IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 2507 of 2009 (W)

PETITIONER:

M/S.VAIGAI THREAD PROCESSORS PVT.LTD.
NO.55/2, BILVARADAHALLI, JIGNI HOBLI
GOTTIGERE PO., BANGALORE-560083, AND UNIT AT KORATTI-680308,
REP. BY ITS WHOLE TIME DIRECTOR, V.J.PAUL.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR

RESPONDENTS:
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1. STATE OF KERALA
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT, REVENUE(L)
   DEPARTMENT-SECRETARIAT
   THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY TO GOVERNMENT
   DEPARTMENT OF REVENUE, SECRETARIAT
   THIRUVANANTHAPURAM.

3. DISTRICT COLLECTOR, THRISSUR.

4. TAHSILDAR, MUKUNDAPURAM TALUK,
   IRINJALAKUDA, THRISSUR.

5. DIRECTOR OF INDUSTRIES AND COMMERCE
   VIKAS BHAVAN, THIRUVANANTHAPURAM.

Addl.R6. IMPLEADED:

6. NATIONAL HIGHWAYS AUTHORITY OF INDIA
   REP. BY ITS PROJECT DIRECTOR & GENERAL MANAGER
   PIU - PALAKKAD, NO.8/1187, ARUMUGHAN COLONY
   CHANDRANAGAR, PALAKKAD - 678 007.(ADDL.R6 IS IMPLEADED AS PER
   ORDER DATED 02.11.2009 IN IA.13372/2009)

Addl.R7. IMPLEADED

7. KORATTY GRAMA PANCHAYAT
   REPRESENTED BY ITS SECRETARY, KORATTY P.O., THRISSUR.

(ADDL.R7 IS IMPLEADED AS PER ORDER DATED 28.11.2012 IN IA.15636/2012)

<u>Addl.R8. IMPLEADED</u>

8. THE MANAGING DIRECTOR
KERALA STATE I.T.INFRASTRUCTURE LTD.
TECHNOPARK CAMPUS, THIRUVANANTHAPURAM.
(ADDL. R8 IS IMPLEADED AS PER ORDER DATED 26.06.2013 IN IA 7029/2013)

R1 -R 5 BY SPL. GOVERNMENT PLEADER SMT.R.SUSHEELA R.BHAT
R1 TO R5 BY SPL.GOVERNMENT PLEADER SMT. SUSEELA.R. BHAT,
ADDL.R6 BY ADV. SRI.THOMAS ANTONY,
ADDL.R7 BY ADVS. SRI.PHILIP T.VARGHESE,
SRI.THOMAS T.VARGHESE,
SMT.ACHU SUBHA ABRAHAM,
ADDL.R8 BY ADV. SRI.K.A.ABDUL SALAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.1.2015, ALONG WITH WPC. 31575/2009 & WPC. 36019/2009, THE COURT ON 08-04-2015, DELIVERED THE FOLLOWING:

APPENDIX IN WPC.2507/09

PETITIONER'S EXTS;

EXT.P1: COPY OF LEASE DEED DT.10.10.1950 REGISTERED AS NO.3056/1950 OF SRO, CHALAKKUDY.

EXT.P2: COPY OF LEASE DEED DT.27.4.1956 REGISTERED AS NO.2101/1956 OF SRO, CHALAKUDY.

EXT.P3: COPY OF GOVERNMENT ORDER GO(MS)NO.122/98/RD DT.5.3.98.

EXT.P4: COPY OF NOTICE DT.24.4.07 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.

EXT.P5: COPY OF MAHAZAR DT.23.7.07 PREPARED BY THE 3RD RESPONDENT.

EXT.P6: COPY OF ORDER DT.13.7.07 ISSUED BY THE GOVERNMENT SERVED ON THE PETITIONER ON 25.7.07.

EXT.P7: COPY OF JUDGMENT DT.25.8.08 IN WPC.23153/07.

EXT.P8: COPY OF LETTER DT.5.11.08 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P8(A): COPY OF ACKNOWLEDGMENT DT.7.11.08 OF EXT.P8 LETTER.

EXT.P9: COPY OF GO(MS)NO.427/2008/RD DT.12.12.08.

EXT.P10: COPY OF REVIEW PETITION DT.31.12.08 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT WITHOUT ANNEXURES.

EXT.P11: COPY OF GO(MS)NO.4/2009/RD DT.2.1.09 ISSUED BY THE 2ND RESPONDENT.

<u>RESPONDENTS' EXTS:</u>

EXT.R7(A): COPY OF PLAN DRAWN TO SCALE THAT SHOWS THE LAND ACQUIRED.

