

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

Gwalior, Dated : 07/09/2020

Shri Alok Katare, Counsel for the Petitioners

Shri Sankalp Sharma, Counsel for the respondent/State

Shri Raghvendra Dixit, Counsel for the respondent no. 2 and 3,
but joined the Video-Conferencing at the fag end of the arguments.

Shri Vinod Bhardwaj, Senior Counsel with Rohit Batham for
respondent no. 4 and 5.

Heard finally, through Video-Conferencing.

This petition under Article 226 of the Constitution of India
seeking the following relief(s) :

- (I) That, the present petition filed by the petitioner may kindly be allowed;
- (II) That, the respondents no. 1 to 3 may kindly be restrained not to transfer the land in favor of the respondent no. 5 on the basis of the agreement to sale executed by the respondent no. 4 and the said land be auctioned by inviting application from public for grant of lease.
- (III) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner.

The necessary facts for disposal of the present petition in short are that Plot No. 33, Industrial Area, Banmore, Distt. Morena was leased out to respondent no. 4 and due to non-fulfillment of the conditions of lease, the lease granted in favor of the respondent no. 4 stood cancelled. Thereafter, the respondent no. 4 challenged the order of cancellation by filing W.P. No. 5514/2009, which was later

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

on withdrawn with liberty to prefer an appeal before the Chairman of M.P.S.I.D.C. The appeal was preferred by respondent no. 4 through the stranger who projected himself to be the partner of respondent no. 4. The appeal was dismissed by order dated 31-8-2015, which was challenged in a revision, which too was dismissed and both the orders have been challenged by the respondent no. 4 by filing W.P. No. 2431 of 2016, which is pending and an interim order of maintaining status quo has been passed. It is further pleaded that the respondent no. 4 has executed an agreement to sale in favor of respondent no. 5. It is the claim of the petitioner that it has also put up an application for allotment of land or to auction the said piece of plot by inviting applications and by following the due process of law. But the respondents no. 2 and 3 have joined hands with the respondents no. 4 and 5 and are trying to transfer the lease in favor of the respondent no. 5 on the basis of the agreement to sell. It was also apprehended that the respondents no. 2 and 3 would transfer the land in favour of respondents no.4 and 5 and thereafter, the respondent no. 4 would withdraw the W.P. No. 2431 of 2016. It is further pleaded that the respondent no. 4 has no power to transfer the lease to respondent no. 5 by executing an agreement to sell. It is also pleaded that the petitioner tried to obtain the copy of the agreement to sell under the Right to Information Act, but the same was rejected on the

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

ground that the information sought by the petitioner relates to the third party and it has denied the access to documents to the petitioner. The appeal filed by the petitioner under the Right to Information Act was also dismissed. It was pleaded that the respondent no. 4 has no authority to execute the agreement to sale plot no. 33, Industrial Area, Banmore, Distt. Morena. It was further pleaded, that the petitioner is also one of the contender but the respondents by adopting the incorrect means are trying to frustrate the legitimate claim of the petitioner.

The respondents no. 2 and 3 have filed their return and raised preliminary objections with regard to the maintainability of this petition. It is pleaded that the petitioner has suppressed the fact that her husband had filed a W.P. No. 5706/2014. The said writ petition was also filed on the similar set of facts. On the preliminary objection raised by the answering respondents, the said writ petition was withdrawn by him with liberty to file civil suit. It is further pleaded that if a litigant comes to a Court and invokes a Writ Jurisdiction, then he must come with clean hands. The answering respondents have also mentioned in para 2 of their return as under :

2..... Details of law laid down by this Hon'ble Apex Court is given as under :-
I - 2003(9) SCC 401,
II - 2010(8) SCC 660,
III -2010 (11) SCC 557
IV - 2011(7) SCC 69

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

It is further pleaded that the petitioner has no *locus standi* to file this petition, because the lease deed granted in favor of the respondent no. 4 was cancelled, which is subject matter of W.P. No. 2431/2016 and an interim order is in operation to maintain the *Status Quo*. Since, the respondent no. 5 is interested in running the Industry, therefore, has entered into an agreement to purchase the assets of the respondent no.4 and accordingly, a prayer was made to revive the allotment of the cancelled lease. On the basis of the undertaking submitted by the respondent no.4 that it will withdraw the writ petition, therefore, the matter was processed for revival of lease as per the provisions of Rule 19 of Niyam, 2019. Niyam, 2019 provides for entire procedure for allotment of Industrial land in the shape of plots to the Units. Niyam, 2019 is having statutory force. It is specifically pleaded that since, the respondent no 4 has executed an agreement to sale of Unit in favor of respondent no.5, **therefore, as per the provisions of Rule 19(c)(iv) of Niyam, 2019, the matter for revival of lease was processed subject to withdrawal of W.P. No. 2431/2016.** It is was further pleaded that neither the respondent no.4 nor no. 5 have chosen to assail any action of answering respondents towards revival of cancelled lease deed and the petitioner has no *locus standi*. The petitioner has neither applied nor followed any procedure to get allotment in its favor as per Rule

