

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 19292 of 2014 (J)

PETITIONER(S):

**GEETHA RAMANUJAN, PARTNER,
M/S.LEEGEE CORPORATION LEEGEES BUILDING,
G.V. IYER ROAD, WILLINGDON ISLAND,
KOCHI- 682 003.**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN**

RESPONDENT(S):

- 1. ESTATE MANAGER, COCHIN PORT TRUST,
WILLINGDON ISLAND, COCHIN - 682 003.**
- 2. THE CHAIRMAN, COCHIN PORT TRUST, PORT TRUST BUILDING,
WILLINGDON ISLAND, COCHIN - 682 003.**
- 3. COCHIN PORT TRUST, REPRESENTED BY ITS SECRETARY,
PORT TRUST BUILDING, WILLINGDON ISLAND,
COCHIN - 682 003.**
- 4. UNION OF INDIA, REPRESENTED BY THE SECRETARY,
MINISTRY OF SHIPPING AND TRANSPORT, NEW DELHI.**

**R1-R3 BY ADVS. SRI.VABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC
R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-07-2015 ALONG WITH WPC. 5284/2015 AND WPC. 12798/2015,
THE COURT ON 14-07-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE LEASE DEED DATED 340/9/1961.

EXHIBIT P2: TRUE COPY OF THE LETTER DATED 28/2/1996 ISSUED BY THE DEPUTY SECRETARY, COCHIN PORT TRUST TO THE PETITIONER.

EXHIBIT P3: TRUE COPY OF THE FORMAT OF LEASE DEED AGREEMENT FORWARDED TO THE PETITIONER BY THE PORT TRUST.

EXHIBIT P4: TRUE COPY OF THE LETTER DATED 17/4/197 ISSUED BY THE PORT TRUST TO THE PETITIONER.

EXHIBIT P5: TRUE COPY OF ONE OF THE LETTER ISSUED BY THE PORT TRUST RECEIVED BY THE PETITIONER ON 6/11/1997.

EXHIBIT P6: TRUE COPY OF ONE OF THE REPLY LETTER DATED 12/8/1999 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT PORT TRUST.

EXHIBIT P7: TRUE COPY OF LETTER DATED 12/7/2000 SENT BY THE PORT TRUST TO THE PETITIONER.

EXHIBIT P8: TRUE COPY OF LETTER DATED 21/12/2011 SENT BY THE PORT TRUST TO THE PETITIONER.

EXHIBIT P9: TRUE COPY OF REPLY DATED 28/3/2012 GIVEN BY THE PETITIONER TO THE PORT TRUST.

EXHIBIT P10: TRUE COPY OF THE LETTER DATED 18/6/2014 ISSUED BY THE SENIOR ASST.ESTATE MANAGER OF THE RESPONDENT PORT TRUST.

EXHIBIT P11: TRUE COPOY OF THE NOTICE DATED 30/6/2014 ISSUED BY THE RESPONDENT PORT TRUST.

EXHIBIT P12: TRUE COPY OF THE BILL DATED 1/4/2014 ISSUED BY THE RESPONDENT PORT TRUST.

EXHIBIT P13: TRUE COPY OF THE BILL DATED 2/6/2014 ISSUED BY THE RESPONDENT PORT TRUST.

EXHIBIT P14: TRUE COPY OF THE INTERIM ORDER DATED 3/7/2014 IN WPC NO. 16851/2014.

EXHIBIT P15: TRUE COPY OF THE POLICY GUIDELINE OF 2014 COMMUNICATED BY NOTE DATED 30/5/2014.

EXHIBIT P16: TRUE COPY OF THE ORDER DTD.9.2.2015 PASSED BY THE CHAIRMAN, COCHIN PORT TRUST.

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EXHIBIT P17: TRUE COPY OF ORDER ON 25.2.2015 PASSED BY THE ESTATE OFFICER,
COCHIN PORT TRUST.

EXHIBIT P18: TRUE COPY OF THE ORDER DTD.8.4.2015 PASSED BY THE ESTATE
OFFICER, COCHIN PORT TRUST.

EXHIBIT P19: TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD DIRECTOR
OF M/S MALABAR CEMENTS LTD.