ANNEXURE I: COPY OF SKETCH SHOWING THE AREA ALREADY TRANSFERRED TO THE IT DEPARTMENT AND THE BALANCE RESUMED AREA OF 15.32 ACRES WHICH IS YET TO BE TRANSFERRED TO THE SAID DEPARTMENT.

EXT.R1(A): COPY OF O.S.NO.282/10 FILED BY M/S.VAIGAI THREAD PROCESSORS (p)LTD.

EXT.R1(B): COPY OF IA.NO.3102/12 IN O.S.NO.282/10 FILED BY THE STATE

EXT.R1(C): COPY OF ORDER DT.7.9.12 IN I.A.NO.3102/12 IN O.S.282/10 BY THE SUB COURT, IRINJALAKUDA.

EXT.R1(D): COPY OF ORDER DT.1.12.2012 PASSED BY THIS COURT IN OP.NO.4108/12.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C)Nos.2507, 31575 & 36019 OF 2009

DATED THIS THE 8th DAY OF APRIL, 2015

JUDGMENT

W.P.(C)No.2507/09

The petitioner, a Public Limited Company having its registered Office at Bangalore and engaged in the business of spinning and weaving mill at Koratty in Thrissur District, has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P9 order dated 12.12.08 issued by the 2nd respondent by which it was decided to take over 45.43 Acre of land from the land leased out to the petitioner for industrial purpose; and for other consequential reliefs.

2. M/s. Coats Viella India Ltd., the predecessor-in-interest of the petitioner-company obtained lease of an extent of 84.85½ Acre of land situated at Muringoor Thekkumuri Village in Mukundapuram Taluk in Thrissur District. Exts.P1 and P2 registered lease deeds were originally executed by the State of Travancore-Cochin in favour of M/s.Jamuna Thread Mills Ltd., which Company was later on named as "Coats Viella India Ltd." Ext.P1 lease deed

covers an extent of 81.92½ Acre of land and Ext.P2 lease deed covers a further extent of 2.93 Acre.

3. As per the terms of Ext.P1 and P2 lease deeds, the purpose of lease is for establishing a cotton sewing thread factory and for erection of staff quarters, coolie lines and for purposes incidental to such industry. The lease was for a period of 99 years. Ext.P1 and P2 lease deeds restrict the use of the premises only for the purpose of the factory and also any transfer or sublease of the premises without the previous written consent of the Government. When the petitioner-company purchased the unit of M/s. Coats Viella India Ltd. as a factory with its lease hold right, approval was sought from the 1st respondent, which was granted vide Ext.P3 Government Order. In Ext.P3, the Government accorded sanction to lease out 84.85½ Acres of land covered by Ext.P1 and P2 lease deeds in favour of the petitioner-company for 55 years, fixing the lease rent at Rs.55,000/-per annum. Ext.P3 Government Order provides that, the Government will have the right to

revise the rent every five years and that, the lease deed shall be deemed to have been terminated if the premises is transferred or sublet without the prior consent of the Government.

4. Going by the averments in the Writ Petition, the unit run by the petitioner-company started commercial production on 10.11.1998, after a long period of lock out, which lasted for about six years. Due to various reasons, the unit became a sick industrial unit as its net worth became negative. The matter was referred to the Board for Industrial and Financial Reconstruction (BIFR) and the case was numbered as Case No.143/2000. As the Scheme for rehabilitation could not be implemented, the BIFR by its order dt.22.8.2008 recommended winding up of the Company and the matter is pending consideration before the Company Court, High Court of Karnataka.

5. While the matter was pending before the BIFR, the Director of Industries and Commerce, the 5th respondent herein,

has issued Ext.P4 show cause notice to the petitioner to show cause as to why an extent of 42.93 Acres of unused industrial land should not be resumed by the Government. According to the petitioner-company, they sent a reply dt.10.5.2007 requesting that the steps initiated for resumption may not be proceeded further, as the rehabilitation scheme for revival of the unit was in progress and that the land in question is utilised for industrial purpose. But, on 23.7.07, a group of officials, including the 2nd and 3rd respondents, came to the premises and prepared Ext.P5 mahazar and put up a board in the property stating that, as per G.O.(MS)No.265/2007 dt.13.7.2007 of the 2nd respondent, the property is vested in the Government.