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

11(ii)(iii) or even procedure contemplated under Rule 19 of Niyam, 2019, which stipulates application for allotment, deposit of requisite fee, enclosures along with the application for allotment and detailed procedure for transferring the unit. Seeking information about procedure for allotment would not create any right in favor of the petitioner. There is a provision that for revival of cancelled lease-deed after agreement to sale of assets of the lessee. The procedure for allotment of plot takes place in accordance with Rule 11 and 12 of Niyam, 2019. The petitioner has not approached the Court with clean hands. The copies of the correspondences between the answering respondents and respondents no. 4 and 5 have been placed on record as Annexure R/4. Parawise reply to the petition is the repetition of the pleadings in the form of preliminary objections.

The respondents no. 4 and 5 have filed their separate return. It is pleaded that one Shri Ravindra Kumar Agrawal, the husband of the petitioner, had filed W.P. No. 5706 of 2016 in the name of **M/s Metco Enterprises** disclosing the name of the respondent no. 4 as a partnership firm with Shri S.B. Patel and N.C. Agrawal as its partners. It is further pleaded that it is clear from the copies of the documents which have been filed along with this petition, that all those documents (Annexure P/3,P4, P/5 and P/6) were obtained by the husband of the petitioner, thus the petitioner was aware of the

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

correct details of M/s Dayal Industries (Respondent no.4). Earlier the husband of the petitioner had filed W.P. No. 5706 of 2014 thereby challenging the order dated 5-6-2014 (An interim order passed by the Appellate Authority) in respect of the disputed plot. On 23-6-2015, it was brought to the notice of this Court, that by filing W.P. No. 5706 of 2014, **M/s Metcco Enterprises** (Petitioner in W.P. No. 5706 of 2014) is seeking specific performance of Contract and accordingly the said writ petition was withdrawn on 13-7-2015 with liberty to avail the remedy of civil suit. Accordingly, **M/s Metcco Enterprises** (Petitioner in W.P. No. 5706 of 2014) has filed a civil suit in the Court of District Judge, Morea for specific performance of Contract. It is further pleaded that earlier also, the husband of the petitioner filed an application for intervention in W.P. No. 5514/2009. However, the said writ petition was withdrawn by the respondent no.4. It is submitted that since, the petitioner is aware of the correct address of the respondent no.4, inspite of that, an incorrect address of the respondent no. 4 has been mentioned, therefore, the petition is liable to be dismissed on the ground of Concealment of facts. It is further submitted that earlier, the husband of the petitioner had filed W.P. No. 5706 of 2016 for restraining the respondents no. 2 and 3 from transferring the lease of Plot No.33, Industrial Area, Banmore, Morena in favor of the respondent no.5, and the present petition has

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

also been filed for the similar relief. It is further submitted that as per Clause 19(c) of M.P. Rajya Audhyogik Bhui Avum Bhavan Prabandhan Niyam, 2019(In short Niyam 2019), if the lessee sells superstructure and machinery, then the application for transfer of lease-deed is to be filed before the authorities within 03 months and per Rule 42(2) Niyam 2019 , the decision is required to be taken by the authorities within 03 months. It is further submitted that the respondent no. 4 is a partnership firm and its registration certificate has also been filed as Annexure R-4/10. It is further submitted that since, the Chairman, M.P.S.I.D.C. had already restored the lease-deed, therefore, W.P. No. 5514/2009 was withdrawn. However, it was admitted that ultimately the appeal was dismissed and against the order dated 31-8-2015 (Annexure P/1), a revision was filed and against its dismissal, W.P. No. 2341/2016 has been filed by the answering respondents. It is further submitted that it is incorrect to say that the respondent no.4 has executed an agreement to sell the leased plot, but only an agreement for sale of superstructure and machinery has been executed in accordance with Rules. On the basis of the application, MPIDC has passed the order dated 10-2-2010 (Annexure R-4/11). It is further submitted that neither it is in the knowledge of the answering respondents as to whether any application for making auction has been filed, nor there is any such

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

provision in the Rules. It is further pleaded that **although the lease of land stands cancelled, but still the unit is having building, Plant & Machinery, Stocks etc. and it is operational and the lease cancellation order is under status quo by this Court.** The allegations of connivance between the respondents 2 to 5 was also denied. It was further pleaded that the respondent no. 4 has full authority to withdraw his W.P. No. 2341/2016. In reply to the grounds it is pleaded by the respondents no. 4 and 5 that Shri S.B. Patel and Shri N.C. Agrawal are the partners and Shri S.B. Patel has also executed a Power of Attorney. All other grounds raised by the petitioner were also denied.

