REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NOS. 88960 OF 2020 & 47525 OF 2021
IN
CIVIL APPEAL NO. 10856 OF 2016

Bhupinder Singh **…Appellant(s)**

Versus

Unitech Limited **…Respondent(s)/ Applicant (s)**

O R D E R

M.R. SHAH, J.

1. Present I.A. No. 88960 of 2020 has been preferred by the present management of Unitech Limited seeking following prayers/directions: -

(i) Direct M/s. Devas Global LLP to deposit the entire sale consideration of Rs. 206.50 crores for 26.475 acres of land sought to be purchased by it in a time bound manner;

(ii) Direct M/s. Devas Global LLP to either purchase the entire land, as committed, at the same rate or in the alternative provide suitable access to the balance land by taking only proportionate frontage of the land so that any other subsequent purchaser is also

able to get adequate access to the land without any interference and Unitech is able to maximise its revenues from realization of assets;

(iii) Direct that M/s. Devas Global LLP shall not create any third party rights on the entire land and if any rights have been created surreptitiously, then the same shall be kept in abeyance and no further action be taken in furtherance of the same;

(iv) Direct M/s. Markwell Properties Pvt. Ltd. to pay an amount of Rs 29,24,87,837/-, which was given as advance for the purchase of 36 acres of land out of which only 26 acres 19 guntas land was transferred, alongwith interest from March 2007 till its payment;

(v) Direct Col. Mohinder Singh Khaira and Naresh to immediately return a sum of Rs. 83.40 crores and deposit the said amount in the Registry of this Hon'ble Court, which they have received in respect of sale of 12 acres 21 guntas (1st sale transaction) and 10 acres 3.5 guntas (2nd sale transaction) to Devas alongwith interest;

(vi) Direct Col. Mohinder Singh Khaira and Naresh to provide all the requisite documents, including the

details of financial transactions in respect of 26 acres 19 guntas of land as mentioned above;

(vii) Direct legal action be taken against Col. Mohinder Singh Khaira for forgery, cheating, fraud and criminal conspiracy for submission of Board Resolutions of the Company after its dissolution regarding his own authorization; and

(viii) Pass any such further order/s that this Hon'ble Court deems fit in the facts and circumstances of the present case."

2. The dispute with respect to the sale consideration in respect of 26 acres and 19 guntas of land (hereinafter referred to as "land in question") owned by Unitech Limited in favour of M/s. Devas Global Services LLP located at Kadiganahalli Village, Bangalore, came to be confirmed in favour of M/s. Devas Global Services LLP pursuant to the earlier orders passed by this Court.

3. As per the case on behalf of Unitech Limited, Unitech Limited was the absolute owner of the land in question and therefore entitled to the entire sale consideration of Rs. 172.08 crores. It is the case on behalf of the Unitech Limited that despite the above and the fact that Unitech Limited was entitled to the entire sale consideration of Rs. 172.08 crores,

the amount received to the account of Unitech, in Supreme Court Registry, out of the sale transaction is only Rs. 87.35 crores and the balance amount is ordered to be appropriated/paid to the respondents – Shri Naresh Kempanna (Rs. 56.11 crores) and Col. Mohinder Khaira (Rs. 41.96 crores), which, according to the Unitech, they were not entitled to. It is the case on behalf of the Unitech that true facts were not brought to the notice of Justice Dhingra committee and even before this Court and the aforesaid amount of Rs. 56.11 crores and Rs. 41.96 crores were ordered to be appropriated in favour of Shri Naresh Kempanna and Col. Mohinder Khaira respectively.