EXHIBIT P20: TRUE COPY OF THE COUNTER STATEMENT FILED BY THE
RESPONDENTS IN W.P.NO.29436/2014 ALONG WITH THE EXHIBITS
THEREIN.

RESPONDENT(S)' EXHIBITS:

EXT. R1(a): TRUE COPY OF POLICE GUIDELINES FOR LAND MANAGEMENT BY MAJOR
PORTS, 2014.

EXT.R1(b): TRUE COPY OF NOTIFICATION G.NO.39 DTD.31.3.2005 "GUIDELINE FOR
REGULATION OF TARIFF" NOTIFIED BY TARIFF AUTHORITY FOR MAJOR
PORTS.

EXT.R1(c): TRUE COPY OF NOTIFICATION G.NO.160 DTD.11.6.2010 ISSUED BY TARIFF
AUTHORITY OF MAJOR PORTS (TAMP).

EXT.R1(d): TRUE COPY OF NOTIFICATION NO.PW/BTL-27/86 DTD8.7.1986 ISSUED BY
THE GOVERNMENT OF INDIA TO THE 2ND RESPONDENT.

EXT.R1(e): TRUE COPY OF LETTER DTD.28.2.1996 ISSUED BY THE 3RD RESPONDENT
TO THE SECRETARY TO THE GOVERNMENT OF INDIA, NEW DELHI.

EXT.R1(f): TRUE COPY OF LETTER DTD.31.7.1996 ISSUED BY THE GOVERNMENT OF
INDIA TO THE 2ND RESPONDENT.

EXT.R1(g): TRUE COPY OF LETTER DTD.22.5.1997 ISSUED M/S.LEEGEE
CORPORATION, COCHIN TO THE DEPUTY SECRETARY (E) OF THE
1ST RESPONDENT'S OFFICE.

EXT.R1(h): TRUE COPY OF LETTER DTD.7.7.1997 ISSUED BY THE DEPUTY
SECRETARY (ESTATE) OF THE 1ST RESPONDENT'S OFFICE TO
M/S.LEEGEE CORPORATION.

EXT.R1(i): TRUE COPY OF JUDGMENT DTD.10.7.2003 PASSED BY THIS HONOURABLE
COURT IN OP.NO.5106 OF 1992.

EXT.R1(j): TRUE COPY OF LETTER DTD.6.7.1999 ISSUED BY THE DEPUTY
SECRETARY (ESTATE) OF THE 1ST RESPONDENT'S OFFICE TO
M/S.LEEGEE CORPORATION.

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EXT.R1(k): TRUE COPY OF LETTER DTD.6.2.2003 ISSUED BY THE RESPONDENT TO M/S.LEEGEE CORPORATION.

EXT.R1(l): TRUE COPY OF LETTER DTD.3.5.2002 ISSUED BY M/S.LEEGEE CORPORATION TO THE 1ST RESPONDENT.

EXT.R1(m): TRUE COPY OF LETTER DTD.21.10.2003 ISSUED BY THE FINANCIAL ADVISOR & CHIEF ACCOUNTS OFFICER OF THE 3RD RESPONDENT TO M/S.LEEGEE CORPORATION.

EXT.R1(n): TRUE COPY OF LETTER DTD.5.8.2004 ISSUED BY THE RESPONDENT TO M/S.LEEGEE CORPORATION.

EXT.R1(o): TRUE COPY OF LETTER DTD.6.4.2005 ISSUED BY M/S.LEEGEE CORPORATION TO THE 2ND RESPONDENT.

EXT.R1(p): TRUE COPY OF LETTER DTD.28.7.2006 ISSUED BY THE 1ST RESPONDENT TO M/S.LEEGEE CORPORATION.

EXT.R1(q): TRUE COPY OF BOARD'S RESOLUTION NO.138 DTD.18.12.2007.

EXT.R1(q) (a): TRUE COPY OF LETTER DTD.2.1.2008 ISSUED BY THE 3RD RESPONDENT TO THE SECRETARY TO THE GOVERNMENT OF INDIA, NEW DELHI.

EXT.R1(r): TRUE COPY OF LETTER DTD.29.8.2011 ISSUED BY THE UNDER SECRETARY (PO).

EXT.R1(s): TRUE COPY OF LETTER DTD.30.4.2014 ISSUED BY THE CHIEF ENGINEER OF THE 3RD RESPONDENT TO M/S.LEEGEE CORPORATION.

