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ORISSA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION

v.

M/S. MESCO KALINGA STEEL LTD. & ORS.

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(Civil Appeal No. 2545 of 2017)

FEBRUARY 14, 2017

[ARUN MISHRA AND AMITAVA ROY, JJ.]

Orissa Industrial Infrastructure Development Corporation Act, 1980 – s. 33 – Request made to appellant-Corporation for allotment of land (for establishing steel plant) – Corporation's request to State Government to issue orders to process the allotment – The State approved the allotment in principle subject to certain terms and conditions – The proposed allottee was required to pay the cost of the land in twenty half-yearly equal instalments – Execution of lease-deed was condition precedent for allotment of land – On deposit of first instalment, advance possession of a portion of land was given by the Corporation to the proposed allottee – Lease deed was not executed even after the possession of the land was taken over – After about more than five years, appellant-Corporation gave final notice to deposit balance defaulted amount toward the cost of the land – On failure to execute the lease deed and to pay the defaulted amount, possession of the land was cancelled and was resumed by the Corporation – The amount deposited towards the one instalment was adjusted towards compensation for use and occupation of the land and damages – After resumption, the land was further allotted to third parties – Cancellation of possession and resumption of land was questioned in court – High Court held that the Corporation had not complied with Cl. 18 of the policy decision whereby 3 month's notice was required to be given before resuming the possession of the land and directed the Corporation to lease out the land to the proposed allottee – On appeal, held: Under s. 33, Corporation can dispose of the land subject to directions given by the State Government and subject to such terms and conditions as are necessary – Execution of lease-deed was condition precedent for allotment of land – Since the lease-deed was never executed, the relationship of lessor-lessee

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never came into being – Thus Cl. 18 of policy decision never came into force as no concluded contract came into being and the transaction became void – Therefore, it is not necessary to serve three months' notice before resumption of land and resumption was justified – Forfeiture of amount for use and occupation of land and for damages was also appropriate as compensation could be claimed u/s. 70 of Contract Act – In the facts of the case, principle of promissory estoppel is not attracted as no assurance was given by the Corporation – Cost of Rs. 5 lakhs imposed on the respondent (proposed allottee) – Contract Act, 1872 – s.70 – Administrative Law – Principle of Promissory Estoppel.

Allowing the appeals, the Court

HELD: 1. As provided in section 33 of the Orissa Industrial Infrastructure Development Corporation Act, 1980, the Corporation can dispose of the land subject to directions given by the State Government in such a manner and subject to such terms and conditions as may be necessary. The allotment letter itself contemplated the execution of the lease deed as a condition precedent. Condition No.18 of the general terms and conditions to be inserted in lease deed provided that the lessee had to remedy the breach within three months after notice. Aforesaid condition No.18 never came into force and remained inoperative in the facts of the instant case as lease deed itself had not been executed. Even otherwise, more than three months' time was given to Mesco (respondent-proposed allottee) to remedy the breach inasmuch as notice for resumption was initially given in 1997 and for more than 5½ years till resumption in July, 2003, breach was not remedied. In spite of receiving the advance possession, there was failure on the part of Mesco to execute the lease deed though draft lease deed was sent to it in January, 1996 for execution. The relationship of lessor and lessee never came into being, in the absence of execution of lease deed. The execution of lease deed was necessary as the State Government had only accorded in principle approval and advised the Corporation to allot the land that could only be done by execution of lease deed. As a matter of fact, the Corporation ought not to have handed over advance possession of the land to Mesco without execution of lease deed. Thus, no concluded contract

A **came into being and the transaction became void due to failure on the part of Mesco to execute a formal lease deed, and therefore, it was not necessary to serve three months' notice to remedy the breach. [Paras 12, 13] [885-F-G; 886-E-H; 887-A-B; 888-C-D]**

B **2. The Corporation is a statutory authority and it can act only on the basis of written lease deed. The execution of lease deed is necessary and it is in public interest to prevent unauthorized leasing out of property on its behalf. Lease is required to be executed in a prescribed format in the shape of formal document which is *sine qua non*. In the absence thereof, it would not be permissible to hold that relationship of lessor and lessee came into being. [Para 15] [889-B]**

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Bhikraj Jaipuria v. Union of India **AIR 1962 SC 113: [1962] SCR 880 – relied on.**