6. As per Ext.P5 mahazar, the revenue officials have taken possession of 44.43 Acres of land, excluding the factory building and the remaining extent of 34.815 Acres. On 25.7.2007, the petitioner was served with a copy of Ext.P6 Government order dt.13.7.2007 of the 2nd respondent, based on which the land was taken possession. Ext.P6 order states that,

on the basis of the report of the District Collector, the 3rd respondent herein, and the Land Revenue Commissioner, the Government came to the conclusion that an extent of 34.81½ Acres of land alone is required for the purpose of the Company and therefore, in regard to the balance extent of 46.43 Acres, the lease is cancelled and land resumed. In Ext.P6, there is also a further direction to recover a sum of ₹4,33,000/- from the petitioner-company towards value of trees cut and removed.

7. Challenging Ext.P6 order, the petitioner-company had approached this Court in W.P.(C).No.23153/07 and this Court by order dt.13.7.07 granted an order of stay of any action pursuant to Ext.P6 Government Order. Later, the said Writ Petition was disposed of by Ext.P7 judgment by which the Government was directed to take a final decision after affording an opportunity of being heard to the petitioner. For the said purpose, the representative of the petitioner was directed to be present before the 1st respondent on 5.9.2008, on which date or any other adjourned date the 1st respondent shall hear the said

person and pass final orders in the matter.

8. According to the petitioner-company, its representative was present before the 2nd respondent on 5.9.2008 and 25.9.2008. Thereafter, a hearing was conducted on 31.10.2008. During the course of hearing, the documents pertaining to the proceedings before the BIFR were sought for by the 2nd respondent, which were sent along with Ext.P8 covering letter dt.5.11.2008. Thereafter, the 2nd respondent issued Ext.P9 order to take over 45.43 Acres of land from the land leased out to the petitioner-company. In Ext.P9, the Government came to the conclusion that, though the land was leased out for the purpose of setting up an industry, as borne out from records, the unit is no longer functioning. Major part of the lease hold land is covered with over grown trees and the constructions meant for the industrial unit are in a dilapidated condition. Moreover, the petitioner-company has sought Government permission to sublet the leased out land, which shows that the land is not required by the petitioner-company.

In such circumstances, the Government decided to resume 45.43 Acres of land which can effectively utilised for other public purposes and economic activities.

9. According to the petitioner-company, the reasons stated in Ext.P9 in order to resume 45.43 Acres of land leased out to it are factually incorrect and without any legal basis. Pointing out the above aspects, the petitioner has submitted Ext.P10 review petition before the 2nd respondent. While so, the 2nd respondent has issued Ext.P11 Government Order dated 2.1.2009 ordering that 30 Acre of land out of the 45.43 Acre of land resumed from the petitioner-company shall be transferred to Information Technology Department for setting up an IT Park by the Kerala State IT Infrastructure Limited, the additional 8th respondent herein, on condition that the value of the land shall be treated as Government equity. It was in such circumstances, the petitioner-company has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P9 order passed by the 2nd respondent and a writ of mandamus commanding the

2nd respondent to consider Ext.P10 Review Petition and for other consequential reliefs.

10. On 6.2.2009, this Court admitted the matter on file and issued notice to the respondents. Though the petitioner-company prayed for an interim order staying the operation of Ext.P9 order, the same was declined and the said order dt.6.2.2009 reads thus:

> "Learned counsel for the petitioner presses for in interim order. Admittedly, they have requested the Government for subleasing the land, which has been sought to be resumed by the Government. The very fact that the petitioner-company sought subleasing of the land itself shows that they are not using the land and they do not require that land. Therefore, I am not inclined to grant an interim order. Accordingly, the interim relief is declined."

11. Against the above order dated 6.2.2009, the petitioner preferred W.A.No.428/09 and a Division Bench of this Court by order dated 25.2.2009, directed the respondents to make available the plan/sketch prepared by them in respect of the 30 Acre of land sought to be resumed as per the impugned

order. The Division Bench made it clear that, in the meanwhile, there shall not be any disturbance to the premises and buildings which are actually used by the petitioner. Later, the said Writ Appeal was closed by order dated 10.8.09 and the judgment of the Division Bench reads thus:

> "This is an appeal filed against the interim order of the learned Single Judge dated 6th February 2009 in W.P.(C)No.2507/09. During the pendency of the Writ Appeal, we find that an extent of 30 Acre has been measured and demarcated, as can be seen from the sketch produced by the District Collector along with the memo dt.22.7.09 filed by the learned Government Pleader. On instruction, the learned counsel for the appellant submits that this 30 Acre of property as demarcated in the sketch would not affect the functioning of the Company."
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> 2. In that view of the matter, it is not necessary for us to go into the various contentions taken by the parties since those contentions are to be taken in the Writ Petition. Hence leaving open all the questions, we close this Writ Appeal permitting the Government to utilise the 30 Acre of land as demarcated in the sketch appended to the memo dt.22.7.09. Needless to say that further proceedings in respect of the balance area

would be subject to the final decision in the Writ Petition."