The petitioner has filed its rejoinder along with I.A. No. 1850 of 2020 seeking exemption from filing affidavit in support of the rejoinder on the ground that the petitioner has gone to Seattle and due to lock down could not come back to India. In the Rejoinder, it is pleaded that Petition has been filed by **M/s Metco autotech**, which is a separate legal entity and Smt. Manju Agrawal is the Proprietor of the said firm. The petitioner has its independent business and has separate GST number and is also carrying on business at Industrial area. It is further submitted that the husband of Smt. Manju Agrawal is the proprietor of different firm namely M/s Metco Enterprises. It is further pleaded that the petitioner has given the address of the

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

respondent no. 4, which is in record. It is further pleaded that Mr. Ravindra Agrawal is the proprietor of **M/s Metco Enterprises** and the present petition has been filed by **M/s Metco autotech** and since, both the firms are different, therefore, any petition filed by **M/s Metco Enterprises** will not have any bearing on the *locus standi* of the present petitioner. It is further pleaded that since, M/s Metco Enterprises had filed the writ petition for specific performance of Contract entered into between the respondent no. 4 and M/s Metco Enterprises, therefore, the said writ petition was withdrawn with liberty to file a civil suit and the withdrawal of the said writ petition has not vitiated the rights of the petitioner to apply for lease of an Industrial Plot. It is further pleaded that the respondent no. 4 was a proprietary firm and Shri S.B. Patel is the Proprietor. The affidavit in support of return of respondents no. 4 and 5 has been sworn by the Power of Attorney-Holder of Shri S.B. Patel and not as a Partner of respondent no.4. It is further pleaded that according to Rule 19(c) (iv), the appellate authority can allow the revival of lease, but against the order of cancellation dated 9-6-10998, the respondent no. 4 did not file any appeal and waited till year 2004, when Udyog Mitra Yojna was introduced for revival of Industry and an application was filed for revival of lease, which was dismissed against which the respondent no. 4 filed a Writ Petition No. 5514/2009 which was

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

lateron withdrawn by respondent no. 4 as an appeal was filed during the pendency of the said writ petition. Thereafter, one year time was granted by the appellate authority for revival of the Industry and to start production industrial activity, but it was found that nothing was done by the respondent no. 4 during this period of one year, therefore, the order of Termination of lease No. 1843-52 was upheld by the appellate authority. This order was challenged by the respondent no. 4 by filing a revision, which too was dismissed by order dated 4-3-2016 and both the orders have been challenged by filing W.P. No. 2431/2016 and under the garb of interim order, the entire transaction is taking place. It is further pleaded that after the dismissal of the revision, the respondents no. 2 and 3 cannot revive the lease-deed. It is further pleaded that if auction is not permissible, then fresh allotment is to take place as per Rule 11 of Niyam, 2019. It is further pleaded that the respondent no. 4 has not filed the copy of the partnership deed.

The respondents no. 4 and 5 have filed their additional return and submitted that W.P. No. 5514/2009 was filed by the respondent no. 4 by projecting itself to be a partnership firm. Similarly in W.P. No. 5706/2014, which was filed by **M/s Metco Enterprises**, the respondent no. 4 was impleaded as Partnership firm. In para 4 of the Additional Return it has been pleaded as under :

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

4. That, apart from above even though it is true that M/s Metco Enterprises and M/s Metco autotech are two different firms but the proprietor of these respective firms are in relation as husband and wife living in the same house.....

It is pleaded that the present petition is a camoufluge of ill intention and somehow to take advantage. The corporate veil as shown by the petitioner deserves to be lifted to see the real intentions. The petitioner has not applied for allotment therefore, has no *locus standi*. It is further pleaded that it is beyond imagination, that the petitioner firm was not aware of the previous litigations of another firm i.e., **M/s Metco Enterprises**. It is further pleaded that it is clear from Annexure P/3,P/4,P/5 and P/6, that these documents were obtained by the husband of the petitioner. Further there is no provision in the Niyam, 2019 for auction of the Industrial Plot. Since, the respondent no. 5 is keen in running the Industry, therefore, it has entered into an agreement to sale of assets of respondent no. 4. The procedure as mentioned in Rule 19(c)(iv) of Niyam, 2019 has been followed.

