



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 850/2025

In

S.B. Civil Writ Petition No.14646/2021

Rajasthan Leather Industries Ltd., Having Its Registered Office At Pucca Bandha, Tonk Through Its Authorized Signatory Chairman Cum Managing Director, Shri Deepak Saini Son Of Shri Chotey Lal Saini, Aged About 37 Years, R/o 690, Bhola Nagar, Kotla Mubarakpur, New Delhi- 110003

----Appellant

Versus

1. State Of Rajasthan, Through Principal Secretary To Government, Revenue Department, Government Secretariat, Jaipur.
2. Secretary, Department Of Industries, Government Secretariat, Jaipur.
3. Secretary, Public Enterprises, Jaipur
4. Commissioner, Industries, Government Of Rajasthan, Jaipur
5. Tehsildar, Tonk.

----Respondents

Connected With

D.B. Special Appeal Writ No. 168/2026

In

S.B. Civil Writ Petition No.14646/2021

1. State Of Rajasthan, Through Principal Secretary To Government, Revenue Department, Government Secretariat, Jaipur.
2. Secretary, Department Of Industries, Government Secretariat, Jaipur.
3. Secretary, Public Enterprises, Jaipur
4. Commissioner, Industries, Government Of Rajasthan, Jaipur
5. Tehsildar, Tonk.

----Appellants

Versus

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----Respondent

For Appellant(s) : Mr. Kamlakar Sharma, Sr. Adv.
assisted by Ms. Alankrita Sharma

For Respondent(s) : Mr. G.S. Gill, AAG assisted by
Ms. Shikha Sharma, AAAG and
Ms. Rashmi Kaushik
Mr. Basant Singh Chhaba, AAG
assisted by Mr. Hardik Singh and
Ms. Mansi Sharma
Mr. S.S. Naruka, AAG assisted by
Mr. Sachin Singh Rathore and
Mr. Anshuman Singh

**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SHUBHA METHA**

Judgment

Date of conclusion of arguments : 24/03/2026

Date on which judgment was reserved : 24/03/2026

**Whether the full judgment or only
the operative part is pronounced : Full judgment**

Date of pronouncement : 30th/04/2026

(Per Hon'ble The Acting Chief Justice)

REPORTABLE

Facts

1. By way of the present special appeals (writs), Rajasthan Leather Industries Limited and the state government assailed the order dated 12.05.2025 passed by the learned Single Judge, whereby the writ petition preferred by the appellant-company (writ petitioner) was partly allowed. The writ petition came to be disposed of by the learned Single Judge with the following observations:

"11.Considering the aforesaid material aspect of the matter so also the opinion given by the Advocate General as well as the subsequent decision taken by the Ministry of the concerned Department, the instant writ petition stands disposed of granting liberty to the petitioner to use and develop land in question for the

purpose of establishing Agro Based Food Park. The petitioner would be at liberty to diversify its portfolio but the petitioner would not be allowed to sale/alienate the property in question without permission of the respondents.

12. In case, the petitioner feels aggrieved by any of the actions of the respondent-State, the petitioner would be at liberty to approach the Arbitrator for settlement of dispute in terms of the agreement dated 12.11.1992.

13. Stay application as well as all applications (pending, if any) stand disposed of.

2. While the learned Single Judge permitted the appellant to diversify his business by setting aside the restriction imposed in that regard, the other condition restraining the appellant from selling or alienating the property in question was maintained and the appellant has been precluded from selling or otherwise alienating the said property without prior permission of the respondents.

3. The facts relevant for the adjudication of the present appeal are that the state government acquired the land ad measuring 193 bighas vide order no 1595 dated 31.07.1971 under the Rajasthan Land Acquisition Act 1953 for industrial purposes for M/s Rajasthan State Tanneries which was incorporated on 22.11.1971 as a State Government undertaking under the Companies Act, 1956 having initial authorised capital of Rs 1,00,00,000/- divided in 10 lakhs equity shares of Rs 10 each. The certificate of incorporation number 1381 of 1971/72 was issued by the Registrar of Companies. Upon acquisition, the possession of the entire land was handed over to the government company as per the certificate dated 16.10.1973 issued by the office of the Collector, Tonk. The land was entered in revenue records in the namer of M/s Rajasthan State Tanneries Limited in the year 1977. Subsequently, M/s Rajasthan State Tanneries Limited ceased its operations as it ran into continued losses. Accordingly, the sate government by cabinet approval dated 17.05.1988 took a decision to privatise the

company by transfer of entire shareholding and invited tender in this regard. The state government issued the tender notice in the year 1992 for change of management by transfer of shareholding.

4. Notably, Clause (j) of the said agreement expressly entitled the writ petitioner to diversify and expand its business activities, with the object of promoting the growth of the company and generating employment opportunities.

5. Despite repeated requests made by the writ petitioner, the land in question continued to remain recorded in the name of Rajasthan State Tanneries Ltd. as agricultural land even after it being transferred to the writ petitioner company.

6. Thereafter, a meeting was convened on 13.06.2008, which was chaired by the Hon'ble Industries Minister. The writ petitioner objected to the certain decisions which were taken in the said meeting as being wholly illegal, which subsequently led to the filing of the writ petition by the petitioner. In the meeting, the following decisions were taken:

"(1) Unit representative would submit detailed project report to the Industries Department within seven days.

(2) Detailed action plan report of the proposed project in which it should be disclosed that in how much days collective Mechanized Automatic Animal Slaughtering House would be established and production would be started.

(3) Issuance of no objection certificate for establishment of slaughtering house should be ensured from Municipal authorities and Pollution Control Board.

(4) Permission from Revenue Department, Government of Rajasthan should be obtained to use the land for industrial purposes should be obtained as the land of State Tanneries is recorded in the name of State Government i.e. Rajasthan State Tanneries Ltd.

(5) Permission to sell the above said land would not be granted by the State Government and permission would be obtained to use the land for commercial purposes. With the conditions NOC should be granted to open mutation in the name of Tonk Tanneries Ltd."

7. Mutation of the land in favour of the writ petitioner and its conversion from agricultural to non-agricultural use became necessary as The failure to effect the conversion created substantial impediments for the writ petitioner company in carrying on its business operations. However, despite repeated requests, no steps were taken by the concerned authorities in this regard.

8. Vide letter dated 05.03.2009, the Principal Secretary, Revenue Department directed the District Collector, Tonk, to record the land in the name of the writ petitioner company. Pursuant thereto, the District Collector, Tonk, vide communication dated 02.04.2009, directed the Tehsildar to take necessary steps in this regard. Consequently, the Patwari sanctioned the mutation in favour of the writ petitioner company.