12. A counter affidavit has been filed on behalf of the 3rd respondent, contending that, based on an application submitted by M/s.Coats Viella India Ltd. and the petitioner-company , the Government by Ext.P3 accorded sanction to lease out 84.85½ Acres of land covered by Exts.P1 and P2 lease deeds to the petitioner-company for period of 55 years fixing lease rent at the rate of Rs.50,000/- per annum Later, by G.O.(Rt) No.5260/98/RD. dt.21.12.2008 the Government acquired and transferred 3.61 Acre of land to the National Highway Authority of India, the addl.6th respondent herein, for widening NH-47 and a further extent of 1 Acre for the Kerala State Electricity Board. In the meanwhile, certain labour disputes arose in the petitioner-company and the Government convened a meeting on 28.2.2005 to discuss the labour problems of the then work force in the factyory consisting of 475 workers. The authorities of the petitioner-company made a request to sublet the leased out land in order to revive the Company. As directed by the 3rd

respondent, the Tahsildar, Mukundapuram , the 5th respondent herein conducted an enquiry about the actual requirement of land for the smooth functioning of the Company, which revealed that an extent of 34.81½ Acres of land alone is required for the petitioner-company and the balance extent is seen unutilised. As per the lease conditions, the lease of unutilised land has to be cancelled and the same has to be resumed. Considering all these facts, the Government vide Ext.P6 resumed 45.43 Acres of unutilised land and steps were initiated against the petitioner-company to recover ₹4,33,000/- as the value of trees cut and removed from the lease hold land without prior permission from the Government. Pursuant to the direction contained in Ext.P7 judgment, a hearing was conducted on 31.10.2008 and the petitioner-company could not produce any documents to prove that the Company was actually functioning. It was in such circumstances, the Government by Ext.P9 decided to take over the balance area of 45.43 Acre of land leased out to the petitioner-company. Later, by Ext.P11 Government Order 30

Acre of the land so resumed was ordered to be transferred to the additional 8th respondent for setting up an IT Park. Pursuant to the said Government Order, the land was handed over to Information Technology Department on 15.1.2009. Therefore, according to the 3rd respondent, the resumption of unutilised lease hold land based on Ext.P9 Government Order is perfectly legal and therefore no interference of this Court is called for.

13. Heard arguments of the learned counsel for the petitioner, the learned Special Government Pleader appearing for respondents 1 to 5 and the respective Standing Counsel for additional respondents 6 to 8.

14. The learned counsel for the petitioner contended that Ext.P9 order passed by the 2nd respondent cancelling the lease of 45.43 Acre of land covered by Exts.P1 and P2 lease deeds and Ext.P3 Government Order are per se arbitrary and illegal and issued in gross violation of the principles of natural justice. According to the learned counsel, the property was given by the erstwhile Government of Travancore-Cochin for starting an

industry for the manufacture of sewing threads and the petitioner-company continues to carry on the said activity in the said property. However, it is only on account of the petitioner-company being a sick industrial company as declared by the BIFR, it was decided to seek permission of the Government to sublease a portion of the land for the limited purpose to revive the unit in pursuance of a scheme of rehabilitation and the said request of the petitioner-company had been wrongly interpreted by the Government for the purpose cancelling the lease . As per the conditions in Exts.P1 and P2 lease deeds, the lease is liable to cancelled only if the petitioner had violated the terms of the lease. In the absence of any such violation, the resumption of land based on Ext.P9 will not stand. The learned counsel would further contend that, going by Ext.P5 mahazar, respondents 2 and 3 have taken possession of the buildings and structures which are being used by the petitioner-company for its industrial purpose and therefore, Ext.P9 order has been passed without application of mind.

15. Per contra, the learned Special Government Pleader appearing for respondents 1 to 5 contended that Ext.P9 order is perfectly legal and no interference of this Court is called for. She has also reiterated the contentions raised in the counter affidavit filed on behalf of the 4th respondent.

16. I have also considered the arguments advanced by the respective Standing Counsel appearing for additional respondents 6 to 8.