D **3. Possession had been enjoyed by Mesco without execution of the lease deed. The conduct of the Corporation was also not diligent. Notice was served in the year 1997 for resumption but thereafter up to July, 2003 nothing was done by either the Corporation or Mesco. Not even a single communication has been placed on record by Mesco containing its proposal to remedy breach. No explanation has been placed on record for inaction on the part of Mesco. The transaction became void, due to Mesco's own lapse and negligence, and it has forfeited the right to get the lease deed executed. After taking possession, it could not have waited for so many years. What was required to be performed by Mesco was not done. It also failed to make any development of worth on the land. There is no force in the submission that they have spent a sum of Rs.22 crores as they were unable to explain how they spent the said amount. Apart from that, having failed to execute the lease deed, they were to invest at their own peril. In case they have invested some amount, on that basis they cannot claim any legal or equitable right. [Para 14] [888-E-H]**

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4. Forfeiture of amount of Rs.1.25 crores from Mesco was also appropriate. Section 70 of the Contract Act deals with the cases where a person does a thing not intending to act gratuitously and others enjoyed it. In such a situation compensation can be claimed under section 70. Mesco would be rather liable to pay

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compensation in addition, for retaining possession so long. [Para 16] [889-F-H; 890-A]

State of West Bengal v. M/s. B.K. Mondal and Sons **AIR 1962 SC 779 : [1962] Suppl. SCR 876**; *New Marine Coal Co. (Bengal) Private Ltd. v. The Union of India* **AIR 1964 SC 152 : [1964] SCR 859**; *Laliteshwar Prasad Sahi v. Bateshwar Prasad and Ors.* **AIR 1968 SC 580**; *Karamshi Jethabhai Somayya v. State of Bombay (now Maharashtra)* **AIR 1964 SC 1714 : [1964] SCR 984**; *Mulamchand v. State of Madhya Pradesh* **AIR 1968 SC 1218 : [1968] SCR 214 – relied on.**

5. The High Court has adventured into an avoidable illegality while directing execution of lease deed. It is a settled law that equity follows the rule of common law in respect of such contracts. Renewal of lease is a privilege and if a tenant wishes to claim the privilege, he must do so strictly within the time limited for the purpose. Where there is no time limit, an application may be made within a reasonable time. If delay is on the part of lessee for renewal arising out of mere neglect on his part and which could have been avoided by reasonable diligence, would not entitle him to claim renewal. Applying the same principle to the instant case, it is apparent that the conduct of Mesco was unfair and unpardonable. The conduct disentitled it from indulgence by Court in any manner. [Para 18] [892-A-C]

6. Mesco had no enforceable right for grant of any relief by mere handing over of possession. Mesco was required to do several acts in this case as per the general terms and conditions subject to which the lease was to be granted. Nothing has been performed including payment of instalments etc. and in such a situation no relief is permissible to be given. [Paras 19, 20] [892-D-E; 894-B-C]

Khela Banerjee & Anr. v. City Montessori School & Ors. **(2012) 7 SCC 261**; *Raj Kishore (Dead) by LRs. v. Prem Singh & Ors.* **(2011) 1 SCC 657 : [2010] 14 SCR 1019**; *Mumbai International Airport Private Ltd. v. Golden Chariot Airport & Anr.* **(2010) 10 SCC 422 : [2010] 12 SCR 326 – relied on.**

A 7. The plea of Mesco that the Corporation is bound by promissory estoppel, is wholly unworthy of acceptance. It is not the case of Mesco that there was any assurance given to it on the basis of which it has acted upon. The State Government had withdrawn its initial offer of equity participation of Rs.25 crores well before the order of allotment was issued. It was made clear B in the order that the State Government had directed the Corporation to allot 2500 acres of land subject to execution of lease deed. In such a situation there is no room to entertain the plea of promissory estoppel and it is not the case that any of the authorized persons had at any point of time, without execution of C lease deed, asked Mesco to do anything. Any such assurance even if it had been given, would be of no consequence. In the facts of the instant case, the principle of promissory estoppel is not attracted at all. The Corporation is a statutory body and can act only in the mode prescribed and Mesco was informed of the lease deed to be executed in prescribed format. [Para 21] [894-D G-H; 895-A-D]

8. The High Court has totally misdirected itself in directing to lease out the balance land. The High Court has also ignored that certain intervening events have taken place and there was total failure on the part of Mesco to carry out its obligations. The E High Court could not have issued the direction more so in the changed situation and in view of the defaults committed by Mesco. As a matter of fact, Mesco was never inclined to abide by the terms of the letter dated 4.7.2003. When resumption was made on 25.7.2003, a representation was submitted on 20.8.2003 by F Mesco. In that, an attempt was made to dictate its own terms in the garb of prayer for payment. As a matter of fact, it is apparent from the conduct of Mesco that it had no justification at any point of time not to execute the lease deed. It was delaying the same for the reasons best known to it which was wholly impermissible conduct, particularly after taking possession. The breach was not G remedied for several years much less for three months in which it was to be remedied. Thus, High Court misadventured into holding the action of the Corporation of resumption of land to be illegal. There was no equitable or legal consideration in favour of the respondent herein and a writ is not issued to perpetuate H an illegality. Not only the conduct of Mesco was unfair, third party

rights had also intervened. Lawful method had been exercised for resumption of land and cancellation of letter of handing over the possession. [Para 23] [895-F-H; 896-A-B]