9. However, while effecting such mutation, two conditions/restrictions, namely, (i) restriction on diversification of business, and (ii) restriction on sale/alienation of the land, were imposed, which were without authority of law and in clear violation of original agreement as at the time of transfer no such conditions existed.

10. The writ petitioner also obtained a legal opinion from Hon'ble Justice B.P. Singh, former Judge of the Supreme Court of India, wherein it was opined that the aforesaid conditions were without any legal authority. Thereafter, several further representations, the matter was referred to the learned Advocate General, who, vide opinion dated 22.02.2012, also opined that the restrictions imposed on the use of land were not supported by law, particularly in light of Sections 10 and 11 of the Transfer of Property Act, 1882, and Section 133 of the Rajasthan Land Revenue Act, 1956.

11. That on 21.05.2015, one of the Directors of the writ petitioner company submitted a representation to the Hon'ble Revenue Minister assailing the

aforesaid arbitrary conditions. Pursuant thereto, a report was called for from the District Collector, Tonk, vide communication dated 30.07.2015. The District Collector, in turn, sought a report from the Sub-Divisional Officer, who directed the Tehsildar to furnish a factual report.

12. In compliance thereof, the Tehsildar submitted a report stating that the land stood duly mutated in the name of Tonk Tanneries, and made reference to letters dated 05.03.2009 and 20.03.2009, which did not stipulate any such conditions. However, in the covering letter dated 07.12.2015, reliance was placed upon an alleged order dated 02.04.2009 as the basis for imposing the aforesaid restrictions, purportedly in the interest of the State. After this several other representations were also submitted.

13. That one of the Directors of the writ petitioner company submitted an application under Section 90A of the Rajasthan Land Revenue Act, 1956 on 01.03.2019 seeking permission for establishment of an Agro Food Park. Pursuant thereto, the Commissioner, Nagar Parishad, Tonk, vide letter dated 02.08.2019, informed the Director, Local Bodies, that the subject land had been earmarked for industrial use in terms of the Master Plan, 2031. Thereafter, the Chief Town Planner approved the layout plan on 16.08.2019, which was subsequently approved by the Nagar Parishad in its SPC meeting held on 18.09.2019.

14. In furtherance thereof, the writ petitioner submitted a representation dated 17.09.2019 to the Commissioner, Industries, seeking issuance of No Objection Certificate and approval of the project. The Commissioner, Industries, vide communication dated 09.10.2019, sought a report in the matter, wherein it was reiterated that the land was not subject to any such restrictions. The Nagar Parishad also supported the proposal by

recommending issuance of separate pattas and requested approval for establishment of the agro-based industry.

15. As the conditions were imposed at ministerial level, the matter was again placed before the Minister for removal of the conditions. However, no decision was taken.

16. Consequently, after exhausting all available remedies and representations, which yielded no result, the writ petitioner was constrained to file the writ petition, being aggrieved by the inaction of the State authorities as well as the illegal and arbitrary conditions imposed by the State Government, including the endorsement made by the Patwari in the revenue records.

Arguments

A. Submissions on Behalf of Appellant

17. It is submitted on behalf of the appellants that the learned Single Judge failed to properly appreciate that the writ petitioner company was aggrieved by the manifest illegality, arbitrariness, and colourable exercise of power on the part of the respondents, whereby conditions restraining the writ petitioner from sale/alienation of the land as well as from diversifying its business were imposed. The said conditions, having been incorporated in the revenue record by the Patwari at the instance of the Minister, were wholly without jurisdiction and beyond the authority vested in the Patwari as well as the State Government. It is further submitted that the specific challenge in the writ petition was to the lack of authority in law of the respondents to impose such conditions; however, merely on account of the fact that, during the pendency of the writ petition, the restriction pertaining to diversification was relaxed by the Minister, the learned Single Judge proceeded to dispose of the writ petition without adjudicating upon the

validity and legality of the remaining condition restraining sale/alienation of the property, which continues to operate to the prejudice of the appellants.

18. It is further submitted that the learned Single Judge erred in observing that the petitioner would not be permitted to sell or alienate the property in question without prior permission of the respondent-State, which observation is ex facie contrary to settled principles of law. The learned Advocate General, in his opinion, had categorically opined that the transferee is entitled to enjoy the property without any such restrictions, in view of Sections 10 and 11 of the Transfer of Property Act, 1882. It is submitted that the restrictions imposed at the instance of the Minister, and subsequently reflected in the revenue record, are not traceable to any statutory provision and are wholly without authority of law; consequently, the continuation and endorsement of such restrictions is arbitrary, illegal, and liable to be set aside. Furthermore, It is being vehemently argued by the appellant that company has not fulfilled or discharged its liabilities, and it is also denied that company remained non functional for 33 years and because of imposition of two arbitrary conditions, the company was not able to to set up any commercial business as permission had to be taken from State Government but the State government did not approve any of the requests. Initially also tannery was being run by the appellant for 4 years till the area got marked as a green belt and only eco friendly industry was allowed to bet established. Also, the imposition of conditions by the respondent state was neither statutory or policy-based and the transfer was not an allotment or a grant, it was a full fledged transfer of ownership by transfer of 100% shareholding which was approved by Cabinet vide order no. 169/94 dated 6/10/1994. It is also submitted that decision of the Hon'ble minister regarding establishment of Agro-food park was drawn on

3.8.23 and the file was sent to Additional Chief Secretary, Industries Department for passing necessary orders for implementation of the orders of Hon'ble Minister but the additional Chief Secretary did not pass any order and thereafter the note sheet annexed by the respondents in their reply was drawn which seems to be be malafide and motivated.

19. It is submitted that the learned Single Judge failed to appreciate that upon complete transfer of ownership, the State Government had divested itself of all rights, title, interest, and management control over the property, and therefore had no authority or justification to impose any conditions subsequently in the year 2008, particularly after having divested itself of all liabilities as early as in the year 1995. It is further submitted that even assuming, without admitting, that such conditions had been imposed at the time of transfer, the same would, in any event, be void and unenforceable in view of Sections 10 and 11 of the Transfer of Property Act, 1882, which prohibit imposition of absolute restraints on alienation and enjoyment of property.

20. It is submitted that the imposition of the aforesaid restrictions is wholly arbitrary and contrary to the binding terms of the agreement dated 12.11.1992, pursuant to which the State Government transferred 100% shareholding of the undertaking, and the subsequent approval of the Cabinet dated 06.10.1994 culminated in complete privatization and cessation of all control of the State Government over the said entity. It is further submitted that the writ petitioner entered into the agreement on the basis of express contractual terms, which did not envisage or impose any restriction on the future use, diversification, or alienation of the property. The subsequent imposition of such conditions, dehors the agreement, defeats the legitimate expectation of the writ petitioner and

amounts to a unilateral alteration of contractual terms, thereby violating the well-settled doctrine of sanctity of contract. It is also submitted that no retrospective conditions could have been imposed at the stage of mutation entries, which are merely fiscal in nature and do not confer or alter substantive rights, and therefore the impugned action of imposing restrictions at such a stage is wholly illegal and unsustainable in the eyes of law.