While arguing in support of the petition, certain more factual aspects were mentioned by the Counsel for the petitioner, which were not disputed by the Counsel for the respondent no. 4 and 5. It is not out of place to mention here that the Counsel for the respondent no. 2

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

and 3 did not join the Video-Conferencing at the beginning of the arguments and joined only at the fag end of the arguments. The facts which were disclosed by the Counsel for the Petitioner are as under :

1. Date of allotment of land to respondent no. 4 : 4-4-1990
2. Registration of Lease-deed : 5-4-1990
3. Possession delivered to respondent no. 4 : 7-4-1990
4. Notice (Time Limit) : 27-5-1993
5. Lease Cancelled : 9-6-1998
6. Udyog Mitra Yojana : Year 2004
7. Application for revival rejected : 24-10-2007
8. W.P.No. 5514/2009 withdrawn on : 30-6-2014
9. Appeal dismissed : 31-8-2015
- 10.Revision Dismissed : 4-3-2016
- 11.W.P. No. 2431/2016 (Pending) Interim order : 10-5-2016

The Counsel for the Petitioner as well as the Counsel for the respondents no. 4 and 5 argued extensively taking the same stand which they have taken in their respective pleadings. However, the Counsel for the respondents no. 4 and 5 was requested to argue on the correctness of order dated 10-2-2020, then it was replied by the Counsel for the respondents no. 4 and 5 that the said order was passed during the pendency of this petition and has not been challenged by the Petitioner. However, no arguments on the

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

correctness of the order dated 10-2-2020 were advanced.

In addition to the grounds raised in the return as well as Additional Return, the Counsel for the respondents no. 4 and 5 also submitted that since, the petitioner has not disclosed the source of documents, therefore, the petition is liable to be dismissed. Further, since, the present petition is a frivolous one, therefore, it should be dismissed and dishonesty and fraud should not be permitted to bear the fruit and benefit to those person who have defrauded. The Counsel for the respondents no. 4 and 5 relied upon the judgments passed by the Supreme Court in the case of **Ashok Kumar Pandey Vs. State of W.B.** Reported in (2004) 3 SCC 349, **Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamon & Gem Development Corporation Ltd.** And another reported in (2013) 5 SCC 470, **Devendra Kumar Vs. State of Uttaranchal and others** reported in (2013) 9 SCC 363, **S.P. Chengalvaraya Naidu (dead) by L.R.s s. Jagannath (Dead) by L.Rs. and others** reported in AIR 1994 SC 853, and by this Court in the case of **Jagdish Prasad Shivhare Vs. Municipal Corporation Gwalior & others** reported in 1999(2) MPLJ 247, and **Sunil Kumar Jain Vs. State of M.P. and others** reported in 2019 Legal Eagle (MP) 228.

Before the conclusion of the arguments, the Video-

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

Conferencing was joined by the Counsel for the respondents no. 2 and 3 and did not seek any permission to advance his arguments. But looking to the controversy involved in the matter, Shri Raghvendra Dixit was asked to address on the question of correctness of the order dated 10-2-2020, but he insisted that first of all, he should be heard on his preliminary objections. However, Shri Dixit was informed that hearing is going on for the last near about 1 hour and arguments have been already advanced by both the parties extensively including the preliminary objections, and the preliminary objections raised by the respondents no.2 and 3 are identical to that of respondents no. 4 and 5, but Shri Dixit did not answer the query raised by this Court with regard to the correctness of the order dated 10-2-2020.

From the Pleadings and arguments advanced by the Counsel, the following questions arise for determination in the present case :

1. Whether the petition filed by **M/s Metco autotech** suffers from suppression of fact and if so, its consequences.
2. Whether the withdrawal of the writ petition by **M/s Metco Enterprises** with liberty to file Civil Suit has any impact on this petition?
3. Whether husband and wife can form two different proprietorship firms or not and if so, whether both the different firm would not longer be different entities?