3.1 It is the case on behalf of Unitech Limited that as such none of the rights of the aforesaid two persons, who received any amount out of the total sale consideration of Rs. 172.08 crores were adjudicated upon by this Court and/or even by Justice Dhingra Committee. It is submitted that the aforesaid amount has been paid to Shri Naresh Kempanna and Col. Mohinder Khaira, pursuant to one MOU dated 02.01.2018. Therefore, it is the case on behalf of Unitech Limited that Unitech Limited being the absolute owner of the land in question and neither Col. Mohinder Khaira nor Shri Naresh Kempanna were having any title and/or ownership rights in the land in question. They were not entitled to any amount out of the total sale consideration/sale transaction with respect to the land in question. It is the case on behalf of the Unitech Limited

that a fraud has been committed on behalf of the respective parties namely M/s. Devas Global Services LLP; Col. Mohinder Khaira and Shri Naresh Kempanna and the erstwhile Directors/Management of the Unitech Limited. It is the case on behalf of Unitech Limited that the actual sale consideration being paid to Unitech Limited is just about 50% of the total amount of sale consideration, which is to the detriment of the home buyers, fixed deposit holders, employees and other important stakeholders of the company. It is the case on behalf of the Unitech Limited that on what basis the amount is ordered to be appropriated in favour of Shri Naresh Kempanna and Col. Mohinder Khaira is neither known nor there are any reasons, which could justify the divergence of funds to Shri Naresh Kempanna and Col. Mohinder Khaira.

3.2 It is the case on behalf of Unitech Limited that if the true and correct facts would have been pointed out to this Hon'ble Court and/or the dispute with respect to the appropriation of the sale consideration would have been adjudicated upon by this Hon'ble Court and/or even by Justice Dhingra Committee, this Hon'ble Court might not have passed any order to pay any amount to the aforesaid two persons namely Shri Naresh Kempanna and Col. Mohinder Khaira out of the total sale consideration of Rs. 172.08 crores. Therefore, it is prayed to allow the prayers and issue the directions as prayed in the present application even by invoking the principle of restitution.

4. Shri N. Venkataraman, learned ASG appearing on behalf of the Management of the Unitech Limited has pointed out the number of facts and various transactions with respect to the land in question right from 2005 onwards to demonstrate and satisfy this Hon'ble Court that Unitech Limited was the absolute owner of the land in question and that neither Shri Naresh Kempanna nor Col. Mohinder Khaira were having any title and/or ownership rights in the land in question and therefore, were not entitled to any amount out of the sale consideration/sale transaction of the land in question.

5. Present application has been vehemently opposed by learned counsel appearing on behalf of the respective respondents - Shri Naresh Kempanna and Col. Mohinder Khaira. Number of submissions have been made on merits on behalf of the contesting respondents – in whose favour amount is already disbursed/paid pursuant to the earlier order(s) passed by this Court. Pursuant to the earlier order(s) passed by this Court, it appears that solely on the basis of the report submitted by Justice Dhingra Committee on the basis of one MOU dated 02.01.2018 and without adjudicating the rights of the respective parties, more particularly, the claims of Shri Naresh Kempanna and Col. Mohinder Khaira to receive the amount, amount of Rs. 98.07 crores has been paid to Shri Naresh Kempanna and Col. Mohinder Khaira (Rs. 56.11 crores

paid to Shri Naresh Kempanna and Rs. 41.96 crores paid to Col. Mohinder Khaira). However, it is required to be noted that even the Justice Dhingra Committee submitted the report to pay the said amount to the aforesaid two persons without any adjudication of the claims of the Unitech, M/s Devas and aforesaid two persons, namely, Shri Naresh Kempanna and Col. Mohinder Khaira and just on the basis of MOU dated 02.01.2018, Justice Dhingra Committee submitted the report on the basis of which, this Court passed the order directing to pay amount of Rs. 56.11 crores to Shri Naresh Kempanna and Rs. 41.96 crores to Col. Mohinder Khaira out of sale proceeds of the land sold to M/s Devas Global LLP. Even there was no adjudication by this Court on the entitlement of the amount paid to Shri Naresh Kempanna and Col. Mohinder Khaira. There are serious disputes on the entitlement of the aforesaid amount already paid to Shri Naresh Kempanna and Col. Mohinder Khaira. Thus, there was an obvious error and/or mistake on the part of this Court in directing to pay Rs. 56.11 crores to Shri Naresh Kempanna and Rs. 41.96 crores to Col. Mohinder Khaira, which as such was without any adjudication of the claims of the aforesaid two persons. In that view of the matter, we are of the opinion that the mistake/error committed by this Court is to be corrected on the basis of the principle of restitution.