21. It is further submitted that the selective and discriminatory imposition of the aforesaid restrictions upon the writ petitioner, while similarly situated entities have not been subjected to such conditions, is arbitrary and violative of Article 14 of the Constitution of India, as the impugned action lacks any reasonable classification or intelligible differentia and does not bear any rational nexus with the object sought to be achieved. It is submitted that the imposition of the aforesaid conditions at the stage of mutation is contrary to the provisions of the Rajasthan Land Revenue Act, 1956, which do not confer any power upon the State Government or its authorities to impose substantive conditions while effecting changes in revenue records, as mutation proceedings are merely fiscal in nature and intended for recording possession and title for revenue purposes, and cannot be utilised as a mechanism to alter or curtail substantive rights.

22. It is further submitted that the learned Single Judge erred in relegating the petitioner to the remedy of arbitration, despite the fact that the arbitration clause contained in the agreement is limited in its scope to disputes arising under or in relation to the terms of the said agreement. The present dispute does not emanate from any contractual disagreement between the parties, but rather pertains to the imposition of arbitrary and illegal conditions by the respondents dehors the agreement, and therefore

the direction to avail the remedy of arbitration is misconceived and unsustainable, as the controversy raised is essentially one involving the exercise of statutory and constitutional powers by the State authorities, which cannot be adjudicated within the confines of a contractual arbitration clause.

23. It is submitted that the learned Single Judge committed a manifest error in law in failing to adjudicate upon the validity and legality of the condition restraining alienation of the property, despite the same being specifically challenged in the writ petition, and without undertaking any analysis or assigning reasons, proceeded to observe that the writ petitioner would not be permitted to sell or alienate the property. Such an observation, rendered without any reasoned consideration, is contrary to settled principles of law and vitiates the impugned order, as it effectively upholds a restriction affecting valuable proprietary rights without examining its legality or the authority under which it was imposed.

24. Lastly, it is submitted that the writ petitioner has been consistently deprived of its right to utilise its own land for lawful industrial purposes, and the continued and unjustified refusal on the part of the State Government has the effect of amounting to a constructive expropriation of the petitioner's property rights. Such action, though not amounting to formal acquisition, effectively strips the petitioner of the beneficial use and enjoyment of its property, and is therefore ex facie violative of the petitioner's constitutional right to property guaranteed under Article 300A of the Constitution of India, as no person can be deprived of property save by authority of law, which is wholly absent in the present case.

25. In support of his submissions, learned counsel cited the following judgements:

(I) Sawarni vs Inder Kaur and Others.¹

(II) Jitendra Singh vs State of Madhya Pradesh and Ors.²

(III) Western Coalfields Ltd vs Special Area Development Authority, Korba and Another³

(IV) Heavy Engineering Mazdoor Union vs State of Bihar and Ors.⁴

(V) Rustom Cavasjee Cooper vs Union of India⁵

B. Submissions on Behalf of the Respondents

26. Learned counsel for the respondents submits that all the allegations, averments, contentions, and assertions made in the writ petition are emphatically denied. It is submitted that the present writ petition has been preferred by the petitioner being aggrieved by the decision taken in the meeting dated 13.06.2008, chaired by the Hon'ble Minister, as well as the conditions subsequently incorporated in the mutation order dated 02.04.2009; however, the said actions are in accordance with law and do not warrant any interference by this Hon'ble Court. Furthermore, it is submitted that neither were the decisions arbitrary but rather were taken to ensure compliance with the original agreement dated 12.11.1992 and to protect the purpose for which the land, originally owned by a state enterprise, was transferred and that the conditions imposed were necessary corollaries to the overall objective of disinvestment, i.e., the revival of the closed unit and providing employment to the local residents. This decision was also necessitated by the non-compliance of the appellant to the contractual terms. Therefore, the grant of NOC for mutation was conditional upon adherence to these conditions and the transfer of land was not an outright sale but rather a conditional transfer of land for public

1 1996 (6) SCC 223

2 2021 SCC OnLine 802

3 (1982) 1 SCC 125

4 (1969) 1 SCC 765

5 (1970) 1 SCC 248

purpose (for which bar on alienation was necessary to ensure that the same was not alienated without meeting the public purpose for which it was transferred). Furthermore, such restrictions would not fall foul of Section 10 of the Transfer of Property Act 1882 since these conditions are not one placed by the transferor but are statutory restrictions and consequence of non-compliance with the terms of the original allotment as well as the Rajasthan Land Revenue Act 1956. Therefore, such public law restrictions fall outside the ambit of the private law principle enshrined under Section 10 of the Act of 1882. Section 11 of the said act is also inapplicable here as any restrictions or enforcement action is legislative/executive and not a private contractual restraint. In this regard, they have relied on a decision of the Apex Court in **The State of Telangana and Others vs Dr. Pasupuleti Nirmala Hanumantha Rao Charitable Trust**⁶ wherein it was held as under:

"23. This Court is of the view that the Appellant-State had allotted land to public trust for public purpose. In such a situation, the State cannot be put in the normal classical inter vivos party's position as public interest is supreme and must prevail. This Court is also of the opinion that Rules, 1975 and the Board of Revenue Standing Orders operate in a completely distinct space and are not eclipsed by Section 10 of the TPA."

27. It is further submitted that as per the Jamabandi of revenue village Mehganv for the Samvat years 2071–2074, Khasra No. 296 measuring 48.3974 hectares, situated at Village Mehganv, Patwar Halka Dhola Kherda, Tehsil Tonk, District Tonk, stands recorded in the name of M/s Tonk Tanneries Pvt. Ltd. (now Rajasthan Leather Industries Ltd.), and the revenue entries clearly stipulate that the land cannot be sold without prior permission of the State Government and that any commercial or other use would require approval from the competent authority. It is also reflected that the nature of the land is recorded as Ghair Mumkin Naala, Ghair

⁶ Civil Appeal No. 5321/2025

Mumkin Chahi, Ghair Mumkin Paal, Ghair Mumkin Road, Ghair Mumkin Rasta, and Ghair Mumkin Tanneries, which itself justifies regulatory oversight and control. It is submitted that Mutation Order No. 652 came to be passed strictly in compliance with Order No. 1338 dated 02.04.2009 issued by the District Collector, Tonk, as well as the corresponding order passed by the Tehsildar, Tonk, and therefore the mutation entries were effected in due compliance of lawful directions issued by competent authorities and cannot be said to be arbitrary or without jurisdiction. It is further submitted that the Deputy Secretary (State Enterprises Department) had written to the district collector, Tonk to save the assets of Rajasthan State Tanneries Ltd. from being destroyed. The letter mentioned that the company was not make any efforts to re-established the manufacturing unit but rather efforts were made to destroy the land, plants and assets of this unit. Therefore, the letter requested ensuring that the present management does not sell this land to anyone, does not use it for any work except leather work, there is no change in the revenue record and the assets arent destroyed. In this regard, the opinion given by the Advocate General is advisory in nature and cannot supersede decisions taken by the government.