17. As borne out from records, an extent of ½ Acres of land was originally leased out to M/s Jamuna Thread Mills Ltd., which company was later on named as M/s Coats Viella India Ltd., vide Exts.P1 and P2 registered lease deeds executed by the erstwhile State of Travancore-Cochin. Going by the terms of Exts.P1 and P2 lease deeds, the object of the lease is for the establishment of a cotton sewing thread factory and erection of staff quarters, coolie lines, etc., incidental to such cotton thread factory. As specifically provided in the lease deeds, if the leasehold is not used for the purpose above mentioned, or the

cotton sewing thread factory referred to above does not continue to be used for the purpose aforesaid for a period of three years continuously by the lessee, or if the leasehold is put to any other use, unconnected with the working of the factory, or if the leasehold or any portion thereof is transferred or sublet without the previous written consent of the lesser, the lease shall be deemed to have terminated without reference to the period of the lease and the possession of the land with the buildings, if any, will vest absolutely in the lesser without any further steps being taken by the lesser in that direction.

18. Later, there arose certain labour disputes in M/s.Coats Viella India Ltd. and the mill situated in the leasehold land was sold to the petitioner company as per sale deed dt.28.1.1994. Both parties jointly filed an application before the Government for granting necessary written consent for transfer of leasehold rights in favour of the petitioner-company. Meanwhile, the labour disputes were settled and steps have been taken to reopen the factory on the basis of that

settlement. It was in such circumstances, the Government by Ext.P3 accorded sanction to lease out 84.85 and a half Acre of land covered by Exts.P1 and P2 lease deeds to the petitioner-company for 55 years fixing the lease rent at the rate of ₹50,000/- per annum, on condition that the lease rent shall be revised by the Government in every five years in accordance with the provisions of the existing law on the basis of the market value prevailing from time to time.

19. When the Government found that out of 84.85½ Acres of industrial land covered by Ext.P3, 42.93 Acres remained unutilised, the petitioner-company was issued with Ext.P4 notice to show cause why the said extent of unutilised industrial land should not be resumed without further notice. Later by Ext.P6, it was ordered to resume 46.43 Acres of land lying unutilised and the same was taken possession of after preparing Ext.P5 mahazar. By Ext.P7 judgment, this Court has directed the Government to take a final decision in the matter after affording an opportunity of being heard to the petitioner-

company. As can be seen from Ext.P7 judgment in that Writ Petition, the petitioner-company has stated before this Court that it has approached the Government for permission to sublease a portion of the land . In view of the statement so made in the Writ Petition, it was contended on behalf of the respondents, that when the petitioner–company themselves sought permission of the Government to sublet portion of the land, it is abundantly clear that it does not need the land. It was pursuant to the direction contained in Ext.P7 judgment, the Government issued Ext.P9 order.

20. On an appreciation of the facts and circumstances, the Government came to the conclusion that the Industrial Unit is no longer functioning and the construction meant for the unit are in a dilapidated condition. The petitioner-company itself has sought for Government permission to sublet the leased land, which shows that the land is not required by it. Hence totally in consonance with the lease conditions, the Government concluded that 45.43 Acres of land has to be resumed so that

the said high value and prime land located on the side of NH-47 can be effectively utilised for public purpose and for economic activities. It was in such circumstances, Ext.P9 Government order was passed to take over 45.43 Acre of industrial land leased out to the petitioner-company. Later, by Ext.P11 Government order, 30 Acres of land from the 45.43 Acres land resumed from the petitioner-company was ordered to be transferred to the additional 8th respondent for setting up an IT Park.

21. It is not in dispute that the leasehold right of the petitioner–company based on Exhibit P3 Government Order over 84.85½ Acres of industrial land is subject to the terms and conditions contained in Exts.P1 and P2 lease deeds by which, the said land was originally leased out to its predecessor-in-interest. Out of the said 84.85½ Acres of land, 80.24½ Acres of land was with the petitioner-company after excluding 3.61 Acres handed over to the additional 6th respondent for widening NH-47 and a further extent of one Acre acquired and transferred

for the Kerala State Electricity Board. Though the unit started commercial production 10.11.1998, after a long period of lock out, which lasted for about 6 years, it became a sick industrial unit and the matter was referred to BIFR and the case was numbered as Case No.143/2000. By order dt.22.8.2008, the company was ordered to wound up as the BIFR found that the scheme of rehabilitation proposed could not be implemented.

22. As borne out from records, though the Government accorded sanction on 5.3.1998, for transferring the leasehold rights over the industrial land having an extent of 84.85 Acres in favour of the petitioner-company, the unit became a sick industrial unit in the year 2000 itself. It is also admitted by the learned counsel for the petitioner-company that the Industrial Unit remain closed for the last several years and the winding up petition is pending consideration before the Company Court, High Court of Karnataka. In Ext.P9 Government Order, it was found that the industrial unit of the petitioner-company is no longer functioning and the industrial land leased out to it is lying

unutilised. It was in such circumstances, the Government in Ext.P9 order decided to resume 45.43 Acres of land leased out to the petitioner-company, a portion of which was later transferred vide Ext.P11 order to the additional 8th respondent for setting up an IT Park.

