lease enables the IDA to extend the lease for which neither the renewal nor permission of the State Government is necessary.

A
B

35. The argument of the Respondents that the Agreement of the MPRTC with the Appellant has been frustrated was sought to be countered by Mr. Nariman. It was submitted that self induced frustration cannot be a basis to frustrate a valid agreement. In this context, it was contended that the submission of the Respondents that MPRTC is being wound up is not tenable since such winding up is the result of an act of the Party itself. Reliance placed upon *Boothlinga Agencies vs. V.T.C. Poriaswami Nadar*⁷, wherein it was *inter alia* held that "the doctrine of frustration of contract cannot apply where the event which is alleged to have frustrated the contract arises from the act or election of a party." It was also contended that commercial exigencies can never lead to frustration. Reliance was placed upon Pollock and Mulla, 14th Ed. Pgs. 887-889.

C
D
E

36. Mr. Nariman also submitted that the submission of the IDA that the Appellant has no privity of contract with the Petitioner is not correct. Further, the submission of the IDA that the Agreement to Lease was only for a bus stand and no permission was granted by the IDA to MPRTC for constructing a commercial project has been submitted to be incorrect by Mr. Nariman. Another factual submission advanced by the Appellant is that the submission of the Respondents that MPRTC is being wound up is not correct.

F

37. Lastly, Mr. Nariman contended that on the balance of equity, the MPRTC ought to be directed to comply with the directions of the High Court contained in order dated 05.08.2005, and put the Appellant in possession of the plot.

G

7. (1969) 1 SCR 65, at Page 79.

H

A 38. Mr. J.P. Cama, learned senior counsel appearing for
 the 5th Respondent - Indore Development Authority has
 submitted that by an agreement dated 2nd November, 1981,
 IDA entered into a lease in respect of 10 acres of his property
 situated in its Scheme No. 54 at Indore in favour of MPRTC.
 B Possession of the land was handed over on 22nd January,
 1982. The first installment of the premium and leased rent was
 deposited on 3rd October, 1980. The lease was to be for a
 period of 30 years subject to renewal. The lease was to subsist
 in the first instance upto 21st January, 2012 but was terminated
 C on 2nd July, 2007, i.e., before the expiry of the period of 30
 years from the date of possession. MPRTC had challenged the
 aforesaid decision in Writ Petition No. 6770 of 2007. Since the
 appellant had no privity of contract with IDA, it could not have
 challenged the termination of the lease on 2nd July, 2007 and
 D did not do so. Since the dispute was between two Government
 organizations, the High Court rightly remitted the matter to the
 Chief Secretary of the State of Madhya Pradesh for resolution.
 Even though, the appellant was not a party to the aforesaid writ
 petition filed by MPRTC, it had submitted a representation on
 E 22nd February, 2009. The directions issued by the Chief
 Secretary were challenged in Writ Petition No. 2937 of 2009
 in which the impugned judgment has been passed. The
 submissions of Mr. Cama in brief are:-

(i) That there was no privity of contract between IDA
 F and Sri Ram Builders, i.e., the appellant. Therefore,
 the High court has rightly granted liberty to the
 appellant to file a Civil Suit, if so advised.

(ii) The cancellation of the lease by IDA has become
 G final. This has not been challenged by the appellant.
 Therefore, no Mandamus can be issued to IDA, to
 permit the appellant to construct the Bus Stand and
 commercial-cum-residential complex. Mr. Cama
 further submitted that the lease commences from
 H 22nd January, 1982 when possession was handed
 over and expired on 21st January, 2012 upon