28. Learned counsel further submits that, as a matter of fact, no tannery or any industrial activity is presently being carried out on the subject land, and in the absence of any ongoing industrial use, the petitioner cannot claim that any immediate or irreparable prejudice has been caused so as to invoke the extraordinary jurisdiction of this Hon'ble Court. The objective behind the transfer of the land was the revival of the sick industrial unit, re-establishment of dairy operations and ensuring employment to retrenched or displaced workers. However, the appellant failed to revive the

unit and provide employment, nor have they invested any funds towards restarting the operations. Furthermore, it is submitted that the industry was not functional for over 33 years. Owing to such non-compliance, the state government could not transfer its remaining equity as per the MoU. The failure of the appellant to fulfil the conditions of the MoU means it never took full effect. In this regard the defense of Covid-19 taken for non-performance of contractual obligations is invalid as such non-performance substantially predates the pandemic.

29. Learned counsel further submits that the land was exclusively acquired for industrial purpose. While the petitioner was permitted to diversify its operations as per the agreement dated 12.11.1992, this was intended to facilitate the expansion of industrial activities, primarily related to leather and associate products and to generate employment for the local population. This permission to diversify does not allow the petitioner to sell or alienate the land which would defeat the purpose of original acquisition of land. In this regard, it is also submitted that the Nagar Parishad's jurisdiction is limited to physical planning aspects and such approval cannot supersede the superior contractual and administrative conditions imposed by the state government at the time of conditional land transfer.

30. Learned counsel also submits that while the land was erroneously recorded as agricultural, this was a defect in the revenue records. It is submitted that the land was acquired for and transferred as industrial land and that the request for conversion was merely a step to rectify the administrative error in the revenue records. The erroneous entry does not grant the petitioner the right to utilize the land for non-industrial purposes or to sell or alienate it, which remains contrary to the initial acquisition and subsequent agreement conditions. Further, it is submitted that the fact that

the land was recorded as agricultural land despite being used for industrial purposes necessitated the petitioner to undertake proper procedure for conversion of land use from agricultural to non-agricultural (as outlined by the Commerce Department's letter dated 30.06.2008). Mutation and land use conversion are separate statutory processes and the petitioner failed to complete the latter as per the relevant rules. It is further submitted that revenue records (including entry of mutation) carry a presumption of correctness unless successfully rebutted in a manner prescribed by law, which the appellant has failed to do.

31. Learned counsel further submits that disputes involving a public law element and exercise of sovereign or administrative power are not arbitrate under the Arbitration and Conciliation Act 1996. This is because, an arbitrator, being a creature of contract and private law, cannot decide issues requiring the interpretation and enforcement of constitutional or public mandates such as the validity of administrative action or the correction of state revenue records. The proper forum for such challenge is through a writ court or the specific revenue courts/authorities established by statute.

32. Learned counsel also submits that deprivation of property was strictly in accordance with law as mandated by article 300A and was done under the authority of acts like The Land Acquisition Act 1894, Companies Act 2013, SICA. The objections of the interested parties were heard and duly disposed of.

33. Learned counsel further submits that this Hon'ble Court, while exercising jurisdiction under Article 226 of the Constitution of India, is guided by well-settled self-imposed limitations and does not ordinarily undertake an elaborate fact-finding exercise, and the issues raised by the

petitioner involve disputed questions of fact which require detailed examination of evidence and are therefore not amenable to adjudication in writ jurisdiction. Furthermore, owing to the above-mentioned non-compliance with the foundational terms of the MoU.

34. It is further submitted that an efficacious and alternative statutory remedy is available to the petitioner for redressal of its grievances, and without exhausting such remedies, the petitioner has directly approached this Hon'ble Court, which is impermissible in law; on this ground alone, the writ petition deserves to be dismissed. Learned counsel submits that the petitioner has failed to establish its locus standi to maintain the present writ petition, as sufficient documentary evidence has not been placed on record to substantiate its claim of ownership or entitlement over the land in question, and at the same time the petitioner seeks to challenge the conditions attached thereto, which is an inconsistent stand not permissible in law.

35. It is submitted that the contention of the petitioner regarding violation of Article 14 is wholly misconceived, as it is a settled principle that absolute equality is neither practicable nor required, and so long as the classification adopted by the State is reasonable and based on intelligible differentia having a rational nexus with the object sought to be achieved, the same cannot be interfered with in exercise of writ jurisdiction. It is further submitted that the conditions imposed upon the land are in furtherance of public interest and regulatory requirements, and the State is well within its powers to regulate the use and transfer of land in larger public interest; the petitioner cannot claim unfettered rights contrary to such regulatory framework.

36. It is also submitted that the jurisdiction under Article 226 of the Constitution is extraordinary and discretionary in nature and is to be exercised sparingly, and this Hon'ble Court does not sit as an appellate authority to correct mere errors of fact or law unless there is manifest illegality or gross injustice, which is conspicuously absent in the present case. It is submitted that there is no violation of any fundamental right or statutory provision as alleged by the petitioner, and the actions of the respondents are in consonance with law and have been taken after due consideration of the material available on record, and therefore cannot be termed as arbitrary or illegal.

37. Learned counsel reiterates that the petitioner was under a legal obligation to first avail the alternative remedies available under the statutory framework before invoking the writ jurisdiction of this Hon'ble Court, and failure to do so renders the petition liable to be dismissed. It is finally submitted that the entire writ petition is misconceived, misleading, and based on incorrect and unsubstantiated facts, and has been filed with an oblique motive, amounting to an abuse of the process of law, seeking to obtain reliefs without any legal foundation; the same therefore deserves to be dismissed with exemplary costs.

38. On the issue of diversification, in their cross Special Appeal Writ⁷, the Respondents placed reliance on clause (j) of the agreement and the MoA to submit that the land could have been subjected to any other use by the appellant-company for the purposes of expansion and diversification. It was also stated that while mutating the land in favour of the appellant-company, the Tehsildar imposed two conditions, i.e., state government will not accord approval for the sale of this land and their permission is required for other commercial use.