EXT.R1(t): TRUE COPY OF ORDER DTD.19.12.2013 ISSUED BY THE SENIOR ASSISTANT ESTATE MANAGER OF THE 3RD RESPONDENT.

EXT.R1(u): TRUE COPY OF THE LETTER DTD.4.9.2014 ISSUED TO PETITIONER ISSUED BY THE PORT TRUST.

EXT.R1(v): TRUE COPY OF THE LETTER DTD.14.10.2014 ISSUED BY THE PORT TRUST DIRECTING THE PETITIONER TO VACATE THE LEASED PREMISES WITHIN ONE MONTH.

EXT.R1(w): TRUE COPY OF THE RECEIPT ACKNOWLEDGING RECEIPT OF THE AFORESAID NOTICE BY THE PETITIONER.

EXT.R1(x): TRUE COPY OF THE JUDGMENT DTD.20.2.2015 PASSED BY THE LEARNED DIVISION BENCH OF THIS HONOURABLE COURT IN WA.NOS.1928,1951 AND 1960 OF 2014.

Msv/

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EXT.R1(y): TRUE COPY OF THE JUDGMENT DTD.11.11.2014 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT IN WP(C) NOS.29436, 27972 AND 29830 OF 2014.

EXT.R1(z): TRUE COPY OF EXTRACT OF THE RELEVANT PORTION OF THE MINUTES OF THE 201ST MEETING OF THE BOARD OF DIRECTORS OF MALABAR CEMENTS LIMITED.

EXT.R1(aa): TRUE COPY OF LETTER DTD.9.6.2012 ISSUED BY THE MANAGING DIRECTOR OF M/S.MALABAR CEMENTS LIMITED TO THE 2ND RESPONDENT.

EXT.R1(ab): TRUE COPY OF PROCEEDINGS OF THE TENDER COMMITTEE MEETING HELD ON 17.12.2012.

EXT.R1(ac): TRUE COPY OF ORDER OF DISCHARGE DTD.26.12.2012 ISSUED BY THE 3RD RESPONDENT.

EXT.R1(ad): TRUE COPY OF LETTERS ISSUED TO THE TENDERS DTD.26.12.2012 BY THE 3RD RESPONDENT.

EXT.R1(ae): TRUE COPY OF E-MAIL DTD.16.8.2014 SENT BY THE MANAGING DIRECTOR OF MALABAR CEMENTS LIMITED TO THE 2ND RESPONDENT.

EXT.R1(af): TRUE COPY OF THE MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES HELD ON 29.9.2014.

EXT.R1(ag): TRUE COPY OF PROCEEDINGS OF THE LAND ALLOTMENT COMMITTEE HELD ON 29.8.2014.

EXT.R1(ah): TRUE COPY OF COMMUNICATION ISSUED BY M/S.MALABAR CEMENTS LIMITED TO THE DIVISIONAL RAILWAY MANAGER, TRIVANDRUM DTD.26.8.2014.

EXT.R1(ai): TRUE COPY OF 'LAND USE PLAN OF THE COCHIN PORT 2012-14' PUBLISHED IN APRIL 2012.

EXT.R1(aj): TRUE COPY OF LETTER DTD.17.4.1997 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.R1(ak): TRUE COPY OF LETTER DTD.7.7.1997 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.R1(al): TRUE COPY OF LETTER DTD.11.2.2002 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.R1(am): TRUE COPY OF LETTER DTD.10.4.02 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J

W.P(C) Nos.19292 of 2014 , 5284of 2015 &
12798 of 2015

Dated this the 14th day of July, 2015

J U D G M E N T

The three writ petitions raise identical questions as to, (i) the character and status in which the petitioners occupy the premises of the respondent Port Trust; to which the petitioners were originally inducted as lessees and (ii) the sustainability of the eviction notices issued against the petitioners under the Public Premises (Eviction of unauthorised Occupation) Act, 1971 (for brevity, “the Act of 1971”). They also raise an alternative question of rehabilitation and compensation, if the eviction is sustained. W.P(C) No. 12798/2015 confines the challenge to the last alternate question alone.

2. I have heard the learned Senior Counsel Sri.N.N

Sugunapalan, appearing for all the petitioners and learned Standing Counsel Sri V Abraham Markose for the respondent Port Trust.