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

4. Whether the respondents no. 2 and 3 can exercise their power under Rule 19(c)(iv) of Niyam, 2019 specifically when the appellate authority has already dismissed the appeal filed by the respondent no. 4 and the said order along with the revisional order is subject matter of W.P. No. 2431/2016?
5. Whether the respondent no. 4 is a proprietorship firm or partnership firm.
6. Whether this petition is liable to be dismissed for want of challenge to order dated 10-2-2020.
7. Whether the petitioner has expressed its willingness to participate in allotment proceeding of Plot No. 33, Industrial Area, Banmore, Distt. Morena.

1. Whether the petition filed by M/s Metco autotech suffers from suppression of fact and if so, its consequences.

The respondents no. 4 and 5 have rightly admitted in their Additional Return that **M/s Metco autotech** and **M/s Metco Enterprises** are two different entities. However, the contention of the Counsel for the respondents no. 4 and 5 is that since, **M/s Metco Enterprises**, whose proprietor Shri R.K. Agrawal is the husband of the proprietor of **M/s Metco autotech**, therefore, should have disclosed the fact of withdrawal of W.P. No. 5706/2014 as well as of filing a civil suit in the light of the liberty granted by this Court.

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

The respondent no. 4 and 5 have filed a copy of Writ Petition No. 5706/2014 as Annexure R-4/1. It is clear that M/s Metco Enterprises had projected its *locus standi* on the basis of an agreement to sell executed between it and respondent no. 4 through Shri S.B. Patel. The order dated 23-6-2015 passed by this Court in W.P. No. 5706 of 2014 reads as under :

Parties through their counsel. List this matter on 13/7/2015 as learned counsel for the petitioner prays for time to file reply to I.A. No.5794/14, an application filed by respondent no.1 for dismissal of the petition. The objection raised by respondent no.1 is to the effect that grievance of the petitioner rests upon the alleged agreement between the petitioner and S.B.Patel and in fact the petitioner is seeking remedy through the said agreement i.e. performance of the said agreement and as such there is lease order already passed by IIDC in favour of respondent no.1. At the first instance the aforesaid agreement is denied by respondent no.1 and it is submitted that if, for any reason, the agreement has any relevance or value, the grievance, if any, can be addressed only by filing a suit for specific performance and not by invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

Thereafter, the matter was taken up on 13-7-2015 and the following final order was passed :

Shri Rohit Mishra, Advocate for the petitioner.
Shri V.K. Bhardwaj, Sr. Advocate with Shri Anand Bhardwaj
Advocate for the respondents no. 1 (a)&(b)
Shri S.K. Jain, Counsel for the respondent no.2
Shri Anil Sharma, Advocate for the respondent no. 4.
There is a preliminary objection raised by Counsel for the respondents as regards maintainability of the writ petition. Counsel for the petitioner prays for liberty to file a duly constituted civil suit before the civil Court of competent jurisdiction for the relief claimed in the writ petition. Accordingly, this writ petition stands disposed of as

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

withdrawn with the liberty prayed for.

It is made clear that this Court has not expressed any opinion on merits of the case.

With the aforesaid, writ petition stands disposed of.

Thus, it is clear that W.P. No. 5706 of 2014 was withdrawn by M/s Metco Enterprises because it was seeking enforcement of its contractual rights and the Counsel for the respondents had rightly taken an objection, that since, the petition is for specific performance of Contract, therefore, the remedy is to file a Civil Suit and accordingly the liberty was granted.

However, the W.P. No. 5706 of 2014 was filed by a separate Proprietorship firm, therefore, the withdrawal of the said writ petition will not have any bearing on the outcome of the present petition, merely because the proprietor of the petitioner firm is the wife of the proprietor of M/s Metco Enterprises. The Counsel for the respondents could not point out that when the firms are different, then how one firm will be bound by the order passed in the case of another firm.

It is the contention of the respondents no. 4 and 5 that since, the husband of the Proprietor of the Petitioner firm had obtained the documents under the Right to Information Act, therefore, the non-disclosure of filing of W.P. No. 5706/2014 by M/s Metco Enterprises would amount to suppression of facts.

It is true that whenever a party comes to a Court, then it must

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

come with clean hands.

However, the question for consideration is that whether the suppression of fact of withdrawal of W.P. No. 5706 of 2014 and filing of civil suit by M/s Metcom Enterprises can be said to be suppression warranting dismissal of this writ petition?

Suppression should be of a material fact. Every suppression of fact would not result in dismissal of writ petition. The Supreme Court in the case of **S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar** reported in (2004) 7 SCC 166 has held as under :

13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of court by deciving it. But the suppressed fact must be a material one in the sence that had it not been suppressed, it would have had an effect o n the merits of the case.....