⁷ DB Special Appeal Writ No. 168/2026

39. It is further stated in the Special Appeal Writ that the judgement dated 12.05.2025 is contrary to law as the learned single judge has not properly construed clause (j) of the agreement dated 12.11.1992, a perusal of which, clearly demonstrates that the company can expand its operations or product lines to include more variety but not to make use of the land for any other commercial activities or to sell or alienate the same. Furthermore, the learned single judge failed to appreciate the fact that the MoU dated 12.11.1992 imposed certain conditions (revival of industry within stipulated time, employment generation, recommencement of operations in previously closed units, regularisation of the industry in complying with all statutory obligations and discharging all liabilities of the company including payment of outstanding dues), none of which have been fulfilled by the company for more than 33 years and hence no benefit or concession can be extended to the respondent company, particularly when the state government never granted any exemption or concession to it from the terms of company shareholding transfer, which are still in force and binding on the company.

40. It has been further stated in the said writ that despite repeated reminders to ensure compliance, the company has failed to do so. It was also argued that the learned single judge failed to consider the fact that the land in question is situated in a strategically important and prime location and no other suitable land is available in the vicinity and the same is needed for industrial development and public purposes. Therefore, if the company has no intention of reviving the industry, then the land can be better utilised for other public and industrial purposes.

41. It is also stated in the abovementioned writ that that clause (p) of the agreement clearly stipulated that in the event of any disputes arising at any stage in relation to any aspect of the agreement or its interpretation, the same shall be referred to the sole arbitrator and that Section 5 of the Arbitration and Conciliation Act 1996 bars judicial intervention in matters governed by the said part. In this regard, the Hon'ble Supreme Court in **Bisra Stone Lime Company Ltd. and Another vs Orissa State Electricity Board and Another**⁸ has categorically held that the High Court may refuse to exercise its jurisdiction if there exists a valid arbitration clause. Furthermore, as this alternate remedy was available, a writ petition was not maintainable, for which reliance was placed on a decision of the Hon'ble Supreme Court in **A.V. Venkateswaran, Collector of Customs, Bombay vs Ramchand Sobhraj Wadhwani and Another**⁹.

42. It was further argued that the writ petition suffers from inordinate delay as the mutation was sanctioned in 2009 whilst the writ petition was filed in 2021. Reliance in this regard was placed on a decision of the Apex Court in **Mrinmoy Maity vs Chhanda Koley and Others**¹⁰ wherein it was held that ordinarily, inordinate delays would be fatal to the litigants case.

43. It was also pointed out that the learned single judge has failed to consider that in the writ petition, the company has not challenged the order of the district collector which is a quasi judicial order but rather it has challenged the action of the Patwari which is an executive order which is consequential in the form of compliance of the order of the district collector. In this regard, it was argued that it is settled law that no writ of certiorari can be issued against an executive action.

⁸ 1976 (2) SCC 167

⁹ 1961 SCC OnLine SC 16

¹⁰ 2024 (15) SCC 215

Issues for Determination

- 1.** Whether a Writ petition is maintainable in this case?
- 2.** Whether any conditions could have been imposed subsequent to signing of the agreement dated 12.11.1992?
- 3.** Whether mutation proceedings can be used to impose substantive restrictions affecting proprietary rights?
- 4.** Whether relegation to arbitration was justified in the facts of the present case?

Analysis and Discussion

A. Maintainability of the Writ Petition

44. The facts and circumstances of the present case unequivocally indicate that the impugned actions of the respondents are arbitrary and discriminatory, and therefore violative of Article 14 of the Constitution of India. The material on record reflects that the conditions in question have been imposed selectively upon the appellants, while similarly situated entities have not been subjected to any such restrictions, without there being any intelligible differentia or rational nexus with the object sought to be achieved.

45. Further, the effect of the impugned conditions is such that it substantially impairs the appellants' ability to use, enjoy, and deal with their property in a lawful manner. This then goes counter to the arguments made by the Respondents of non-operationalization of the industry as such conditions itself serves as a roadblock to operating the manufacturing unit. This amounts to an unjustified interference with the appellants' right to property, guaranteed under Article 300A of the Constitution of India, as the deprivation is not backed by any valid authority of law. The restrictions, therefore, operate not merely as regulatory measures, but as an effective

denial of the beneficial enjoyment of the property, rendering the action of the respondents constitutionally unsustainable.

46. The scope of Article 300-A was examined in **K.T. Plantation (P) Ltd.**

v. State of Karnataka¹¹, wherein the Apex Court held that:

166. Article 300-A, when examined in the light of the circumstances under which it was inserted, would reveal the following changes:

- 1. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India.*
- 2. Legislature can deprive a person of his property only by authority of law.*
- 3. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a constitutional right.*
- 4. Right to property, since no more a fundamental right, the jurisdiction of the Supreme Court under Article 32 cannot be generally invoked, aggrieved person has to approach the High Court under Article 226 of the Constitution.*

168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd. [(2002) 4 SCC 134] , while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.

170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of "public purpose" and "compensation" in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of List III Entry 42, as well and, hence, would apply when the validity of a statute is in question.

¹¹ (2011) 9 SCC 1

47. A further example of such arbitrariness is the fact that the minutes of the meeting dated 13.06.2008 do not show anything to indicate that the objections raised by the appellant were considered prior to imposing such conditions, which is arbitrary. In this regard, it is important to note that one of the cardinal principles of administrative law is to ensure that administrative action taken fairly and after giving due consideration to the objections raised by those who will be affected by such decisions. A similar stance was taken by the Apex Court in **Basudev Dutta vs State of West Bengal and Ors.**¹² which held that:

"12.2. It is settled law that every administrative or quasi-judicial order must contain the reasons. Such reasons go a long way in not only ensuring that the authority has applied his mind to the facts and the law, but also provide the grounds for the aggrieved party to assail the order in the manner known to law. In the absence of any reasons, it also possesses a difficulty for the judicial authorities to test the correctness of the order or in other words, exercise its power of judicial review....."

48. Furthermore, on the aspect of deprivation of property, the Hon'ble Supreme Court recently in **Samiullah vs State of Bihar and Ors.**¹³ observed that:

"36. A requirement of rules, regulations or even law that impedes or restrains easy and effective transfer of property will be illegal as it has the direct effect of "depriving of property" to that extent, and such delays, caused due to unreasonable and arbitrary restrictions, impinge the right to hold and dispose of property. We therefore hold that the prescription of mentioning and production of jamabandi allotment or holding allotment as a precondition for registration of a legally presented document under impugned sub-rules 19(xvii) and (xviii) is arbitrary and illegal and as such, liable to be set aside."