5.1 On the principle of restitution, the decision of Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Others (2020) 8 SCC 129** is required to be referred to. In paragraphs 335 to 339, it is observed and held as under: -

> **"335.** The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In *South Eastern Coalfields Ltd.* v. *State of M.P.* [*South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648] , it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in *South Eastern*

Coalfields [*South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648] thus : (SCC pp. 662-64, paras 26-28)

> "*26*. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan* v. *Board of Revenue, U.P.* [*Zafar Khan* v. *Board of Revenue, U.P.*, 1984 Supp SCC 505]). In law, the term "restitution" is used in three senses : (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315). *The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:
>
> > 'Often, the result under either meaning of the term would be the same. … Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.'
>
> The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par

with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. …

27. … This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (*A. Arunagiri Nadar* v. *S.P. Rathinasami* [*A. Arunagiri Nadar* v. *S.P. Rathinasami*, 1970 SCC OnLine Mad 63]). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. … the concept of restitution *is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order* even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

(emphasis supplied)

336. In State of Gujarat v. Essar Oil Ltd. [State of Gujarat v. Essar Oil Ltd., (2012) 3 SCC 522], it was

observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed : (SCC p. 542, paras 61-62)

> "61. The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within the third category of common law remedy, which is called quasi-contract or restitution.
>
> 62. If we analyse the concept of restitution, one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434)."

337. In A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430], it was stated that restitutionary jurisdiction is inherent in every court, to neutralise the advantage of litigation. A person on the right side of the law should not be deprived, on account of the effects of litigation; the wrongful gain of frivolous litigation has to be eliminated if the faith of people in the judiciary has to be sustained. The Court observed : (SCC pp. 451-55, para 37)

> "37. This Court, in another important case in Indian Council for Enviro-Legal Action v. Union of India [Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161] (of which one of us, Dr Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of

that judgment dealing with relevant judgments are reproduced hereunder : (SCC pp. 238-41 & 243, paras 171-76 & 183-84)

'170. * * *

171. In Ram Krishna Verma v. State of U.P. [Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620] this Court observed as under : (SCC p. 630, para 16)

"16. The 50 operators, including the appellants/private operators, have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in Jeewan Nath Wahal case [Jeewan Nath Wahal v. State of U.P., (2011) 12 SCC 769] and the High Court earlier thereto. As a fact, on the expiry of the initial period of the grant after 29-9-1959, they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law, they are continuing to ply their vehicles pending the hearing of the objections. This Court in Grindlays Bank Ltd. v. CIT [Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191 : 1980 SCC (Tax) 230] held that the High Court, while exercising its power under Article 226, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution

> this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated 26-2-1959."

172. This Court in Kavita Trehan v. Balsara Hygiene Products Ltd. [Kavita Trehan v. Balsara Hygiene Products Ltd., (1994) 5 SCC 380] observed as under : (SCC p. 391, para 22)

> "22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers, where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words:
>
> > '144. Application for restitution.—(1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,….'
>
> The instant case may not strictly fall within the terms of Section 144, but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

173. This Court in Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P)

Ltd. [Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325] observed as under : (SCC pp. 326-27, para 4)

> "4. From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and the person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of the immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and

> direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation."

174. In Padmawati v. Harijan Sewak Sangh [Padmawati v. Harijan Sewak Sangh, 2008 SCC OnLine Del 1202 : (2008) 154 DLT 411] decided by the Delhi High Court on 6-11-2008, the Court held as under : (SCC Online Del para 6)

> "6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One of the aims of every judicial system

> has to be to discourage unjust enrichment using courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

We approve the findings of the High Court of Delhi in the case mentioned above.

175. The High Court also stated : (Padmawati case [Padmawati v. Harijan Sewak Sangh, 2008 SCC OnLine Del 1202 : (2008) 154 DLT 411] , SCC OnLine Del para 9)

> "9. Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right but also must be burdened with exemplary costs. The faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately

> win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step, and even if they succeed in prolonging the litigation due to their money power, ultimately, they must suffer the costs of all these years' long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts."

176. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197 of 2008 was preferred to this Court. The Court passed the following order [Padmawati v. Harijan Sewak Sangh, (2012) 6 SCC 460 : (2012) 3 SCC (Civ) 765] : (SCC p. 460, para 1)

> "1. We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The special leave petition is, accordingly, dismissed."

* * *

183. In Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd. [Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325] this Court in para 4 of the judgment observed as under : (SCC pp. 326-27)

> "4. … It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the

> plaintiff in whose favour the decree is passed and to protect the property, including further alienation."

> 184. In Ouseph Mathai v. M. Abdul Khadir [Ouseph Mathai v. M. Abdul Khadir, (2002) 1 SCC 319] this Court reiterated the legal position that : (SCC p. 328, para 13)
>
> > "13. … [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection." ' "
>
> There are other decisions as well, which iterate and apply the same principle. [Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161; Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191 : 1980 SCC (Tax) 230; Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620. Also Marshall Sons & Co. (India) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325.]

338. A wrongdoer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In Kalabharati

> Advertising v. Hemant Vimalnath Narichania [Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808] , it was observed that courts should be careful in neutralizing the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, at his behest, should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others — including undermining of public purposes underlying acquisition proceedings. A different approach would mean that, for instance, where two landowners (sought to be displaced from their lands by the same notification) are awarded compensation, of whom one allows the issue to attain finality — and moves on, the other obdurately seeks to stall the public purpose underlying the acquisition, by filing one or series of litigation, during the pendency of which interim orders might inure and bind the parties, the latter would profit and be rewarded, with the deemed lapse condition under Section 24(2). Such a consequence, in the opinion of this Court, was never intended by Parliament; furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.
>
> **339.** In Krishnaswamy S. Pd. v. Union of India [Krishnaswamy S. Pd. v. Union of India, (2006) 3 SCC 286], it was observed that an unintentional mistake of the Court, which may prejudice the cause of any party, must and alone could be rectified. Thus, in our opinion, the period for which the interim order has operated under Section 24 has to be excluded for counting the period of 5 years under Section 24(2) for the various reasons mentioned above."

5.2 As per the settled position of law, the act of the Court shall prejudice no one and in such a fact situation, the Court is under an

obligation to undo the wrong done to a party by the act of the Court. The maxim *actus curiae neminem gravabit* shall be applicable. As per the settled law, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor by the act of the Court.

6. Applying the principle of restitution and the law-laid down by this Court in the case of **Indore Development Authority (supra)** on the principle of restitution to the facts of the case on hand, we are of the opinion that this is a fit case to apply the principle of *actus curiae neminem gravabit* and the principle of restitution and to direct Shri Naresh Kempanna and Col. Mohinder Khaira to return the amount and deposit the same with this Court with 9% interest from the date on which the payment is received by them. However, with the liberty in their favour to move appropriate application(s) or appropriate proceedings before this Court for adjudication of their rights to receive any amount from the sale proceeds of the land sold to M/s Devas Global LLP.

7. In view of the above and for the reasons stated above, Shri Naresh Kempanna and Col. Mohinder Khaira are hereby directed to return and deposit the amount paid to them (i.e., Rs. 56.11 crores paid to Shri Naresh Kempanna and Rs. 41.96 crores paid to Col. Mohinder Khaira),

paid pursuant to the earlier order(s) passed by this Court, with 9% interest from the date on which the amount is received, to be deposited with the Registry of this Court within four weeks from today. However, it will be open for either of them to move appropriate application(s) or appropriate proceedings for adjudication of their rights to receive any amount from the sale proceeds of the land sold to M/s Devas Global LLP and as and when such application(s) is/are made, the same be considered in accordance with law and on its own merits.

Present application is disposed of in terms of the above.

I.A. No. 47525 of 2021 filed for impleadment is also disposed of.

……CJI.
[Dr. D.Y. Chandrachud]

……J.
[M.R. Shah]

NEW DELHI;
MARCH 23, 2023.