Even for the sake of argument, if the submissions of the Counsel for the respondents is accepted, that the petitioner should have disclosed the fact of withdrawal of W.P. No. 5706/2014 filed by another firm M/s Metco Enterprises, then the question is that whether the disclosure of that fact would have resulted in dismissal of the writ petition?

The copy of the Writ Petition No. 5706/2014 has been placed on record as Annexure R-4/1. From this writ petition, it is clear that M/s Metco Enterprises was claiming its *locus standi* on the basis of

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

an agreement executed between it and respondent no. 4 through Shri S.B. Patel and accordingly, order dated 05-6-2014 was challenged. It is undisputed fact that order dated 05-6-2014 was an interlocutory order passed in an appeal filed by the respondent no. 4 and ultimately, the appeal filed by the respondent no. 4 was dismissed by order dated 31-8-2015. Thus, the interim order passed by the Appellate Authority on 05-6-2014 also ceased to exist. The Supreme Court in the case of **Prem Chandra Agrawal and another Vs. Uttar Pradesh Financial Corporation and others** by order dated 23-4-2009 passed in **C.A. No. 2769 of 2009** has held as under :

4. It is a well-settled principle that once a final order is passed, all earlier interim orders merge into the final order, and the interim orders cease to exist.

5. In this appeal, since the final order has been passed by the High Court, obviously all interim orders passed by the High court in the same writ petition cease to exist automatically. Consequently, any direction given in the interim order dated 24.4.2004 also ceases to exist.

6. In view of the final order passed by the High Court, the impugned interim order and any direction therein have ceased to exist. The appeal has become infructuous and is, accordingly, dismissed.

The Supreme Court in the case of **Kalabharati Advertising v. Hemant Vimalnath Narichania** reported in **(2010) 9 SCC 437** has held as under :

15. No litigant can derive any benefit from the merre pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

stands nullified automatically.....

16. In Ram Krishna Verma Vs. State of U.P., this Court examined the issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. Vs. ITO and held that no person can suffer from the act of the court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. A similar view has been reiterated by this Court in Mahadeo Savlaram Shelke Vs. Pune Municipal Corpn.

17. In South Eastern Coalfields Ltd V. State of M.P. this Court examined this issue in detail and held that no one shall suffer by an act of the Court.....

Thus, it is clear that interlocutory order dated 05-6-2014 was passed by the Appellate Authority in an appeal, but ultimately, the said appeal was dismissed. Therefore, the order dated 05-6-2014 automatically stood nullified. Thus, even if it is held that since, the husband of the proprietor of the petitioner firm was looking after the litigation, and he should have disclosed the fact of filing of writ petition no. 5706/2014 against the order dated 05-6-2014, still it is held that the order dated 05-6-2014 which was challenged in W.P. No. 5706/2014 stood nullified due to dismissal of appeal.

Thus, viewed from any angle, this Court is of the considered opinion, that since, W.P. No. 5706 of 2014 was not filed by the present petitioner, therefore, non-disclosure of withdrawal of W.P. No. 5706 of 2014, which was filed by another firm will not amount to suppression of fact, much less suppression of material fact. Even if it

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

is held that in all fairness, the petitioner should have disclosed the fact of withdrawal of W.P. No. 5706 of 2014, still then the non-disclosure of said fact cannot be said to be a suppression of material fact, warranting dismissal of this petition. Accordingly, the first contention of the respondents is rejected.

2. Whether the withdrawal of the writ petition by M/s Metco Enterprises with liberty to file Civil Suit has any impact on this petition?

The respondents no. 4 and 5 in their Additional Return have already conceded that both the firms i.e., M/s Metco Enterprises (Petitioner in W.P. NO. 5706 of 2014) and M/s Metco autocap (Present petitioner) are two different entities. However, merely because the proprietors of these firms are husband and wife, therefore, the respondents are trying to project that the present petition is merely a camouflaged and in fact Shri R.K. Agrawal is the contesting party.

As already pointed out that the cause of action for filing W.P. No. 5706 of 2014 was different. Further the order which was impugned in W.P. No. 5706 of 2014 by another firm, stood automatically nullified due to dismissal of the appeal itself. Further M/s Metco Enterprises was claiming its *Locus standi* on the basis of an agreement to sell executed between it and respondent no. 4

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

through Shri S.B. Patel. Therefore, this Court is of the considered opinion, that withdrawal of W.P. No. 5706 of 2014 and filing of civil suit by M/s Metco Enterprises will not have any impact on the maintainability of this petition.

3. Whether husband and wife can form two different proprietorship firms or not and if so, whether both the different firm would not longer be different entities?