Case Law Reference

[1962] SCR 880	relied on	Para 15
[1962] Suppl. SCR 876	relied on	Para 16
[1964] SCR 859	relied on	Para 16
AIR 1968 SC 580	relied on	Para 17
[1964] SCR 984	relied on	Para 17
[1968] SCR 214	relied on	Para 18
(2012) 7 SCC 261	relied on	Para 19
[2010] 14 SCR 1019	relied on	Para 20
[2010] 12 SCR 326	relied on	Para 21

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2545 of 2017

WITH

Criminal Appeal No. 2546 and 2547 of 2017.

ARUN MISHRA, J. 1. Leave granted.

2. The appeals have been preferred by Orissa Industrial Infrastructure Development Corporation (in short 'IDCO') and also by Jindal Stainless Ltd. aggrieved by the impugned judgment and order dated 30.10.2007 passed by the High Court of Orissa, thereby directing IDCO to lease out 825.68 acres of land and to enter into a lease agreement with M/s. Mesco Kalinga Steel Ltd.

3. The factual matrix discloses that Mesco Kalinga Steel Ltd. (in short 'Mesco') had applied to IDCO for allotment of 2500 acres of land on 30.6.1994 and IDCO in turn, requested the Government of Orissa to issue necessary orders to process the allotment. On 28.10.1994 the State Government conveyed in principle approval for allotment of 2500 acres of land on the terms and conditions laid down in the policy decision of the State Government as revised on 25.1.1995 for establishment of steel plant.

A 4. Initially the State Government had agreed for equity participation of Rs.25 crores towards the cost of land. This offer was withdrawn by the State Government on 2.2.1995 and was communicated to Mesco. IDCO wrote a letter on 21.3.1995 to Mesco to deposit the land cost in twenty half-yearly equal instalments and further requested to deposit Rs.1.25 crores towards the first instalment and Rs. 13.08 B lakhs towards ground rent and cess. Mesco deposited Rs.1.25 crores with IDCO on 3.4.1995. On 13.6.1996 IDCO requested Mesco to take over possession of 1756.29 acres of land in the first phase and to submit the draft lease deed for execution. Mesco took over possession of the land on 18.6.1996. However, lease deed was not executed. Thereafter, C on 13.10.1997, the State Government intimated the proceedings of the meeting held on 26.9.1997 to IDCO and required it to execute the lease deed in favour of Mesco and also to realize the instalments due.

5. On 27.10.1997, IDCO requested Mesco to submit draft deed of lease agreement for execution within 15 days, failing which steps will D be taken for cancellation of allotment and resumption of land. IDCO again requested on 26.11.1997 to submit the draft deed of agreement for execution. However Mesco kept quiet and failed to get the lease deed executed. Thereafter, for more than 5 ½ years nothing happened. No steps were taken by Mesco to get the lease deed executed. Thereafter, IDCO gave final notice to Mesco on 4.7.2003 to deposit the balance E defaulted amount of Rs.22.44 crores along with statutory dues and to execute the lease deed by 19.7.2003 failing which it was intimated that the said land shall be resumed at their cost and the amount paid shall be adjusted towards compensation for use and occupation of the land; apart from that, Mesco shall also be liable for damages. Ultimately on 25.7.2003 F on failure to get the lease deed executed, land was resumed and possession letter of 1756.29 acres of land was cancelled by IDCO. The amount of Rs.1.25 crores deposited by Mesco was forfeited and adjusted towards compensation for use and occupation of the land and damages.

6. After resumption of the land, IDCO allotted 209.59 acres of G land out of the land in question to Visa Industries Ltd. on 7.11.2003 and also allotted 71.20 acres out of the disputed land to Jindal Stainless Ltd. Possession of the land was handed over to Visa Industries Ltd. on 30.8.2004 and to Jindal Stainless Ltd. on 28.2.2005. IDCO further allotted 533.52 acres of disputed land to Jindal Stainless Ltd. and another 120 acres of land out of the disputed land to Visa Industries Ltd. and handed

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over possession to Jindal and Visa on 11.11.2005 and 17.11.2005 respectively. The lease deed etc. have been executed between the aforesaid parties. A