Therefore, the conditions imposed vide the meeting dated 13.06.2008 which restrain such "easy and effective transfer" can be said to be illegal.

¹² 2024 SCC OnLine SC 3616

¹³ (2026) 1 SCC 475

49. On the issue as to whether the writ petition was maintainable in the present case, and whether the appellants–writ petitioners were justified in invoking the extraordinary jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India in a contractual matter, the same has been settled by a judgment of the Hon’ble Supreme Court in **Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd.**¹⁴, wherein it was held as under:

"21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the

14 (2013) 5 SCC 470

applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand."

50. In an earlier decision, the Hon'ble Supreme Court in **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.**¹⁵

held as under:

"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 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

15 (2004) 3 SCC 553

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."

51. Subsequently, on the aspect of issuance of writs, the Hon'ble Supreme Court in **Joshi Technologies International Inc. v. Union of India**¹⁶ held that:

"70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice."

52. In light of the above discussion, we find the present writ petition to be maintainable.

B. Imposition of Conditions Post Signing of Agreement Dated 12.11.1992

53. Regarding the contention pertaining to violation of Sections 10 and 11 of the Transfer of Property Act 1882, it would be apposite to first quote the same:

"10. Condition restraining alienation.-Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammad or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.-Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

[Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]"

54. From a perusal of agreement dated 12.11.1992, it is apparent that no condition was imposed at the time of transfer of the land. What was said in clause (j) was that the plant and machinery are to be used for the manufacture of leather and leather goods with liberty granted to the appellant to expand and diversify into areas which are useful for the company and for generating employment for the local population (as far as possible). The restrictions on alienation were subsequently imposed by the state government vide the meeting dated 13.06.2008, mentioning that sale of the said land would not be permitted by the state government and grant of NOC will be basis the conditions laid down in the said meeting.

55. A condition imposed unilaterally, in absence any statutory provision permitting the same and in violation of the statutory provisions mentioned above, particularly subsequent to signing of the agreement of 12.11.1992 is void. In the context of unilateral modification of contract, the Hon'ble Supreme Court in **Kanwar Raj Singh (D) Through Legal Representatives vs Gejo (D) Through Legal Representatives and Ors.**¹⁷ observed as under:

"13. The corrections unilaterally made by the first defendant after the execution of the sale deed without the knowledge and consent of the purchaser will have to be ignored. Only if such changes would have been made with the consent of the original plaintiff, the same could relate back to the date of the execution. It is not even the first defendant's case that the subsequent correction or interpolation was made before its registration with the consent of the original plaintiff. Therefore, in this case, what will operate is the sale deed as it existed when it was executed."

56. On the above mentioned issue, the Hon'ble Supreme Court in **Delhi Development Authority and Anr. vs Joint Action Committee, Allottee Of SFS Flats And Ors.**¹⁸ had held as under:

"66. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract-making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders which are not backed by any statute, new terms of contract could (sic not be) thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such."

¹⁷ (2024) 2 SCC 416

¹⁸ (2008) 2 SCC 672

57. Before proceeding further, it would be apposite to refer to Sections 90-A and 102 of the Rajasthan Land Revenue Act 1956 which reads as under:

"[90-A.] Use of agricultural land for non-agricultural purpose –

.....

(3) The State Government shall, after making or causing to be made due inquiry in the prescribed manner, either refuse the permission applied for or grant the same subject to the prescribed terms and conditions.

.....

102. Power of Government to allot land for purposes other than agricultural as well as on special terms – Notwithstanding anything hereinforce contained, the State Government shall have power to allot land for the purpose of an industry or for any purpose of public utility on such conditions as it deems fit."

58. The discretion exercisable by the state government (mentioned above) to impose conditions for allotment of land can be said to be encapsulated within the terms stipulated in the agreement, which itself does not provide for further discretion to the state for subsequent and unilateral addition of conditions. In this regard, the Apex Court in **State of Madhya Pradesh vs Sew Construction Limited and Ors.**¹⁹ held as under:

"23. In the context of discretion, we may reiterate this principle. The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such discretion that is entirely outside the realm of the contract."

59. A perusal of the agreement between the appellant and the state government show that the entire shareholding of the appellant-company was transferred to the now appellants. This would include the property used to operate the manufacturing unit. While the agreement did stipulate expansion and modernisation of the unit, it did not include any express

¹⁹ (2022) 17 SCC 370

prohibition on the alienation of the property. In this regard, recently, the Apex Court in **Annaya Kocha Shetty (Dead) through Lrs vs Laxmibai Narayan Satose Since Deceased through Lrs. and Ors.**²⁰ provided the following guidance on the interpretation of deeds:

"17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:

***17.1** The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.*

***17.2** If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.*

***17.3** Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.*

***18.** The construction of a deed is "generally speaking, a matter of law." However, when there is an ambiguity in the deed, determining its meaning is a mixed question of fact and law. This concept is encapsulated by sections 91 and 92 of the Evidence Act, 1872.*

***18.1** Section 91 of the Evidence Act, 1872 denotes that a deed constitutes the primary evidence of the terms to which the parties are to adhere. Whereas section 92 of the Evidence Act, 1872 forbids any contradictions or variations in a written document by extrinsic evidence. However, there are exceptions outlined in the proviso to section 92, that allow variations from this general rule....."*

60. This usage of the surrounding context to interpret a contract was also recently mentioned by the Apex Court in **General Secretary, Vivekananda Kendra vs Pradeep Kumar Agarwalla and Ors.**²¹, wherein it was observed that:

"19. If the words in a contract/deed are clear, there is very little the courts must do in the construction of the contract in determining the intention of the parties. In furtherance of determining the intention, the deed must be read as a whole to ascertain the true meaning of its clauses, and the words of each clause should be interpreted harmoniously. This intention must be derived directly from the plain and ordinary meaning of the text itself. Furthermore, these words should be understood exactly as the intended parties would commonly use them. The covenants must be applied precisely as written, neither diluted into irrelevance nor

20 2025 SCC OnLine SC 758

21 2026 SCC OnLine SC 316

stretched beyond their original scope. If the construction of the contract/deed, through its words and context, does not provide the court with the parties' intention, the court may have regard to the circumstances surrounding its creation and the subject-matter to which it was designed and intended to apply."