3. Sri. N N Sugunapalan, learned Senior Counsel would assert the right of the petitioners to be continued, without any hindrance, by virtue of Section 106 of the Kerala Land Reforms Act, since all the petitioners have been inducted prior to the coming into force of the said Act. There is a prohibition in evicting them, from the commercial lease of the demised premises, is the plea. It is also argued that the petitioners having been inducted long back, on the basis of lease agreements, executed between the petitioners and the Port Trust, for a period of 30 years and the petitioners having been continued thereafter, they have to be deemed to be tenants holding over, under the Transfer of Property Act, 1882. The Port

Trust would be interdicted from evicting them, is the primary contention.

4. On the terms and contentions as stipulated in the lease agreement, the learned Senior Counsel would argue that the petitioner's were merely granted possession of the lands on lease and the buildings constructed thereon were with the investment of the petitioners. The petitioners were allowed to sublet the leased premises, to generate business and enable active use of the ports facilities. The lessees so inducted had been a part and parcel of the port activities and they played a major role in the development of the Port. Disputes arose on the completion of the lease period and the Port Trust had allowed the petitioners to continue as per the earlier terms and the agreements for the future periods could not be executed only due to the recalcitrant attitude of the Port

Trust. Attempts were made to revise the lease rent, extract more and more portions of the sub-lease rent some of which were scuttled successfully, by the petitioners, on approaching this Court. All attempts to harass the petitioners having failed, the Port Trust sought to resume the lands under the guise of the Policy Guidelines for Land Management, which too having been frustrated; now resumption is attempted; on the pretext of handing over the area in which the petitioners buildings are situated to Malabar Cements Limited (MCL).

5. On behalf of the petitioners, it is further urged that the petitioners cannot be evicted from the premises, since there is no provision to resume the land, for the benefit of a 3rd party, even according to the Policy Guidelines. The project now put forth, with MCL, is not even sanctioned and even the proposal refers to a totally

different area, being the Mattancherry wharf, whereas the petitioners are continuing in the area coming within the Ernakulam wharf. The Chairman, in Ext.P16 has completely misdirected himself in interpreting the provisions of the land policy, in finding that the petitioners are not carrying on Port related activities and has resorted to pick and choose method, by which, convenient terms in the original lease agreement and the Policy Guidelines are relied on, alternatively to sustain the eviction attempted. The last contention is that in any event, the petitioners are entitled for rehabilitation and are also entitled to compensation for the buildings; which is sanctioned by the Policy Guidelines; which guidelines the Port Trust seeks to rely on.

6. The learned Senior Counsel Sri Abraham Markose would argue that these issues are being agitated

unnecessarily, when those have been settled in an earlier round of litigation. W.P(C) No.19292/2014, which is sought to be projected as the lead case, was not taken up earlier. The unamended writ petition challenged the revision of sub-lease rent, payable to the Port Trust and the order of resumption of land attempted by the Port Trust by Ext.P11. The earlier eviction (Ext.P11) was for the reason that the petitioner had not been carrying on any business in the premises leased to them and had merely sub-let the premises; thus not generating any real income to the Port; which is termed as “throughput” to the Port. Eviction on that basis is no more sought by the Port Trust, since they have now issued notices on a totally different premise, under the Policy Guidelines, resuming land for the purposes of the Port Trust itself. This has been found to be perfectly valid by a learned Single Judge of this

Court and a Division Bench and the only question now surviving is the question of rehabilitation, which even as per the direction of the learned Single Judge, can only be on the terms of the Policy Guidelines.

7. The learned Senior Counsel would point out that Section 106 of the KLR Act, does not confer any fixity of tenure and prohibition from eviction from a property leased out for commercial purposes would not be applicable to the petitioners since the Port Trust has been declared to be a public authority, by way of an Explanation added by an amendment to Section 106. The Transfer of Property Act, 1882 (for brevity "T P Act") would also not be applicable to the Port Trust's premises and the petitioners cannot be said to be tenants, holding over.