7. A representation was submitted by Mesco on 20.8.2003 questioning resumption in which Mesco submitted its own terms and conditions for payment. The said representation was rejected on 26.9.2003 by IDCO. The first round of litigation in the form of W.P. (C) No.12857/2003 was filed by Mesco questioning the cancellation and resumption of land. The High Court disposed of the said writ petition on 15.1.2004. Pursuant thereto, representation dated 20.1.2004 submitted to IDCO had been rejected on 25.2.2004. Thereafter, in the second round of litigation, W.P. (C) No.2453/2005, during its pendency, Mesco came up with another representation dated 22.8.2005 to IDCO which was rejected on 7.10.2005 on the ground that it was highly unsatisfactory, unconvincing and completely unacceptable. Mesco amended the writ petition to question the rejection order dated 7.10.2005. On 11.4.2007 and 12.4.2007, the High Court again asked IDCO whether it was willing to lease out the remaining land to Mesco. As IDCO was unable to do so, the High Court allowed the writ application to lease out 825.68 acres of land. Aggrieved thereby, the appellants are before us. B C D

8. The High Court has held that since IDCO has not complied with clause 18 contained in the policy decision dated 25.1.1995 in as much as 3 months' notice has not been given, it was not open to resume the possession otherwise than in due course of law. Since Mesco had confined its prayer to the available land to the aforesaid extent, the High Court had issued directions to lease out 825.68 acres of land. E

9. It was submitted by learned senior counsel on behalf of the appellants that the High Court has erred in law in setting aside the order of resumption of land as there was failure on the part of Mesco to get the lease deed executed despite repeated reminders made by IDCO in the years 1996 and 1997 and thereafter for several years there was lull, and ultimately after issuance of notice, resumption of land was made which has been subsequently allotted to other industries and the remaining land was required for their future expansion. The land for mining purposes is also not available at present. The instalments were also not deposited. In the absence of execution of lease deed, the relationship of lessor and lessee never came into being, as such the 3 months' notice for resumption F G

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A of land was not required. Three months' notice is required to terminate a lease deed. The order of resumption was passed and pursuant thereto, possession has rightly been taken as Mesco was not vested with any right to retain possession having failed to pay the instalments and execute the lease deed. The order passed by IDCO for forfeiture of the amount deposited to the tune of Rs.1.25 crores was fully justified in the facts and circumstances of the case. No development had been made by Mesco on the land in question. Thus, the impugned order may be set aside.

10. Learned senior counsel appearing on behalf of the respondent urged that the order of the High Court is appropriate and no case for interference in the appeal is made out. Setting up of the steel plant would be in the interest of the State and the public at large. Due to certain legal proceedings etc, Mesco could not get the lease deed executed. It was necessary to serve 3 months' notice to resume the land which has not been done. On a specific query being posed about the development over the land, it was stated that the boundary wall had been constructed. However, no plant etc. could be established before resumption of the land.

11. Before dilating upon the rival submissions, it is appropriate to take note of certain facts. The Government of Orissa, Department of Steel & Mines had conveyed its in principle approval for allotment of 2500 acres of land for establishment of 2 million tons steel plant with ultimate capacity of 3 million tons per annum. The offer for equity participation of Rs. 25 crores was withdrawn by the State Government vide letter dated 5.1.1995 before direction for allotment was issued and IDCO was advised to hand over 2500 acres of land on long term lease basis on the terms and conditions stipulated in the revised terms and conditions issued by the Government on 25.1.1995. They were required to deposit Rs.1.25 crores towards the first instalment and Rs.13,08,842/- towards ground rent and cess as reflected in the letter dated 21.3.1995. The amount of Rs.1.25 crores was deposited on 3.5.1995. Vide communication dated 13.6.1996 of IDCO, possession of 1756.29 acres of land was required to be taken and Mesco was further required to submit a draft deed of agreement in duplicate. It appears that on 18.6.1996 advance possession of 1756 acres of land had been handed over to Mesco but the draft deed of agreement for execution of lease deed was not submitted by it, hence a letter was written on 27.10.1997

by IDCO to resume the land and to cancel allotment. In communication dated 26.11.1997, IDCO wrote that it had sent draft lease deed to Mesco on 20.1.1996 and required the latter to submit the draft of lease agreement for execution immediately. Thus it is apparent that though the possession had been taken by Mesco but, at the same time, there was inexplicable neglect on its part to execute the lease deed. Due to the contumacious default on the part of Mesco for several years, lease deed could not be executed. Ultimately IDCO had served notice dated 4.7.2003 to Mesco regarding resumption of land referring to its earlier communications dated 27.10.1997 and 26.11.1997 to execute the lease deed or to face resumption of land. The amount of instalments had also not been deposited except the initial amount of Rs.1.25 crores. Thus Mesco was required by notice to deposit the balance defaulted amount of Rs.22,84,48,890/- and to execute the lease deed by 19.7.2003 failing which land shall be resumed and the amount paid by Mesco shall be adjusted towards compensation for use and occupation of the land and there shall be future liability of damages and costs thereupon. As nothing was done by Mesco, vide communication dated 25.7.2003, IDCO resumed the land and cancelled delivery of deed of possession dated 18.6.1996. The amount deposited was forfeited.