23. The Division Bench of this Court disposed of W.A.No.428/09 filed by the petitioner-company after recording the submission made on its behalf that 30 Acres of land as demarcated in the sketch produced by the District Collector along with memo dt.22.7.09 filed by the learned Government Pleader would not affect the functioning of the petitioner-company. As can be seen from the counter affidavit filed on behalf of the additional 8th respondent, the IT Park has already been set up, which presently accommodate around 30 companies employing around 600 persons. Ext.P9 order, so far as it relates to resumption of 30 Acre of land, has attained finality in the judgment of the Division Bench of this Court in W.A.428/2009. In the said judgment, it was made clear that

further proceedings in respect of the balance area would be subject to the final decision in this Writ Petition.

24. As far as the challenge made in this Writ Petition in respect of the balance area is concerned, as I have already found, though the industrial land having an extent of 84.85½ Acres was leased out to the petitioner-company for the purpose of running a cotton sewing thread factory, the said land, which is having proximity to NH-47, is lying unutilised for the last several years. Even according to the petitioner-company, the factory is not functioning for the last several years. The petitioner-company had even made a proposal to sublet a portion of the said industrial land under the cover of a revival scheme proposed before the BIFR.

25. When an industrial land leased out for the purpose to start an industry remain unutilised for several years without any industrial activity, it has to be resumed, otherwise the very object of such lease would be defeated. When the leasehold right of the petitioner-company is governed by the terms of

Exts.P1 and P2 lease deeds, by which the said industrial land was originally leased out to its predecessor-in-interest, non-utilisation of land by the petitioner is a valid ground for resuming the leasehold land and therefore, the Government is perfectly justified in ordering resumption of land in Ext.P9 order. Therefore, the challenge made against Ext.P9 can only be repelled and I do so.

26. The learned counsel for the petitioner-company submitted that the petitioner-company has already filed O.S.No.282/2010 before the Court of the Subordinate Judge of Irinjalakuda claiming compensation for the buildings situated in the 30 Acres of land transferred to the additional 8th respondent and the said suit is pending consideration before that court. It is made clear that, none of the findings in this judgment will in any manner prejudice the contentions taken by both sides in that Original Suit.

27. I find absolutely no illegality or irregularity in Ext.P9 order passed by the 2nd respondent. In the result, the Writ

Petition is dismissed.

28. No order as to costs.

W.P.(C)No.31575/09

29. The petitioner has filed this writ petition seeking a writ of certiorari to quash Ext.P18 order of the 4th respondent by which the request made by the petitioner for issuance of necessary certificate for receiving compensation for the buildings and structures taken over by the National Highway Authority of India was turned down by the said respondent.

30. By Ext.P9 order, the Government have decided to resume 45.43 Acres of industrial land out of 84.85½ Acres of industrial land leased out to the petitioner-company for a period of 55 years. Ext.P9 order was under challenge in W.P.(C) No.2507/2009. By Ext.P10 interim order, this Court declined to grant stay of further proceedings pursuant to Ext.P9. In W.A.No.428/09, filed by the petitioner-company challenging Ext.P10 interim order, the Division Bench of this Court by Ext.P11 judgment closed the said writ appeal recording the

submission made on behalf of the petitioner-company that 30 Acres of land already measured and demarcated during the pendency of that Writ Appeal was not integral to the functioning of the factory. In the said judgment, it was made clear that further proceedings in respect of the balance area would be subject to the final decision in W.P.(C)No.2507/09.

31. When the petitioner-company came to know that a non-attachment certificate from the 4th respondent is necessary to process any claim pursuant to Ext.P4 notification, the 4th respondent was requested to issue such certificate, but the said request was declined by Ext.P12 communication stating that the land in question is Government land. The said fact was intimated to the 5th respondent vide Ext.P13 letter, which was followed by Exts.P14, P14(a) and P14(b) letters addressed to the 4th respondent. Later, the petitioner-company was informed vide Ext.P14(c) communication that it is not entitled for compensation for the buildings standing on the leasehold land. According to the petitioner-company, in similar acquisition

proceedings conducted in the year 1972, its predecessor-in-interest received compensation, which is evident from Exts.P15, P15(a) and P15(b).

32. On receipt of Ext.P15 notice, the petitioner-company submitted Ext.P17 request for issuance of necessary certificate for receiving compensation for the building and the structures taken over by the National Highway Authority and the same was also turned down by Ext.P18 order. It was in such circumstances, the petitioner-company has approached this Court seeking a writ of certiorari to quash Ext.P18 and seeking a writ of mandamus directing the 6th respondent to refer the dispute regarding payment of compensation to the petitioner in pursuance of Ext.P4 notification to the District Court having jurisdiction as envisaged under Section 3H of the National Highways Act, 1956.