completion of 30 years period of the lease. It is further submitted that MPRTC can not claim automatic renewal of the lease. It would be subject to the consent of IDA and the State Government. No application had been filed for such extension. In any event, the lease has come to an end by the efflux of time. Mr. Cama further submitted that IDA had given a lease in favour of MPRTC. Under the said lease, MPRTC had no authority to create further third party rights. Wrongly, according to Mr. Cama, MPRTC under the tender conditions / contract entered into with the appellant had given it the right to sell proposed commercial premises, and to collect premium on such allotment from prospective buyers. The MPRTC had only been given NOC for completing the bus stand and the commercial-cum-residential complex on B.O.T. basis. MPRTC had no legal right, being a sub-lessee higher than the lessee. The next submission of Mr. Cama is that MPRTC has completely wound up its operations; they have sold all their buses. Therefore, it can not be compelled to get the bus stand constructed from the appellant. Countering the submission of Mr. Nariman and Mr. Patwalia, he submits that the order of the High Court dated 5th August, 2005 directing MPRTC to hand over the possession to the appellant can not be relied upon by the appellant, the said order has not become final inasmuch as:-

- (i) IDA was not a party in the said proceedings;
- (ii) The HC had not decided the matter in relating to lease of the IDA
- (iii) State Govt had filed recall application – which was pending disposal before HC

A (iv) Even MPRTC filed a recall application wherein they
 B pleaded that the entire order was based on the
 statement made by their counsel that they are not
 in a position to pay Sri Ram builders, however they
 made a statement, in recall application that they are
 now willing to repay Sri Ram and hence prayed for
 recall of order dated. 5.8.05 – which was also
 pending;

C (v) Where SLP is dismissed without giving reasons,
 there is no merger of the judgment of the HC with
 the order of SC. Hence judgment of HC can be
 reviewed, even after dismissal of SLP. Reliance
 was placed upon *Gangadhara Palo vs. The
 Revenue Divisional Officer & Anr.* [2011 (4) SCC
 602]

D 39. It is submitted that construction of bus terminal on
 B.O.T. basis was a commercial transaction between MPRTC
 and the appellant. Even if the cancellation is not legal, this Court
 will not interfere in this decision as it was purely contractual in
 nature. He relies on the judgments of this Court in the case of
 E *Rajasthan Housing Board & Anr. vs. G.S. Investments & Anr.*⁸
 and *Ramchandra Murarilal Bhattad & Ors. vs. State of
 Maharashtra & Ors.*⁹

F 40. It is submitted that the arguments of the appellant that
 the lease, which was granted in the first instance for 30 years
 was intended to continue (automatically) for a further period of
 30 years in terms of clause 1 of the aforesaid lease deed is
 untenable. Even otherwise the submission can not be
 considered as there were no pleadings to this effect either in
 the original petition or in the grounds of SLP. In any event,
 G according to the respondents, the initial period of the lease was
 for 30 years. Furthermore, Paragraph/Clause 5(E) of the
 agreement to lease makes it clear that after termination of the

8. (2007) 1 SCC 477.

H 9. (2007) 2 SCC 588.

lease period, it can be extended after renewal; that too only with the consent of MPRTC and IDA and further obtaining sanction of the State Government. According to Mr. Cama, two short questions would arise namely:-

- (i) From what date, the period of 30 years is to be counted?
- (ii) Whether there is an automatic extension of lease?

41. It is according to Mr. Cama, admittedly possession of the property was given to MPRTC on 21st January, 1982. This premium, as well as the first lease rent had been deposited on 3rd October, 1980. It is also an admitted position that the lease rent for the entire period of 1982 onwards has in fact been paid by deposit of premium plus 15 years lease rent. It is reiterated by Mr. Cama that admitted date of actual possession by the lesser is 22nd January, 1982. Therefore, the first period of lease expired by efflux of time on 21st January, 2012. With regard to the renewal of the lease, it is submitted that even such renewal is on specific sanction of the IDA and the State Government. He submits that the concept of extension of the lease is distinguishable from the concept of renewal. In support of this submission, Mr. Cama relies on *Hardesh Ores (P) Ltd. Vs. Hede and Company*¹⁰ (Pages 627 & 628). He submitted that the agreement of lease used both words extension and renewal but extension is always made *subject to renewal*. Mr. Cama further pointed out that Order dated 5th August, 2005 has not become final and binding on all parties on the dismissal of the SLP filed by the MPRTC. The aforesaid SLP was dismissed in limine. Therefore, the judgment of the High Court can not be said to have merged with the order of this Court. In support of the submission, Mr. Cama relies on *Kunhayammed & Ors. vs. State of Kerala & Anr.*¹¹ and *Gangadhara Palo vs. Revenue Divisional Officer & Anr.*¹²

10. (2007) 5 SCC 614.