8. The project jointly attempted with the MCL,

a public sector undertaking under the State Government, is on a nomination basis, as has been permitted by the policy guidelines and the same would generate more throughput to the Port, thus making it a project of the Port Trust itself. There is no basis for the contention that the proposal was to set up the unit of MCL in Mattancherry wharf since that related to an earlier tender notification. The present project is on a nomination basis and on the MCL later expressing a desire to step in, with the project. The Port Trust has absolute discretion in deciding on the area, in which the MCL should set up the project and the petitioners who refused to execute the lease agreements, after the expiry of the initial term, cannot stand in the way of such development activities. As to rehabilitation, the learned Senior Counsel would specifically refer to the offer made to the lessees to

participate in the auction proceedings of those premises otherwise vacated, which they have failed to participate in. Compensation also cannot be a valid claim, since even the lease agreement specifically provided that, on resumption by the Port Trust, the lessees would have to demolish the building and give vacant possession of the land.

9. The learned Senior Counsel for the petitioner would urge the contention based on Section 106 relying on the various amendments made to the KLR, which are extracted hereunder. Section 106, originally read as under:-

“(1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or order or decree of Court, where, on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 18th

December, 1957, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy. Such rent shall be liable to be varied every twelve years on the motion of the lessor or the lessee, in such manner as may be prescribed.”

The said provision was amended to the present form w.e.f 01/01/1970 by Act 35/1969 which reads as follows:

106. Special provisions relating to leases for commercial or industrial purposes -

(1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or in any order of decree of Court, where on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 20th May, 1967, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy, and such rent shall be liable to be varied every twelve years.

(2) If, between the 18th December, 1957 and

the date of commencement of this Act, any decree or order of Court has been executed and any person dispossessed by delivery, such person shall, on application before the Land Tribunal, be entitled to restoration of possession:

Provided that before restoration, such person shall be liable to pay-

- (i) the compensation paid by the landlord for any improvements in the land and, subsisting at the time of restoration;
- (ii) the compensation for any improvements effected subsequent to the delivery

Provided further that he shall not be entitled to restoration if the property has passed on to the possession of a bonafide transferee for value.

By Act 35 of 1969 w.e.f 01/01/1970 the following provision was also added as sub-clause(3)

(3)Nothing contained in Sub section (1) and subsection (2) shall apply to Lands owned or held by Government of Kerala or local authority.

And further later, by Act, 17 of 1972 the following

explanation was added which reads as follows:

Explanation: for the purpose of this Sub Section Local authority includes the Cochin Port Trust and any University established by an Act of Kerala State Legislature.

10. The compelling argument made based on the decisions reported in Chettian Veetil Ammad and another v Taluk Land Board and others (1980(1) SCC 499) and Sedco Forex International Drill Inc. v. Commissioner of Income Tax (2005(12) SCC 717) is that the explanation can operate only prospectively. The learned Senior Counsel would contend that as originally enacted in 1969, any lessee of a land leased for commercial or industrial purposes with the lessee having constructed buildings for such purpose before 18.12.1957; would not be liable for eviction. Admittedly, the petitioners herein were

inducted only later to that date, specifically in the year 1961. However, in the year 1970, the date was amended to 20.05.1967 and to get over the difficulty suffered by any lessee who had been inducted later to 18.12.1957 but before 20.05.1967, sub-section (2) was introduced whereby such lessees, if dispossessed could file an application before the Land Tribunal for restoration of possession. Hence, the intention of the Government was to prohibit eviction of any lessee who had been leased out land, for industrial or commercial purposes and who had constructed buildings thereon, prior to 20.05.1967. The right so accrued on the lessees cannot be taken away by the explanation brought in, in the year 1972; is the contention. The explanation would only apply prospectively, argues the learned Senior Counsel.

11. Essentially it is to be noticed that there is no question of any prospective application of the Explanation, if the petitioners contention is accepted. The Section itself

provided for prohibition from eviction, only in the case of lessees who occupied the lands and built buildings, prior to 20.05.1967. There is also a prohibition in creating any tenancies in respect of lands, after the commencement of the KLR Act, by Section 74. In such circumstance if the lessees who were so inducted prior to 20.05.1967 are continued to be protected under the Act; despite the non-obstante clause and explanation, then, none could be evicted. In such circumstance, the non-obstante clause and the explanation would be redundant and rendered otiose.