33. A counter affidavit has been filed on behalf of the 3rd respondent contending, inter alia, that the petitioner-company is not entitled for any compensation since the ownership of the

land vested with the Government. The acquired land measuring 3.15 Acres includes both leasehold land and also land under the exclusive possession and ownership of the Government. Therefore, the petitioner-company is not entitled to get the compensation amount and it was in such circumstances, the 4th respondent turned down the request made by the petitioner-company for issuance of non-revenue recovery certificate. Out of the 80.12 Acres of land, an extent 46.43 Acres was resumed by the Government as unutilised industrial land. As the land under acquisition vests with Government the petitioner-company is not entitled for compensation for any buildings situated thereon.

34. Heard the arguments of the learned counsel for the petitioner, the learned Special Government Pleader appearing for respondents and also the learned Standing Counsel for the National Highways Authority of India.

35. The learned Standing Counsel for the National Highway Authority of India, who appeared in the connected Writ

Petition, submitted on instruction that the petitioner-company, has not made any claim for compensation in respect of the land acquired for the widening of NH-47.

36. By Ext.P4 notification issued by the 5th respondent under Section 3G(3) of the National Highways Act, 1956 an extent of 12631 Sq.Metres equivalent to 3.15 Acre of land in Sy.No.698/4, 701/3 and 758/3 of Murnigoor Thekkumuri Village in Mukundapuram Taluk was sought to be acquired for the widening of NH-47. Going by Ext.P4 notification, the said property is classified as revenue poramboke leased out to the petitioner-company. The learned Standing Counsel for the National Highway Authority has submitted that, the petitioner-company has not so far made any claim for compensation in respect of the aforesaid land, included in Ext.P4 notification.

37. Going by Section 3H(4) of the National Highways Act, 1956, if there is any dispute regarding the right to receive compensation in respect of any property sought to be acquired, the 5th respondent has to refer the dispute to the competent

Principal Civil Court. In the absence of any claim made by the petitioner-company, the 5th respondent cannot be compelled to refer the dispute to the concerned Principal Civil Court having jurisdiction under Section 3H(4) of the National Highways Act.

38. The fact that the petitioner-company is bound by the terms of Exts.P1 and P2 lease deeds is not in dispute. Going by the said lease deeds, if the leasehold land is not used for the purpose of running cotton sewing thread factory for a period of three years continuously by the petitioner-company, or if leasehold or any portion thereof is transferred or sublet without the previous consent of the Government, the lease shall be deemed to have been terminated without reference to the period of lease and the possession of the land with the building, if any, shall vest absolutely in the Government without any further steps being taken by the Government in that direction. It is also not in dispute that, though commercial production was started in the Industrial Unit on 10.11.1998, it became a sick Industrial Unit within a short span of one year and the matter

was referred to BIFR and the case was numbered as Case No.143/2000. Further, the pleadings on record clearly indicate that, the entire extent of the industrial land in question is not in use for any industrial activities for the last more than 14 years. Moreover, under the guise of a scheme for revival, the attempt of the petitioner-company was to sublet a portion of the leasehold land. In such circumstances, mere pendency of the matter before the BIFR or the Company Court, High Court of Karnataka, would not in any manner help the petitioner-company to wriggle out of the terms and conditions of Exts.P1 and P2 lease deeds.

39. When the entitlement of the petitioner-company to claim compensation for any building situated on the leasehold land is in dispute, the 4th respondent cannot be compelled to issue necessary certificate to the petitioner-company for receiving compensation for the buildings situated on the leasehold land. The question whether there is deemed termination of lease in terms of the conditions stipulated in

Exts.P1 and P2 lease deeds is also a disputed question of fact, which cannot be adjudicated in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India. Therefore, the 4th respondent cannot be found fault with in not issuing necessary certificate to the petitioner-company for receiving compensation for any buildings situated on the leasehold land acquired for NH-47. Similarly, in the absence of any claim made by the petitioner-company, the 5th respondent cannot be compelled to refer the dispute to the Principal Civil Court concerned having jurisdiction under Section 3H(4) of the National Highways Act.