11. (2000) 6 SCC 359.

12. (2011) 4 SCC 602 (Para 7).

A 42. With regard to the submission relating to the order
passed by the Chief Secretary, Mr. Cama submits that the
appellant has to either accept or challenge the order in toto. If
the complete order is accepted, the termination of the lease is
set aside, the property would return to IDA with compensation
B to the appellant. In the event, the order is completely set aside,
the termination of the lease remains in force and the property
returns to the IDA. In either case, the land returns to the IDA.
Mr. Cama submits that the order passed by the Chief Secretary
is a comprehensive order and can not be permitted to be
C challenged in a truncated manner.

43. We have considered the submissions made by the
learned counsel for the parties.

44. Before we proceed to examine the submission made
D by Mr. Nariman, it would be appropriate to cull out the bare
essential facts for the determination of the controversy herein.
A lease deed dated 2nd November, 1981 was entered into
between MPRTC and IDA. The possession of the land was
handed over to MPRTC on 22nd January, 1982. Initially, the
E lease was taken by the MPRTC for the purpose of a bus stand.
It appears that no final decision was taken till 8th November,
2001 when the Council of Ministers of the State Government
authorized the construction of a commercial complex on the
land under BOT Scheme. A tender notice was issued on 13th
F April, 2002. On 7th July, 2003, the bid of the appellant was
found to be the highest. The amount as mentioned in Para 6
earlier, was duly paid by the appellant. A separate agreement
was entered into between MPRTC and the appellant on 4th
February, 2004 which read alongwith the tender document
G provided as under:

“The successful promoters/builders will have the right to
market the saleable space made available to him on
different floors in the commercial complex, collect premium
on such allotment from prospective buyers.”

H

45. On 25th May, 2004, MPRTC deposited the lease rental with IDA. A formal lease was executed on 26th May, 2004. As noticed earlier, the lease was for 30 years. The leased land (plot) was to be used only for the bus terminal. It was specifically provided that the plot cannot be divided. The possession of the plot had been received on 22nd January, 1982. The lease also provided that the Rules published in the gazette on 16th December, 1977 shall be binding on the lessee. Rule 40 of the aforesaid Niyam/Rules read as under :

“The lessee may take possession of the plot on the date fixed or notified to him for taking over possession of the plot and the lease of the plot shall commence from the date irrespective of the fact “whatsoever, possession of the plot has been taken or not and the lessee shall pay all rates and taxes where leviable the owner or the lessee from the date.”

46. On 24th June, 2004, IDA gave its no objection for bus terminal-cum-commercial complex to be constructed under the BOT Scheme. On 18th December, 2005, the State Government decided to wind up the MPRTC. The proposal of the State Government was not approved by the Ministry of Shipping and Road Transport, Government of India. On 17th November, 2008, a letter was issued informing the State Government that the Ministry of Labour had declined to grant permission for closure under Section 25-O of the Industrial Disputes Act, 1947. On 5th August, 2005, the directions were issued by the High Court in the writ petition filed by the appellant. SLP filed against these directions was dismissed by this Court on 7th October, 2005. In the contempt petition filed by the appellant for non compliance of the directions of the High Court dated 5th August, 2005, MPRTC was restrained from handing over the possession of the property or to create third party interest/rights. On 2nd November, 2007, the lease was cancelled by IDA on the ground that MPRTC had violated the prescribed conditions by handing over the possession to RTO. As noticed earlier, the

A cancellation of the lease was challenged by MPRTC, by way
of a writ petition, which was disposed of by the High Court on
11th December, 2007 by referring the entire issue to the Chief
Secretary. The appellant did not challenge the order dated 2nd
November, 2007 but submitted to the jurisdiction of the Chief
B Secretary by filing a comprehensive representation. Even in the
writ petition in which the impugned order had been passed, the
appellant had only challenged Clauses III, IV and V of the order
of the Chief Secretary.