12. The memorandum of understanding (MOU) was reached between the Government of Orissa and Mesco Group of Industries on 4.5.1994. According to the same, Government of Orissa had undertaken to recommend leasehold rights for mining at suitable mining locations. The MOU was required to be converted into agreement in due course of time. As per the general terms and conditions framed by the Government of Orissa on 25.1.1995 for allotment of land for steel plants, the cost of land was Rs.1 lakh per acre. The amount was to be paid in instalments as provided with a right to hold the demised property for 90 years. Condition No.18 of the general terms and conditions to be inserted in lease deed provided that the lessee had to remedy the breach within three months after notice. Clause 18 of the general terms and conditions is extracted hereunder :

> **"18.** If the dues of the Lessor hereby reserved or any part thereof shall at any time being arrears and unpaid for three months next after the date on which the same shall have become due, whether the same shall have been lawfully demanded or not, or if there is a breach or non-observance by the Lessee of

A any of the conditions and covenant herein contained *and the lessee fails to remedy the breach within three months of the notice in writing given by the lessor or becomes insolvent or enters into an agreement with his creditors for composition of the said business.* This agreement will be deemed to have been terminated and the Lessee may notwithstanding the waiver
B of any previous causes of action or rights or remedy of re enter and without prejudice to any such rights, or remedy of the lessor for recovery of dues under the lease, enter upon the demised property and repossess the same as if this demised property had not been leased out. In such a case the lessee shall pay to the
C Lessor such amount by way of damages or such other charges as may be determined by the Lessor. The amount of damages or other dues recoverable from the Lessee will be adjusted against the amount already paid by the Lessee. If after such adjustment there remains surplus, the same shall be returned to the lessee without any interest. If after such adjustment there shall remains
D some dues recoverable from the lessee and if lessee fails to pay the same, the lessor shall be free to take any legal action as it deems for realization." (emphasis supplied)

Aforesaid condition No.18 never came into force and remained inoperative in the facts of the instant case as lease deed itself had not
E been executed. Even otherwise, more than three months' time was given to Mesco to remedy the breach inasmuch as notice for resumption was initially given in 1997 and for more than 5½ years till resumption in July, 2003, breach was not remedied. In spite of receiving the advance possession, there was failure on the part of Mesco to execute the lease
F deed though draft lease deed was sent to it in January, 1996 for execution. The relationship of lessor and lessee never came into being, in the absence of execution of lease deed. The execution of lease deed was necessary as the State Government had only accorded in principle approval and advised IDCO to allot the land that could only be done by execution of
G lease deed. As a matter of fact, IDCO ought not to have handed over advance possession of the land to Mesco without execution of lease deed. However, for the reasons best known to IDCO, advance possession was given. The allotment letter itself contemplated the execution of the lease deed as a condition precedent. As provided in section 33 of the Orissa Industrial Infrastructure Development Corporation Act, 1980 (for

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short 'the Act'), the Corporation can dispose of the land subject to directions given by the State Government in such a manner and subject to such terms and conditions as may be necessary. The condition precedent was that of execution of lease deed, and as it was so directed by State Government also, in our considered opinion, no concluded contract came into being and the transaction became void due to failure on the part of Mesco to execute a formal lease deed.

13. Section 33 of the Act is extracted hereunder:

"Section 33. Disposal of land by the Corporation. - (1) Subject to any directions given by the State Government the Corporation may dispose of –

(a) Any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) Any such land after undertake or carrying out such development as it thinks fit,

to such person in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act.

(2) The powers of the Corporation with respect to the disposal of land under sub-S. (1) shall be so exercised as to secure, so far as practicable, that –

(a) where the Corporation proposes to dispose of by sale any such land which is surplus to its requirement, the Corporation shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use as the Corporation may think fit to impose.

(b) persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use have an opportunity to obtain thereon accommodation suitable to their reasonable

A requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(3) Nothing in this Act shall be construed as enabling the Corporation to dispose of land by way of gift, but subject as aforesaid; reference in this Act to the disposal of land shall B be construed as reference to the disposal thereof in any manner whether by way of sale, mortgage, exchange, or lease or by the creation, of any easement, right or privilege or otherwise."