61. From a reading of the above, it is clear that when a contract is executed between parties, it is assumed to be the final and complete understanding reached and agreed to between such parties and therefore serves as an exclusion to extrinsic evidence [see decision of the Apex Court in **Roop Kumar vs Mohan Thedani**²² (also subsequently referred to by the Apex Court in **V. Anantha Raju and Anr. vs T.M. Narasimhan and Ors.**²³)]. However, an exception to the above is when a contract is silent on something, a court can imply certain terms [though such power is limited to certain grounds (as enumerated by the Apex Court in **Adani Power (Mundra) Limited vs Gujarat Electricity Regulatory Commission and Ors.**²⁴)]:

"24. It could thus be seen that it is more than well settled that the clauses in the agreement ought to be given the plain, literal and grammatical meaning of the expression used in the same. No doubt, that the courts will also try to gather as to what intention the parties wanted to give them. As has been held by Ranjan Gogoi, J. (as his Lordship then was) the principle of business efficacy could be invoked only if by a plain literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. This test requires that a term can only be implied, if it is necessary to give business efficacy to the contract, to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. If the contract makes business sense without the term, the courts will not imply the same. It is amply clear that courts can imply a clause only if it is found that the plain and literal meaning given to the expression used in the terms is not in a position to make out the intention of the parties. Reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the

²² (2003) 6 SCC 595

²³ (2021) 17 SCC 165

²⁴ (2019) 19 SCC 9

parties thereto. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. It must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract. As held in Nabha Power Ltd. [Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508 : (2018) 5 SCC (Civ) 1] , for invoking the business efficacy test and carving out an implied condition, not expressly found in the language of the contract, the following five conditions will have to be satisfied: (SCC p. 540, para 49)

- (1) Reasonable and equitable;*
- (2) Necessary to give business efficacy to the contract;*
- (3) It goes without saying i.e. the Officious Bystander Test;*
- (4) Capable of clear expression; and*
- (5) Must not contradict any express term of the contract."*

62. When it comes to interpreting commercial contracts in general, while applying of tests like the Officious Bystander Test, the standard of 'reasonableness' to be applied is not an abstract one but rather of a person with similar knowledge, information and skill. Furthermore, deviation from the text of the agreement to rely on other sources for interpretation of the contract must be done sparingly. This is because, certainty and predictability is key in commercial transactions. When parties enumerate their common understanding of the terms and conditions in the form of an agreement, they do so to avoid any confusion or vagueness with regards to the rights and obligations of each party, thereby ensuring seamless execution of the agreement. This becomes particularly crucial for time sensitive transactions where delays can frustrate the agreement itself. Regarding interpretation, as good commercial practice, parties can include an 'interpretation clause' in their contracts which encompasses things like definitions, objectives, accepted commercial practices, etc. This will help resolve issues like multiple possible interpretations of a word and also

ensure contextual interpretation of words depending on which part of the agreement they are mentioned in. This will aid in reducing ambiguity when interpreting contracts. However, it is important to note that mere omission of a term generating some uncertainty which can be cured would not render a contract void. Rather, only when the above fails, then such agreements are void under Section 29 of the Indian Contract Act 1872. The same is reproduced below:

"29. Agreements void for uncertainty.-
Agreements, the meaning of which is not certain, or capable of being made certain, are void."

63. Now, we shall examine each of these conditions individually:

(a) Regarding the first condition, in light of the judgements delivered in **Kanwar Raj Singh (D) Through Legal Representatives (supra)** and **Delhi Development Authority (supra)** read with the statutory restrictions imposed under Sections 10 and 11 of the Act of 1882, the first condition is not satisfied.

(b) Regarding the second condition, it is first important to understand the objective behind entering into this agreement. For this, the tools provided in **Annaya Kocha Shetty (Dead) through Lrs (supra)** can be utilised. The literal and golden rules of interpretation would not be useful here as the condition under consideration, i.e., bar on alienation does not find any written expression, including through any terminology which can be utilised to infer such a condition. Therefore, this case calls for purposive interpretation, i.e., understanding the contract "*in light of its object and context*" to identify the objective behind the same. A perusal of the facts of the case shows that the reason behind sale of the company was the losses it had incurred. This has also been reflected

in the preamble of the agreement, wherein it is mentioned that a substantial monetary amount is required to revive the company, which the state government is not in a position to provide for. This is the reason why the agreement mentions the appellant to take over the liabilities. The preamble also shows the objective of the agreement to be revival of the company. While determining the intention of the parties using the method given in **General Secretary, Vivekananda Kendra (supra)** and **Annaya Kocha Shetty (Dead) through Lrs (supra)**, i.e., collective reading of the agreement, would therefore lead us to conclude that the intention was to ensure continued operations of the manufacturing unit and welfare of the local community. Therefore, not permitting investment in the manufacturing unit through alienation of land would go contrary to the business efficacy of the contract as it would hinder the operationalization of the manufacturing unit itself.

(c) Regarding the third condition, the Apex Court in **Enercon (India) Limited and Ors. vs Enercon GMBH and Anr.**²⁵ observed that:

"91. Dr Singhvi has rightly submitted that the unworkability in this case is attributed only to the machinery provision. And the arbitration agreement, otherwise, fulfils the criteria laid down under Section 44 of the Indian Arbitration Act, 1996. Given that two arbitrators have been appointed, the missing line that "the two arbitrators appointed by the parties shall appoint the third arbitrator" can be read into the arbitration clause. The omission is so obvious that the court can legitimately supply the missing line. In these circumstances, the Court would apply the officious bystander principle, as explained by MacKinnon, L.J. in Shirlaw v. Southern Foundries (1926) Ltd. [(1939) 2 KB 206 : (1939) 2 All ER 113 (CA), on appeal from 1937 S 1835] , to interpret the clause. In Shirlaw [(1939) 2 KB 206 : (1939) 2 All ER 113 (CA), on appeal from 1937 S 1835] , it was held that: (KB p. 227)

"... 'prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common "Oh, of course!"'"

In construing an arbitration clause, it is not necessary to employ the strict rules of interpretation which may be necessary to construe a statutory provision. The court would be well within its rights to set right an obvious omission without necessarily leaving itself open to the criticism of having reconstructed the clause."

Therefore, from a discussion in the second condition, it is apparent that the agreement was entered into for the purpose of the company's revival and continued operations. Therefore, any condition, like restriction on alienation of land, which hinders such an objective, cannot be said to form an obvious part of the agreement.

(d) Regarding the fourth condition, the test here is to ascertain whether such a term can be clearly expressed from a perusal of the agreement and using the tools provided in **Annaya Kocha Shetty (Dead) through Lrs (supra)** and **General Secretary, Vivekananda Kendra (supra)**. From statement of the relevant facts discussed for the second test, it is apparent that non-alienation of the land cannot be said to be a valid condition, factoring in the context in which the agreement was entered into as well as its terms and conditions.