C 47. We shall now consider the submission of Mr. Nariman,
seriatim. Can the order dated 5th August, 2005 be implemented
and should the appellant be permitted to go ahead with the
construction of commercial complex-cum-bus stand. Undoubtedly,
the SLP filed by MPRTC against the order dated
5th August, 2005 in Writ Petition No.363 of 2005 has been
D dismissed by this Court, but it was a dismissal in *limine* without
recording any reason. Therefore, the judgment of the High Court
cannot be said to have merged with the order of this Court. In
Kunhayammed (supra), this Court considered the effect of the
dismissal of the SLP in *limine*. This Court reiterated the ratio
E laid down by this Court in *Indian Oil Corporation Ltd. vs. State
of Bihar & Ors.*¹³ which considered the impact of the order
dismissing the SLP with the following expression:

“The special leave petition is dismissed.”

F Considering the aforesaid order of this Court in *Indian Oil
Corporation Ltd.* (supra), it has been observed as follows:

G “*The effect of a non-speaking order of dismissal of a
special leave petition without anything more indicating
the grounds or reasons of its dismissal must, by
necessary implication, be taken to be that this Court had
decided only that it was not a fit case where special leave
should be granted. This conclusion may have been
reached by this Court due to several reasons. When the*

H ¹³. (1986) 4 SCC 146.

order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. *It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork.*

48. In reiterating the aforesaid observation, this Court in *Kunhayammed* (supra) observed as follows:

“27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared.”

49. The aforesaid ratio in *Kunhayammed* (supra) is reiterated by this Court in *Gangadhara Palo* (supra):

A “7. The situation is totally different where a special leave
 petition is dismissed without giving any reasons
 whatsoever. It is well settled that special leave under Article
 136 of the Constitution of India is a discretionary remedy,
 B and hence a special leave petition can be dismissed for
 a variety of reasons and not necessarily on merits. We
 cannot say what was in the mind of the Court while
 dismissing the special leave petition without giving any
 reasons. Hence, when a special leave petition is
 C dismissed without giving any reasons, there is no merger
 of the judgment of the High Court with the order of this
 Court.”

50. Even though the order of the High Court had not
 merged with the order passed by this Court in dismissing the
 SLP, can the appellant be deprived of the benefit of the order
 D passed by the High Court on 5th August, 2005? Mr. Nariman
 has submitted that the order passed by the Chief Secretary on
 11th December, 2007 even though on directions issued by the
 High Court in Writ Petition No.6770 of 2007 cannot nullify the
 directions given by the High Court earlier. The order passed
 E by the Chief Secretary in its executive capacity cannot have the
 effect of nullifying the order passed by the High Court on 5th
 August, 2005. On first blush, the submission made by Mr.
 Nariman seems to be very attractive, but factually it has to be
 noticed that much more water has flown under the bridge since
 F the passing of the order dated 5th August, 2005. Subsequently,
 the lease to MPRTC was cancelled on 2nd November, 2007
 by the IDA. The appellant did not challenge the order dated 2nd
 November, 2007 passed by the IDA. The aforesaid order was
 challenged by MPRTC in Writ Petition No.6770 of 2007. On
 G 11th December, 2007, the High Court without issuing notice to
 the appellant, who was impleaded as respondent No.3,
 disposed of the writ petition. The High Court noticed that two
 instrumentalities of the State have chosen to bring their
 disputes in open court. In such circumstances, the High Court
 H was of the opinion that the entire dispute ought to be decided.