It is apparent from section 33(1) and 33(3) that it was necessary C to execute the lease deed as the Corporation could dispose of the land only in the manner as provided in law and otherwise also it was so stipulated in the Government order itself. Thus, due to neglect of Mesco the transaction became void and it was not necessary to serve three months' notice to remedy the breach. However, in the facts of the case for several years the breach was not remedied after communication D dated 27.10.1997 till July, 2003.

14. In the instant case it is apparent that possession had been enjoyed by Mesco without execution of the lease deed. The conduct of IDCO was also not diligent. Notice was served in the year 1997 for resumption but thereafter up to July, 2003 nothing was done by either E IDCO or Mesco. Not even a single communication has been placed on record by Mesco containing its proposal to remedy breach and on a specific query being made to the learned counsel appearing for Mesco, they were unable to explain as to what transpired between 1997 and 2003 except a vague submission was made that it was mired in certain F litigations which fact has not been even pleaded. Thus, no explanation, good, bad or otherwise has been placed on record for inaction on the part of Mesco. The transaction became void, due to Mesco's own lapse and negligence, and it has forfeited the right to get the lease deed executed. After taking possession, it could not have waited for so many years. What was required to be performed by Mesco was not done. It also G failed to make any development of worth on the land. We find no force in the submission that they have spent a sum of Rs.22 crores as they were unable to explain how they spent the said amount, and only a bald statement was made that they have constructed a boundary wall. It has not been established that a sum of Rs.22 crores had been spent by Mesco. H Apart from that, having failed to execute the lease deed, they were to

invest at their own peril. In case they have invested some amount, on that basis they cannot claim any legal or equitable right. A

15. IDCO is a statutory authority and it can act only on the basis of written lease deed. The execution of lease deed is necessary and it is in public interest to prevent unauthorized leasing out of property on its behalf. Lease is required to be executed in a prescribed format in the shape of formal document which is *sine qua non*. In the absence thereof, it would not be permissible to hold that relationship of lessor and lessee came into being. A situation arose under section 175(3) of the Government of India Act, 1935 a formal document was required to be executed which provision was *pari materia* to Article 299 of the Constitution, this Court held in *Bhikraj Jaipuria v. Union of India* AIR 1962 SC 113 that for a contract between Government and private individuals, formal document is necessary and where it is required that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be judged in the light of the intention of the legislature as disclosed by the object. If the provisions of statute are mandatory, the thing done not in the manner or form prescribed can have no effect or validity. This Court also observed that it is in the interest of the public that the question whether a binding contract has been made between the State and a private individual should not be left to dispute and litigation. B C D E

It is apparent that there is a manner of executing the lease deed with the Corporation. Prescribed form of draft lease deed had been sent by IDCO to Mesco but it failed to execute it. Thus, there was no contract which could have been enforced and it became void due to inaction of Mesco itself. F

16. Forfeiture of amount of Rs.1.25 crores was also appropriate. In *State of West Bengal v. M/s. B.K. Mondal and Sons* AIR 1962 SC 779, this Court held that the provision of section 175(3) is mandatory and non-compliance makes the contract invalid and section 70 of the Contract Act prevents unjust enrichment. It applies as much to individuals as to corporations and Government. Section 70 of the Contract Act deals with the cases where a person does a thing not intending to act gratuitously and others enjoyed it. In such a situation compensation can be claimed under section 70 and this Court has held that section 175(3) of the Government of India Act is not in conflict with the principles enunciated under section 70 of the Contract Act. Thus, we find no force in the G H

A submission on the part of Mesco with respect to the forfeiture of amount of Rs.1.25 crores. In addition, they would be liable to pay as compensation for retaining possession so long. In *New Marine Coal Co. (Bengal) Private Ltd. v. The Union of India* AIR 1964 SC 152 also, this Court has held that when a contract is found to be void due to the provisions of section 175(3) of the Government of India Act it becomes unenforceable but in case a party had performed its obligation, section 70 is attracted in order to recover compensation.

17. In *Laliteshwar Prasad Sahi v. Bateshwar Prasad and Ors.* AIR 1968 SC 580 where mere agreement was entered into in contravention of Article 299 of the Constitution and was not ratified by the Government, it was held not to be a contract as it was void and unenforceable. Similar is the view taken in *Karamshi Jethabhai Somayya v. State of Bombay (now Maharashtra)* AIR 1964 SC 1714. It is true that the said provisions are not attracted in the instant case but statutory corporation has also to act as per the mode prescribed by law.