12. It cannot be said that the non-obstante clause or the explanation has to be applied retrospectively to evict the petitioners. The provisions as it existed prior to the amendment prohibited any lessee inducted as indicated in the section, from being evicted from the premises even owned by the Government or local authority. After the amendment lands owned or held by Government of Kerala or local

authority were exempted from the rigor of section 106.

13. Hence subsequent to the amendment by Act 35 of 1969, no lessee inducted into lands owned by Government or local authority, even prior to 20.05.1967, could claim protection from eviction. Likewise after the introduction of the Explanation; Cochin Port Trust and the Universities being brought in under the definition of local authority, no lessee in the land occupied by such bodies also could claim protection from eviction. The non-obstante clause and the explanation has only prospective effect insofar as, now neither of the petitioners can claim protection from eviction based on Section 106. The issue with respect to the petitioners being considered as tenants holding over would also be controlled by the provisions of the Government Grants Act, 1895 which exempts the application of Transfer of Property Act, 1882 to any grant or other transfer of land or of any interest therein already made or thereafter made by or on

behalf of the Government.

14. The decision in SEDCO FOREX (supra) dealt with the application of explanation brought in by amendment, to an assessment year prior to such amendment. That situation does not arise herein and hence the decision is not applicable to the facts. Three issues were considered in Chettian Veetil Ammad (supra) and reliance placed is on the findings on the third issue. Ceiling limit of lands permitted to be owned and held as per the KLR Act was reduced by a later amendment. The issue that arose was whether the validity or invalidity of transfers effected by the land owners, exceeding the ceiling limit, should be determined with reference to the ceiling area in force on the date of transfer or in accordance with the ceiling area prescribed by the Amendment Act 35 of 1969. The issue specifically was whether subsection(3) of Section 84 of KLR Act was retrospective in operation. The two primary rules of

construction that (i) the intention of the legislature as is reflected in the plain and clear language of the provision and (ii) the presumption, that unless specifically expressed, every provision shall be prospective, was adopted.

15. Sub-section(3) was held to be a clarification insofar as the ceiling area ie., the area specified in subsection (1) of Section 82 as amended by KLR Amendment Act, 1969 (Act 35 of 1969). The date with reference to which the transfers were to be invalidated having not been changed, it was held that subsection (3) would become retroactive in operation. The provision was held to be declaratory and the presumption against construing it retrospectively so as to respect vested rights, was held to be not applicable. Herein, it is to be noticed that the exclusion with respect to Government land and lands owned by local authorities as also the explanation bringing in the Cochin Port Trust under the definition of local authorities, does not have any retrospective

operation nor is it required. The prohibition from eviction stands vacated/removed prospectively.

16. On the factual aspects, this Court is referring to the documents produced in W.P(C) 19292/2014 and would refer to the specific writ petition, if other documents are referred to. Ext.P1 is the lease deed executed, with one V.K Raja Ram on 30.9.1961 whose assignee is Leegee Corporation, the present occupant of the premises; which assignment is seen approved by the Port Trust as per Ext.P3. There is no dispute that all the petitioners were inducted into the land on similar, valid lease agreements extending for a period of 30 years. The lessees so inducted were permitted to construct buildings thereon, which were to be their exclusive property and also permitted to sub-let the space in the building for office purposes and godown purposes to individuals or

entities using the facilities of the Port, but with the sanction of the Port Trust. A portion of the sub-lease rent was paid to the Port Trust, even as per the agreement, which continued in all those years.

17. All the petitioners had their own operations, to use the port facilities, initially; but admittedly for long they have been merely sub-letting the premises. The lessees hence sit back and rest content with the income generated from the sub-lease, however, conceding a portion of such rent to the Port Trust. The buildings and fixtures erected and affixed upon the land were to be removed, by the lessees themselves, on the expiry of lease or the resumption of the land by Port Trust, (Clause 2 to 4 of Ext.P1). No claim for compensation of the buildings or fixtures could be made. Clause (6) of Ext.P1 also provides that if; on expiry of lease or resumption of

land, the lessees do not remove the buildings and fixtures, then the Port Trust would have the right to remove it and restore the demised premises to their original condition, with liability for the costs of such removal and restoration, cast on the lessee, first from the materials recovered and then, personally from the lessee.