The Counsel for the respondents could not point out any provision of law to show that husband and wife cannot form two different proprietorship firms. Thus, this question is answered in Negative.

4. Whether the respondents no. 2 and 3 can exercise their power under Rule 19(c)(iv) of Niyam, 2019 specifically when the appellate authority has already dismissed the appeal filed by the respondent no. 4 and the said order along with the revisional order is subject matter of W.P. No. 2431/2016?

The respondents have relied upon Rule 19(c)(iv) of Niyam, 2019 which reads as under :

निरस्त भूखण्डों के प्रकरणों में लीज डीड बहाल करते हुए
हस्तांतरण की अनुमति अपीलीय अधिकारी द्वारा दी जाएगी।

Thus, it is clear that where the lease-deed has already been cancelled, then the same can be revived by the Appellate Authority.

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

Now the question for determination is that whether the power of the Appellate Authority is absolute irrespective of dismissal of appeal, or would be available only when no appeal against the cancellation of lease-deed has been filed.

In the present case, the appeal filed by the respondent no. 4 has already been dismissed by order dated 31-8-2015 i.e., much prior to coming into force of Niyam, 2019. The revision filed against the said order was also dismissed by order dated 4-3-2016. Writ petition No. 2431/2016 by which both the orders have been challenged, is pending.

Accordingly, a question was put to the Counsel for the respondents that once, the appeal was already dismissed by the Appellate Authority and the said order has been affirmed in Revision and which is the subject matter of W.P. No. 2431/2016, then whether the Appellate Authority has jurisdiction to revive the lease by bypassing all the orders and pending proceedings? Whether the revival of lease by the appellate authority would amount to review of its own order dated 31-8-2015 or not and whether such a course of action is available. However, this question was not replied by any of the Counsel for the respondents.

Under these circumstances, this Court is of the considered opinion, that after the appeal has been dismissed by the Appellate

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

Authority, then in absence of any power of review, the Appellate Authority cannot exercise its power under Rule 19(c)(iv) of Niyam, 2019.

5. Whether the respondent no. 4 is a proprietorship firm or partnership firm.

The above question is a pure question of fact. However, the respondent no. 4 could have filed a copy of the partnership deed to show that respondent no. 4 is a partnership firm. It is well established principle of law that if a party is in possession of best evidence and choses not to file the same, then an adverse inference can be drawn. Accordingly, inspite of the fact that the petitioner had taken a specific stand in the petition as well as in the re-joinder, the respondent no. 4 has not placed the copy of the partnership deed, therefore, it is held that the respondent no. 4 is a proprietorship firm and not partnership firm.

A Division Bench of this Court in the case of **Ahmad Ali Abdul Razak Vs. Mohammad Hanif Ibrahim and another** reported in **AIR 1958 MP 129** has held as under :

9.....Their Lordships after laying down the law in these words drew an adverse inference against the party who had failed to produce the best evidence. This case was followed and approved bytheir Lordships of the Privy Council in Rameshwar Singh Vs. Bajit Lal AIR 1929 PC 95(E). A Summary of their Lordships' dictum is reproduced in the head-note as follows :

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

“Best evidence not produced though available raises adverse presumption.

6. Whether this petition is liable to be dismissed for want of challenge to order dated 10-2-2020.

This petition was filed on 5-12-2019 and interim order was passed on 3-2-2020. However, it appears that thereafter, an order dated 10-2-2020 (Annexure R-4/11) has been passed by the respondents no. 2 and 3, thereby reviving the lease-deed which was originally granted in favor of the respondent no.4, but the said revival was made subject to withdrawal of W.P. No. 2431/2016. Thus, it is clear that order dated 10-2-2020 is not final order and has not come into existence, because W.P. No. 2431/2016 has not been withdrawn so far. The relevant part of order dated 10-2-2020 (Annexure R-4/11) reads as under :

..... भूमि के निरस्त पट्टाभिलेख को म.प्र.राज्य औद्योगिक भूमि एवं भवन प्रबंधन नियम 2019 के नियम 19(स) की कंडिका (iv) के प्रावधान अनुसार बहाल करते हुए मेसर्स बी आर ऑयल इण्डस्ट्रीज प्रा. लि. के पक्ष में हस्तांतरण की अनुमति इस शर्त पर प्रदान की जाती है कि मेसर्स दयाल इण्डस्ट्रीज द्वारा माननीय उच्च न्यायालय से प्रथमतः प्रकरण वापिस लेना होगा।.....