by the Chief Secretary of the State of Madhya Pradesh by holding meetings between the Principal Secretary of the Transport Department, Principal Secretaries of Housing and Environment Department and the Managing Director of the MPRTC. The appellant accepted the aforesaid order passed by the High Court and submitted a detailed representation before the Chief Secretary on 20th February, 2009. The Chief Secretary in the meeting held on 4th March, 2009 took a comprehensive decision on all the issues involved in writ petition with regard to the cancellation of the lease deed in favour of MPRTC by IDA. The Chief Secretary revoked the order dated 2nd November, 2007 and notice dated 30th June, 2007 cancelling the lease of land in question granted to the MPRTC by IDA. RTO was directed to release the leased land from attachment. It is noteworthy that the appellant has not chosen to challenge the aforesaid two directions. However, as noticed earlier, the appellant challenged the directions issued in Clauses III, IV and V in Writ Petition No.2937 of 2009 in the High Court of Madhya Pradesh. It was, *inter alia*, contended that the directions in the aforesaid clauses were in violation of the order dated 5th August, 2005. It is noteworthy that even in this writ petition, challenging the direction Nos. III, IV and V issued by the Chief Secretary, the appellant had not challenged the competence of the Chief Secretary to decide the issues. The appellant cannot now be permitted to state that the aforesaid directions are without jurisdiction. Under the orders of the Chief Secretary dated 4th March, 2009, the possession of the land has already been delivered to IDA. Therefore, it would not be possible at this stage to direct that the mandamus granted on 4th August, 2005 in Writ Petition No.636 of 2005 shall be enforced.

51. In the ultimate analysis, the whole controversy boils down to a breach of contract by MPRTC entered into with the appellant. The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State. The parameters

A within which power of judicial review can be exercised, has been authoritatively laid down by this Court in a number of cases.

B In *Tata Cellular vs. Union of India*,¹⁴ this court upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles:

C "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

F * * *

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

G (1) Whether a decision-making authority exceeded its powers?

(2) committed an error of law,

H ¹⁴. (1994) 6 SCC 651.

- (3) committed a breach of the rules of natural justice, A
(4) reached a decision which no reasonable tribunal would
have reached, or
(5) abused its powers. B

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, C the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. D
(ii) Irrationality, namely, Wednesbury unreasonableness.
(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time." E

52. In our opinion, the case put forward by the appellant would not be covered by the aforesaid ratio of law laid down by this Court. The High Court, in our opinion, has rightly F observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not normally grant the relief of specific performance of a contract. This view is supported by *Ramchandra Murarilal Bhattad vs. State of Maharashtra*.¹⁵ This Court relying upon the earlier decision in *Noble Resources Limited vs. State of Orissa*¹⁶ held as under: G

15. (2007) 2 SCC 588.

16. (2006) 10 SCC 236. H

A “50. ...this Court would not enforce specific performance of contract where damages would be adequate remedy. It was also held that conduct of the parties would also play an important role.

B 51. The expansive role of courts in exercising its power of judicial review is not in dispute. But as indicated hereinbefore, each case must be decided on its own facts.”

C 53. At no stage, the appellant had any privity of contract with IDA. MPRTC entered into a BOT contract with the appellant contrary to the terms and conditions of the lease which provided specifically that the land shall be used for constructing a bus stand—cum commercial complex. MPRTC had no legal right to create any further right in favour of the appellant with regard to the receiving of the premium on the constructed units sold to third party(ies). Even otherwise, the appellant seems to be *flogging a dead horse*. Admittedly, the possession of the proposed site was delivered to MPRTC on 22nd January, 1982. The maximum lease period was for 30 years. By efflux of time the aforesaid lease period expired on 21st January, 2012. We do not accept the submission of Mr. Nariman that as the entire rent had been paid, MPRTC would be entitled to automatic renewal of the lease for 90 years. The renewal clause in the lease subsequently provides that the renewal shall be with the consent of IDA. This consent by the IDA is not a mere formality. We are, therefore, not inclined to accept the submission of Mr. Nariman that the term of the lease has to be understood to have commenced from 26.05.2004.

D 54. This apart, there is much substance in the submission of Mr. Cama that no application has been filed even for this formal renewal by MPRTC. In any event, MPRTC would not be in a position to continue with the lease as it is heavily indebted presently, to the tune of Rs. 3500 crores. The property of the corporation has been attached by the various creditors. Even the proposed site where the bus stand – cum – commercial complex was to be constructed is under attachment. The claim

made by the appellant is in the nature of damages for breach of contract and/or the relief of specific performance of contract. So far as the breach of contract is concerned, the appellant will have no cause of action against IDA as there is no privity of contract between the parties. So far as the specific performance is concerned, it appears that the entire purpose of the contract has been frustrated by subsequent events.