18. There is no question of estoppel or ratification in such cases. In *Mulamchand v. State of Madhya Pradesh* AIR 1968 SC 1218, this Court observed thus :

> **"6.** ..... The principle is that the provisions of Section 175(3) of the Government of India Act, 1935 or the corresponding provisions of Article 299(1) of the Constitution of India are mandatory in character and the contravention of these provisions nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case. The reason is that the provisions of Section 175(3) of the Government of India Act and the corresponding provisions of Article 299(1) of the Constitution have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in Section 175(3) of the Government of India Act and Article 299(1) of the Constitution on the ground of public policy — on the ground of protection of general public — and these formalities cannot be waived or dispensed with. If the plea of the respondent regarding estoppel or ratification is admitted, that would mean in effect the repeal of an important constitutional provision intended for the protection of the general public. That is why the plea of estoppel

or ratification cannot be permitted in such a case. But if money is deposited and goods are supplied or if services are rendered in terms of the void contract, the provisions of Section 70 of the Indian Contract Act may be applicable. In other words if the conditions imposed by Section 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. The important point to notice is that in a case falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under Section 70 it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution. In *Bibrosa* v. *Fairbairn*, 1943 AC 32 Lord Wright has stated the legal position as follows:

> "... any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution".

A In the light of aforesaid decision, when we consider the overall conduct of Mesco in the instant case, we are fully satisfied that the High Court has adventured into an avoidable illegality while directing execution of lease deed. It is a settled law that equity follows the rule of common law in respect of such contracts. Renewal of lease is a privilege and if a tenant wishes to claim the privilege, he must do so strictly within the B time limited for the purpose. This Court has further considered the question where there is no time limit, an application may be made within a reasonable time. If delay is on the part of lessee for renewal arising out of mere neglect on his part and which could have been avoided by reasonable diligence, would not entitle him to claim renewal. Applying C the same principle to the instant case, it is apparent that the conduct of Mesco was unfair and unpardonable. The conduct disentitled it from indulgence by Court in any manner. We are constrained to observe that a number of times the High Court had unnecessarily directed the matter to be reconsidered and on each and every occasion there was rejection of the representation by the concerned authorities. Thus, no equitable D consideration was available with Mesco to invoke the writ jurisdiction for the reliefs sought. Relief granted is not permissible as per law.

19. Mesco had no enforceable right for grant of any relief by mere handing over of possession. The question came up before this Court in *Khela Banerjee & Anr. v. City Montessori School & Ors.* E (2012) 7 SCC 261 when bid was cancelled and was not accepted but the Manager of the respondent convinced the Governor to pass individual order of possession and acceptance of the balance amount in ten six-monthly instalments; thereafter instalments were not paid. This Court held that no enforceable right accrued in favour of the respondent F notwithstanding the execution of the agreement dated 12.1.1996 and the offer made by the respondent to make the payment of the balance price was rightly rejected. This Court has held thus :

> **"29.** The first question which merits consideration is whether the conclusion recorded by the High Court on the issue of G enforceability of the agreement dated 12-1-1996 is correct and Respondent 1's prayer for issue of a direction to LDA to accept the balance price was rightly rejected. It is an admitted position that in response to tender notice dated 20-12-1994, Respondent 1 gave bids for four plots including Plot No. 92-A/C and paid 25% of the price offered by it but did not pay the balance amount

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necessitating cancellation of the bid, about which intimation was given vide letter dated 14-6-1995. Respondent 1 did not challenge the cancellation of bids by availing appropriate legal remedy but *its Manager succeeded in convincing the Governor of the State to pass an unusual order for handing over possession of the plots and acceptance of the balance amount in six-monthly instalments.* The reasons which prompted the Governor to act in violation of the Rules of Business and ordain restoration of the plots in favour of Respondent 1 albeit without setting aside the decision of LDA to cancel the bids are not borne out from the records produced before this Court. Therefore, we hold that the order passed by the Governor and the consequential actions taken by the State Government and LDA including the execution of agreement dated 12-1-1996 did not create an enforceable right in favour of Respondent 1 and the High Court rightly declined to issue a mandamus to LDA to accept the offer made on its behalf for payment of the balance price.

30. It is significant to note that the *agreement dated 12-1-1996 contained an unequivocal stipulation that if Respondent 1 fails to pay the instalments of balance price within the prescribed time-limit then the agreement would become void and LDA will be free to sell the plot to any other person. Admittedly, Respondent 1 did not pay the instalments of balance price. Therefore, the agreement stood automatically terminated and LDA became entitled to dispose of the plot by adopting an appropriate mechanism consistent with the doctrine of equality enshrined in Article 14 of the Constitution. It is rather intriguing as to why the functionaries of LDA remained silent for more than 13 years and did not repossess the plot in question. This was perhaps due to the pressure brought by the Manager of Respondent 1 from different quarters, administrative as well as political.*

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32. We have carefully gone through the provisions of the 2009 Act and find that they do not even remotely deal with the issue of allotment of land to the educational institutions. Therefore,

A the Division Bench of the High Court was not at all justified in ordering transfer of the plot to Respondent 1 and that too by ignoring its own finding that the said respondent was a ranked defaulter and the writ petition was filed after a time gap of 13 years without any tangible explanation."