Thus, it is clear that for coming into force of this order dated 10-2-2020, the withdrawal of W.P. No.2431/2016 is a condition precedent. Therefore, it can be said that since W.P. No. 2431/2016 has not been withdrawn so far, therefore, the order dated 10-2-2020 has not come into force.

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

Further, the aforesaid order was passed during the pendency of this petition.

Even otherwise, this Court in exercise of suo moto powers under Article 226 of the Constitution of India can take cognizance of an order which is without jurisdiction.

The Supreme Court in the case of **Deepak Agro Foods v. State of Rajasthan**, reported in **(2008) 7 SCC 748** has held as under :

17..... Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, *non est* and *void ab initio* as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See *Kiran Singh v. Chaman Paswan*.).....

The Supreme Court in the case of **Chiranjilal Shrilal Goenka v. Jasjit Singh**, reported in **(1993) 2 SCC 507** has held as under :

18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non iudice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party.

The Supreme Court in the case of **Ajay Singh Vs. State of Chhatisgarh** reported in **(2017) 3 SCC 330** has held as under :

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

23. Article 227 of the Constitution reads as follows:.....

The aforesaid Article confers power of superintendence on the High Court over the courts and tribunals within the territory of the State. The High Court has the jurisdiction and the authority to exercise suo motu power.

24. In *Achutananda Baidya v. Prafulla Kumar Gayen*⁹ a two-Judge Bench while dealing with the power of superintendence of the High Court under Article 227 has opined that the power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to the High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice.

This Court by order dated 21-8-2020 passed in the case of Trust Mandir Shri Ram Janki Ji vs. State of MP [W.P. No. 16088 of 2017] has held that if the order is without jurisdiction, then this Court can take suo moto cognizance of the matter.

Accordingly, it is held that even if the order dated 10-2-2020 (Annexure R-4/11) has not been challenged, but still it will not have any effect on the maintainability of this petition.

7. Whether the petitioner has expressed its willingness to participate in allotment proceeding of Plot No. 33, Industrial

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

Area, Banmore, Distt. Morena.

The undisputed fact is that the respondents no.2 and 3 have not taken any steps for allotment of Plot No. 33, Industrial Area, Banmore, Distt. Morena. The petitioner has written a letter dated 5-10-2019 to the Executive Director M.P.I.S.D.C. which reads as under:

हमको ज्ञात हुआ है कि बामौर औधोगिक क्षेत्र स्थित प्लाट क्रमांक 33 दयाल इण्डस्ट्रीज की 5 एकड भूमि रिक्त पडी है एवं उस पर कोई उधोग सीपित नही है अतः आवंटन हेतु उपलब्ध है।
उक्त 5 एकड भूमि हम लेने के इच्छुक है जिस पर कि हम अपना फाउन्डी उधोग स्थापित करना चाहते है।
अतः कृपया कर हमको उक्त जमीन की आवंटन प्रक्रिया की विस्तृत जानकारी देने की कृपा करे।
आपके उत्तर की प्रतीक्षा मे।

It is not the case of the respondents that the plot in question was ever thrown open for allotment, but the petitioner did not apply as per rules. In fact, the plot in question was never made available for public allotment, therefore, the contention of the Counsel for the respondents, that the petitioner did not follow the requirements of Rule 19 of Niyam, 2019 are baseless and misconceived. Once, the petitioner had expressed her willingness to participate in allotment proceedings, then it cannot be said that the petitioner has no *locus standi* to file this petition.

So far as the contention of the respondents no. 4 and 5 that the petitioner has not disclosed the source of documents and has filed

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 26652/2019(O)
M/s Metco Autotech thr Vs. The State of M.P. and others

this petition dishonestly and has played fraud is concerned, the same has already been considered by this Court in the previous paragraphs.

Accordingly, it is held that since, the lease-deed granted in favor of the respondent no. 4 has already been cancelled, and the appeal challenging the said order has also been dismissed, and the order passed in appeal has already been affirmed in Revision and W.P. No. 2431/2016 challenging both the orders is pending, therefore, the Executive Director had no authority to issue order dated 10-2-2020.

Since the question of cancellation of lease-deed granted in favor of respondent no. 4 is already a subject-matter of W.P. No. 2431/2016, therefore, it is directed that any further action of the respondents no. 2 and 3 shall be subject to outcome of the said writ petition and the order dated 10-2-2020 (Annexure R-4/11) shall remain in abeyance.

With aforesaid observations, the petition is finally **disposed of**.

(G.S. Ahluwalia)
Judge