18. Disputes existed between the lessor and the lessees on expiry of the lease period. The lessees have also not executed any agreements renewing the lease despite the Port Trust, on the approval of the Central Government having specifically asked them; so to do. The lessees admittedly, were continued in the property even after the expiry of the lease agreement. Ext.P4 communication dated 17.4.1997 indicates that the Government of India, had directed renewal of lease for a period of ten years retrospectively from 21.01.1990. The lessees had

objections with respect to the conditions stipulated and it is an admitted fact that no agreements were executed but the lessees were continued in occupation and the Port had been regularly taking lease rent, as also 25% of the sub-lease rent from the lessees. None of the petitioners, it is to be emphasised, are continuing on valid lease agreements.

19. The earlier proceedings for resumption of land as is indicated at Ext.P8 and Ext.P11 were with the intention of resuming the land from the lessees, who were not adding to the throughput of the Port and to put 3rd parties, who had valid operations to utilize the port facilities, in possession of such properties resumed; again on lease. No consideration of sustainability of such eviction order, need be made at this point, since the Port does not now seek eviction on that ground but seek

eviction on totally different grounds. The issue of revision of the sub-lease rent payable to the Port, also can be left open, since there are other writ petitions pending on this aspect.

20. At this juncture the earlier litigation assumes significance. Two petitioners herein and some others whose premises were required for the project of MCL, was sought to be evicted on the basis of the Policy Guidelines for Land Management by Major Ports 2014 (referred to herein for brevity as Policy Guidelines). There were a number of writ petitions filed against the eviction notices which were disposed of by a learned Single Judge by judgment dated 11.11.2014 in W.P(C) No.29436/2014 and connected cases. The project was one intended at setting up of “Bulk Cement Logistics and Allied Material Handling Hub” through the Malabar Cements Limited, on

nomination basis. The learned Single Judge considered the rival contentions and found that the project is that of the Port itself and is consistent with the policy mandate, of priority to port activities, rather than to purely commercial activities. The resumption sought was found to be consistent with the Policy Guidelines.

21. The learned Senior Counsel appearing for the petitioners then pointed out that the Port Trust, having substantial vacant area in their possession, could accommodate the lessees otherwise, as a measure of rehabilitation. The Port Trust too agreed that the question of rehabilitation would be considered if permissible and there was a direction to do so, consistent with the Policy Guidelines.

22. An appeal was filed by the lessees in which the issue of eviction was found to be permissible only

under the Act of 1971. No such proceedings having been taken, the Division Bench found that if there is a dispute as to whether the occupation of lessees were authorised or unauthorised, they could definitely take up such contentions at the time when such notice was issued. As to the time expired leases, it was found that they could take the contentions, permissible under law when proceedings are initiated under the Act of 1971.

23. The specific contention of the learned Senior Counsel for the Port Trust was noticed, that alternate premises would be allotted only when there is availability of space and would be made only to those lessees who genuinely requires space in the port premises, meaning, with activities enhancing the throughput to the Port. The said submission was recorded and the Court directed that the petitioners could approach the Port

Authorities who would consider their prayer for alternate allotment, depending upon the availability of land and other relevant factors. It was specifically observed that no direction would be issued on that count.

24. The learned Senior Counsel for the petitioners would contend that the directions specifically enabled the petitioners to specifically object to the notices issued under the Act of 1971, and the entire issue is left open by the Division Bench. The learned Senior Counsel for the respondent Port Trust however, points out that the Division Bench has specifically distinguished the persons who were unauthorizedly occupying the premises and whose lease period had expired. The distinction was noticed, insofar as one of the appellants before the Division Bench had a subsisting lease and with respect to all others the lease had expired. The person who had a

subsisting lease, admittedly has already vacated the premises and that issue is no more alive for consideration.

25. There can be no doubt, on a reading of Paragraph 10 and 11 of the Division Bench judgment, that the Division Bench had noticed a clear distinction insofar as the lessees continuing authorizedly on the basis of a subsisting lease agreement and those lessees who were continuing after their term expired; hence unauthorisedly. In paragraph 10 the question referred to was, whether the occupation of the lessees were authorised or unauthorised. It was specifically noticed that if a lessee has a case that the cancellation of a lease deed and the attempt to resume the leased premises is not in accordance with the terms of the contract; he could raise it when the provisions of the Act of 1971 are invoked. The reservation made in

paragraph 10 was only with respect to persons who have a subsisting lease. The petitioners having so subsisting lease agreements cannot claim benefit of such reservation. In paragraph 11, the time expired leases were specifically referred to and the liberty left to them was to make objections as permissible under law on invocation of the provisions of the Act of 1971. There is hence a clear distinction between the two categories. The petitioners herein fall under the second category.