B (emphasis added by us)

20. Mesco was required to do several acts in this case as per the general terms and conditions subject to which the lease was to be granted. Nothing has been performed including payment of instalments etc. and in such a situation no relief is permissible to be given as held by this C Court in *Raj Kishore (Dead) by LRs.* v. *Prem Singh & Ors.* (2011) 1 SCC 657 in which this Court has referred to *Halsbury's Laws of England* thus :

"33. This Court also quoted with approval the following passage from *Halsbury's Laws of England*, Vol. 14, IIIrd Edn., D p. 622, Para 1151:

"1151. *Conditions must as a general rule be strictly observed.*—Where under a contract, conveyance, or will a beneficial right is to arise upon the performance by the beneficiary of some act in a stated manner, or at a stated E time, the act must be performed accordingly in order to obtain the enjoyment of the right, and in the absence of fraud, accident or surprise, equity will not relieve against a breach of the terms."

It is apparent that when several acts are to be done in a stated F manner and in stipulated time and none of them has been performed, as in the instant case, such gross breach became irremediable and no equitable principle could have come to the rescue of Mesco as it has utterly failed to fulfil its obligations.

21. It was submitted on behalf of Mesco that IDCO is bound by G promissory estoppel. We find the submission to be wholly unworthy of acceptance. It is not the case of Mesco that there was any assurance given to it on the basis of which it has acted upon. The State Government had withdrawn its initial offer of equity participation of Rs.25 crores well before the order of allotment was issued. It was made clear in the order that the State Government had directed IDCO to allot 2500 acres

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of land subject to execution of lease deed. In such a situation there is no room to entertain the plea of promissory estoppel and it is not the case that any of the authorized persons had at any point of time, without execution of lease deed, asked Mesco to do anything. Any such assurance even if it had been given, would be of no consequence as held by this Court in *Mumbai International Airport Private Ltd. v. Golden Chariot Airport & Anr.* (2010) 10 SCC 422. Therein a question arose that the Airports Authority of India being a statutory body constituted under section 3 of the Airports Authority of India Act, 1944 was required to execute the contract in a particular form as provided under the Act and the Regulations. As such it was held that even if oral assurance of execution of licence is proved, such assurance cannot bind the statutory body. In the facts of the instant case, the principle of promissory estoppel is not attracted at all. IDCO is a statutory body and can act only in the mode prescribed and Mesco was informed of the lease deed to be executed in prescribed format. Thus the High Court could not have issued the impugned direction.

22. In the writ petition, a prayer had been made for grant of relief of a declaration that Mesco has acquired full title to hold the property in question for a period of 99 years from the date of possession and IDCO has lost its title to the said land and has the remedy to recover the balance amount by filing a suit. The prayer was wholly misconceived. In the instant case, on the basis of MOU or allotment letter, no right has accrued to Mesco, and it having failed to perform its mandatory part, the MOU/offer became void and unenforceable. IDCO was fully justified in resuming the land.

23. The High Court has totally misdirected itself in directing to lease out the balance land. The High Court has also ignored that certain intervening events have taken place and there was total failure on the part of Mesco to carry out its obligations. The High Court could not have issued the direction more so in the changed situation and in view of the defaults committed by Mesco. As a matter of fact, Mesco was never inclined to abide by the terms of the letter dated 4.7.2003. When resumption was made on 25.7.2003, a representation was submitted on 20.8.2003 by Mesco. In that, an attempt was made to dictate its own terms in the garb of prayer for payment. A a matter of fact, it is apparent from the conduct of Mesco that it had no justification at any point of time not to execute the lease deed. It was delaying the same for the

A reasons best known to it which was wholly impermissible conduct, particularly after taking possession. The breach was not remedied for several years much less for three months in which it was to be remedied. Thus, High Court misadventured into holding the action of IDCO of resumption of land to be illegal. There was no equitable or legal consideration in favour of the respondent herein and a writ is not issued to perpetuate an illegality. Not only the conduct of Mesco was unfair, third party rights had also intervened. Lawful method had been exercised for resumption of land and cancellation of letter of handing over the possession.

C 24. Resultantly, the impugned order passed by the High Court is hereby set aside. The appeals are allowed. The writ petition stands dismissed. Cost of Rs.5 lakhs is directed to be paid by Mesco to IDCO within a period of two months from today.

Kalpana K. Tripathy Appeals allowed.