55. We are also not much impressed by the submission of Mr. Nariman that the doctrine of frustration cannot be applied here since it is a "self induced frustration". In the case of *Boothalinga Agencies* (supra), this Court upon comparing and contrasting the English Law and the statement of Indian Law contained in Section 56 of the Indian Contract Act summed up the legal position with regard to frustration of contract as follows:-

"The doctrine of frustration of contract is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. It should be noticed that Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.

In English law therefore the question of frustration of contract has been treated by courts as a question of construction depending upon the true intention of the parties. In contrast, the statutory provisions contained in Section 56 of the Indian Contract Act lay down a positive rule of law and English authorities cannot therefore be of direct assistance, though they have persuasive value in showing how English courts have approached and decided cases under similar circumstances."

We fail to see how the aforesaid observations are of any relevance in the facts and circumstances of this case.

A 56. We are also unable to accept the submission of Mr.
 Nariman that the Doctrine of Frustration would not apply in the
 facts of this case as it is a self induced frustration. The aforesaid
 expression seems to have been borrowed from certain
 observations made by the Judicial Committee in the case of
 B *Maritime National Fish, Limited vs. Ocean Trawlers, Limited*¹⁷.
 The facts of that case, as narrated in *Boothalinga Agencies*
 (supra), would indicate that in that case, the respondents
 chartered to the appellants a steam trawler fitted with an otter
 trawl. Both the parties knew at the time of the contract that it
 C was illegal to use an otter trawl without a licence from the
 Canadian government. Some months later the appellants
 applied for licences for five trawlers which they were operating,
 including the respondent's trawler. They were informed that only
 three licences would be granted, and were requested to state
 D for which of the three trawlers they would like to have the
 licences. They named three trawlers other than the respondent's
 trawler, and then claimed that they would not be bound by the
 trawler of the respondent as it was frustrated. It was held by the
 Judicial Committee that the failure of the contract was the result
 E of the appellant's own election, and, therefore, no frustration of
 the contract.

57. This Court distinguished the aforesaid judgment and
 observed as follows:-

F "We think the principle of this case applies to the Indian
 law and the provisions of Section 56 of the Indian Contract
 Act cannot apply to a case of "self-induced frustration". In
 other words, the doctrine of frustration of contract cannot
 apply where the event which is alleged to have frustrated
 G the contract arises from the act or election of a party. "

58. In our opinion, these observations are of no assistance
 to the appellant as in this case, the lease has come to an end
 by efflux of time. This apart, MPRTC is heavily indebted and

H ¹⁷. (1935) A.C. 524.

had sought permission of the State and the Union of India to wind up. Furthermore, there was also a breach of the terms and conditions of the lease on the basis of which it has been terminated in accordance with law.

59. In any event, these are issues which would involve adjudication of disputed questions of fact which can only be suitably adjudicated in the civil suit as directed by the High Court in the impugned judgment. The appellant shall be at liberty to seek its remedies against MPRTC for breach of contract. Our conclusion that the High Court was right in rejecting the contentions of the Appellant herein is also supported by the law laid in *Rajasthan Housing Board vs. G.S. Investments* (supra) which was relied upon by Mr. Cama. We may notice here the following excerpt:

“..the Court should exercise its discretionary power under Article 226 of the Constitution with great care and caution and should exercise it only in furtherance of public interest. The Court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority.”

60. Also, we are not much impressed by the submission of Mr. Nariman that the order passed by the High Court on 11th December, 2007 has been challenged by the companion SLP (C) No 36887 of 2012. The aforesaid SLP has been filed merely to get over the earlier lapse of not challenging the order of the High Court at the appropriate time. Having submitted to the jurisdiction of the Chief Secretary, it would not be open to the appellant to challenge the order dated 11th December, 2007.

61. For the aforesaid reasons, we see no merit in the appeals. The civil appeals are, therefore, dismissed.