40. In the result, the writ petition fails and the same is dismissed.

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41. In this Writ Petition, the petitioner-company has challenged Ext.P6 order of the 2nd respondent. The petitioner-company was served with Ext.P6 order dated 24.11.2009 of the 2nd respondent revising the rent of the property leased out to it

claiming a total sum of Rs.18,68,77,460/-. Ext.P6 is based on a report of the District Collector regarding the market value of the land for the period from 2003 to 2007 and thereafter for the period from 2007 to 2009 fixing the market value at Rs.24,355/- per cent and Rs.1,00,000/- per cent respectively. The grievance of the petitioner is that Ext.P6 order has been issued in gross violation of the principles of natural justice and outside the terms of agreement between the parties.

42. A counter affidavit has been filed on behalf of the 3rd respondent contending, inter alia, that as per the terms of lease contained in Ext.P3, the lease rent have to be revised every five years. The District Collector as per letters dt.7.3.07, 10.11.09 and 24.11.09 submitted proposals for revision of lease rent in respect of the land held by the petitioner-company during the period from 2003-07 and 2007-09. As per the said report of the District Collector, the highest market value of the leased hold land for the period 2003-07 is Rs.24,355/- per cent and that for the period from 2007-09 is Rs.1,00,000/- per cent. It was on

that basis, a demand for Rs.18,68,77,460 /-was made in Ext.P6. It was also contended that there is no violation of principles of natural justice and the Government passed the orders after considering all aspects of the case.

43. Heard arguments of the learned counsel for the petitioner-company and the learned Special Government Pleader appearing for respondents 1 to 3.

44. The learned counsel for the petitioner-company mainly contended that the revision of lease rent is vitiated by mala fides and it is only a counter blast to Ext.P5 notice issued by the petitioner-company demanding ₹3,06,60,000/- as compensation for the buildings and structures on the 30 Acres of land already resumed. The learned counsel further contended that Ext.P6 order is vitiated by the principles of natural justice and it has no legal backing. Per contra, the learned Special Government Pleader would contend that the demand made in Ext.P6 is perfectly legal and it is in terms of Ext.P3 order by which the land was leased out to the petitioner-company. It

was also contended that for revising the lease rent in terms of Ext.P3 order, no notice need be issued to the petitioner.

45. I have considered the rival submissions made at the Bar.

46. The industrial land held by the petitioner-company was originally leased out to its predecessor-in-interest by Exts.P1 and P2 lease deeds. Later, by Exhibit P3, Government accorded sanction to lease out the said extent of land to the petitioner for 55 years fixing the lease rent at the rate of Rs.55,000/- per annum and on condition that lease rent shall be revised by the Government in every five years in accordance with the provisions of the existing law on the basis of the market value prevailing from time to time. Therefore, going by Ext.P3, the lease rent of Rs.50,000/- per annum in respect of the land leased out to the petitioner-company is subject to revision in every five years on the basis of the market value prevailing from time to time.

47. It is not in dispute that, no notice whatsoever has

been issued to the petitioner-company before revising the lease rent by Ext.P6 Government Order. When Ext.P3 Government order provides for the revision of lease rent in accordance with the provisions of the existing law on the basis of the market value of the land in question prevailing from time to time, it would be open to the petitioner-company to challenge any arbitrary revision of lease rent made not based on the prevailing market value of the land or made not in accordance with the provisions of any existing laws. When the terms of Ext.P3 Government Order casts a liability on the petitioner-company to pay lease rent at the revised rate as and when the same is revised in terms of Ext.P3, it is necessary that the petitioner-company should be given an opportunity of being heard on the proposal made for revision of lease rent. It is not in dispute that, no such notice was issued to the petitioner-company before revising the lease rent by Ext.P3. Ext.P6 Government Order, therefore, is vitiated by the principles of natural justice as the Government failed to afford a reasonable opportunity of being heard to the petitioner-company before revising the lease rent in terms of Ext.P3. Therefore, this Writ Petition is disposed of with the following direction:

1. Ext.P6 order passed by the Government shall be treated as a notice to the petitioner-company for revising the lease rent of the property covered by Ext.P3.
2. The petitioner-company shall submit its objection to the proposal so made to revise the lease rent and such objection should be filed before the 2nd respondent within a period of one month from the date of receipt of a certified copy of this judgment.
3. On receipt of such objection within the time stipulated as above, the 2nd respondent shall issue notice to the petitioner for personal hearing and after affording a reasonable opportunity of being heard, shall pass appropriate orders on the question of revision of lease rent of the property covered by Ext.P3, within a period of two months from the date of such hearing.

4. The interim order of stay of all further proceedings pursuant to Ext.P6 granted by this Court in this Writ Petition shall continue to be in force till such an order is passed by the 2nd respondent as directed above.

The Writ Petition is disposed of. No order as to costs.

Sd/-
ANIL K.NARENDRAN,
JUDGE

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