(e) Regarding the fifth condition, while the point pertaining to bar on alienation of property was not expressly mentioned and therefore such a subsequent bar did not contradict an "express term", the meeting dated 13.06.2008 did impose a bar on usage of the land for commercial purposes without prior approval of the state government

which is directly contradictory to clause (i) of the agreement dated 12.11.1992 which mentions that:

"(i) Transferee will embark upon the scheme for expansion/modernisation of the unit in accordance with the latest proposals dated 23.7.92 submitted by it to the Principal Secretary, State Enterprises. In the process, transferee will bring share capital amounting to \$ 3,00,000 along with interest free loan amounting to \$ 4,35,000 and make working capital arrangements as per projections. The production will commence within 5 months of handing over."

Therefore, the fifth condition is not satisfied.

64. Thus, after the agreement has been entered into and the property having been handed over, the state government lost its right on the land and the factory in toto. There was no occasion therefore for the state government to hold a meeting on 13.06.2008 and impose subsequent restrictions on the subsequent owners of the land as the state government did not have any power to intervene or interfere with the affairs of the leather company who could use their property, machines, etc. for expanding or to diversify into different sectors. Furthermore, a perusal of the other part of the agreement empowers them to mortgage the land to get loans and therefore, we find that the restrictions on alienation issued by the state government itself are per say illegal and come within the four corners of being declared void ab initio. The power exercised by the state government is a colourable exercise of power and would be in violation of Articles 14 and 19 for imposing unnecessary restrictions. Therefore, in absence of an express contractual prohibition, the appellants cannot be said to be restricted from alienating the property. Basis the above discussion, the artificial barriers created in full enjoyment of their property are not sustainable in law.

C. Mutation and Title Rights

65. Mutation entries, as also argued by the learned counsel for the appellant, merely record changes to the revenue records and do not grant or restrict title to any property. Prior to discussing the judicial pronouncement on the same, it would be apposite to refer to Sections 90-A and 102 of the Rajasthan Land Revenue Act 1956 (mentioned above).

66. Such a condition, however, cannot fall foul of the statutory provisions enshrined under the central Act of 1882 mentioned above. Regarding mutation entries, the law has been settled by the Apex Court in **Jitendra Singh vs State of Madhya Pradesh and Ors.**²⁶, wherein the following was observed:

"7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter."

Therefore, restrictions on exercise of the rights of a title holder, like bar on alienation of the land cannot be one of the conditions precedent to grant NOC for mutation as has been imposed vide the meeting dated 13.06.2008. The same is also done in absence of any power granted under the Act of 1956.

D. Relegation To Arbitration

67. The question that arises for consideration is whether the learned Single Judge was justified in relegating the appellants-writ petitioners to the remedy of arbitration. Upon a careful examination of the nature of the dispute, it becomes evident that the controversy does not arise out of the terms of the agreement or their interpretation, but rather pertains to the

imposition of subsequent conditions by the State. Such action, having a direct bearing on the rights of the appellants, cannot be said to be confined to the realm of private law so as to oust the jurisdiction of this Court under Article 226 of the Constitution of India.

68. It is well settled that the existence of an alternative remedy, including arbitration, does not operate as an absolute bar to the exercise of writ jurisdiction, particularly where the impugned action is alleged to be arbitrary, unreasonable, or violative of constitutional or statutory provisions. In this context, the Hon'ble Supreme Court in **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**²⁷ wherein the Apex Court has authoritatively laid down the well-recognised exceptions to the rule of alternative remedy. The relevant extract from the said judgment is reproduced hereinbelow:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

69. Further reliance can also be placed on **ABL International Ltd. (supra)**, wherein it has been held that even in contractual matters, a writ

²⁷ (2003) 2 SCC 107

petition would be maintainable where the State or its instrumentality acts in an arbitrary manner or in violation of Article 14.

70. In the present case, the grievance of the appellants is not directed against any contractual stipulation, but against the unilateral imposition of conditions affecting their proprietary rights, which are alleged to be without authority of law. In such circumstances, the dispute clearly involves a public law element and cannot be relegated to arbitration, which is confined to adjudication of disputes arising out of the contract. The approach adopted by the learned Single Judge, therefore, in directing the appellants to avail the remedy of arbitration, does not appear to be in consonance with the settled principles governing the exercise of writ jurisdiction.

71. We also notice a contradiction between the first and second replies given by different respondents. In the reply submitted by respondents 1 and 5 to the writ petition, it was mentioned that:

"7. That the alternate and efficacious remedy for the purpose of challenging the impugned orders lies before the competent forum as per the prevailing laws which have not been availed by the present petitioner and this writ petition has been directly filed by them before the Hon'ble High Court. As such on the ground of availability of alternate and efficacious remedy, the present writ petition is liable to be dismissed."

Whereas, in the reply submitted by respondents 2-4 to the writ petition, it was mentioned that:

"L. The contents of grounds L are Respondent submits that the present dispute, concerning the validity of a state/statutory action or a question of title/revenue record correction under the Land Revenue Act, is a matter of public law. Disputes involving a public law element and the exercise of sovereign or administrative power are not arbitrable under the Arbitration and Conciliation Act, 1996. An Arbitrator, being creature of contract and private law, cannot decide issues requiring the interpretation and enforcement of constitutional or public law mandates, such as the validity of administrative actions or the correction of state revenue records. The proper forum for such a challenge is the Writ Court (High Court) or the specific Revenue

Courts/Authorities established by the statute, not an arbitral tribunal. Therefore, this ground is essentially an acknowledgement that the dispute is not one fit for arbitration."

Findings

72. In view of the above discussion, we answer the questions framed as follows:

- (a) The present writ petition is maintainable
- (b) The restriction on the right to alienate property is not inferable on the terms of the agreement
- (c) The attempt to unilaterally modify the terms of the agreement dated 12.11.1992 vide meeting dated 13.06.2008 is illegal
- (d) Restrictions on exercise of the rights of a title holder, like bar on alienation of the land cannot be one of the conditions precedent to grant NOC for mutation
- (e) The manner in which the decision was taken in the meeting dated 13.06.2008 is arbitrary and violative of Article 14
- (f) The decision dated in the meeting dated 13.06.2008 restricts the "easy and effective transfer" of the property and therefore is illegal as per **Samiullah (supra)**

73. In view of the above findings, analysis and discussion, we allow the DB Special Appeal Writ No.850/2025, Rajasthan Leather Industries Limited vs State of Rajasthan and Others, setting aside the judgement and order dated 12.05.2025 passed by the learned Single Judge whereby he restricts the sale and alienation of the property in question and usage for other purposes.

74. D.B. Special Appeal Writ No.168/2026, State of Rajasthan and Others vs Rajasthan Leather Industries Limited is dismissed, both on merits as well as barred by limitation.



74. No order as to costs.

75. All pending application(s) are disposed of.

(SHUBHA METHA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ

Gaurav/