26. A reading of the judgment of the learned Single Judge and the Division Bench would indicate that the issue with respect to the project of the MCL, being that of the Port itself has acquired finality. The decision of the learned Single Judge on that count, has not at all been interfered with, by the Division Bench. Though the appeals were filed by the lessees, no argument seems to

have been addressed on that count. There can be no dispute now raised, on the ground of the Port resuming the land for a third party, being MCL.

27. The learned Senior Counsel, on behalf of the petitioner in W.P(C) No.19292/2014, has raised certain additional questions, regarding the resumption made, for the project of MCL, on factual discrepancies, allegedly emanating from the documents produced by the Port Trust itself. Hence though the issue is covered by the judgment in W.P(C) No.27972/2014, which regulates the other petitioners; this Court would examine the factual discrepancies pointed out to bring a quietus to the issue.

28. The assertion made on behalf of one of the petitioner is that the project itself was to be on the Mattancherry wharf side of the port and not at the Ernakulam wharf; where the petitioners occupy lands.

The decision of the Board of Directors of the MCL produced along with the statement filed by the Port Trust, in the earlier round of litigation is referred to. The said statement is produced by way of a reply affidavit filed by the petitioner on 08.06.2015. R1(f) of the said statement refers to setting up of facilities for handling bulk cement and allied cargo and bagging plant at Mattancherry wharf at Wellington Island in Kochi Port area. The alleged sanction accorded by the Government of Kerala produced as Ext.R1(g) along with the said statement is also relied on, to contend that the understanding of the Government, as disclosed in the sanction also is to that end. The learned Senior Counsel for the respondent however, would seek to dispel such apprehensions, arguing that the confusion is only on account of a misunderstanding and has its genesis in the earlier proposal made at the

Mattancherry wharf.

29. The additional counter affidavit filed by the respondent Port Trust puts the issue in the correct perspective. Ext.R1(aa) is the earlier proposal by the MCL, on the basis of tender notification issued, for setting up marine cement terminal and berthing facility at the Port Trust premises. That tender notification was intended at setting up a project in the Mattancherry wharf. There were two tenderers, being MCL and one ABG Cements Limited. The deliberations made by the Tender Committee, is produced as Ext.R1(ab). The bidder who quoted more was found to be M/s.ABG Cements Limited. However, the total offer given by them being less than the reserved price, the Tender Committee recommended discharge of the tender. The earnest money deposit of both the tenderers were refunded as is indicated at Ext.R1

(ac) and Ext.R1(ad). The matter ended there.

30. Subsequently after two years on 16.8.2014, the MCL addressed the Chairman of the Port Trust with Ext.R1(ae). They referred to their earlier proposal in 2012. The MCL never raised a claim on that proposal or tender. They conceded that their bid was not accepted, presumably for it being on the lower side. They referred to their attempt to get funding for their project, from the Government which stood recommended, despite their bid having not been accepted. The MCL, based on the earlier tender notification, proposed that they would set up the project at the Mattancherry wharf of the Port and would, till setting up of such project, use the Ernakulam wharf. This was a proposal which initiated from the MCL, to the Port, based on the sanction of a loan by the Government. By that time, the Policy Guidelines were in place.

31. A reference to the Policy Guidelines would be appropriate at this stage. The objectives of the policy itself is revealed from Ext.R1(a), which is extracted hereunder:-

- a. To ensure that land resources are put to optimum use as per the approved Land Use Plan with focus on retaining/attracting port traffic;
- b. To ensure that optimum value is realized by licensing/leasing Port land through a transparent tender-cum-auction methodology.
- c. The policy prescribes the procedure for revision of rates to enable maximum resource generation for the Ports and the methodology for regular updating of the rates in line with the market value
- d. The policy also recognizes the need for special dispensation for cases relating to educational and security purposes.

32. By Clause 16.2, lease of lands were to be made only through tender-auction methodology through

a competitive bidding process, the reserve price of which and the allotment of which had to be worked out by the Land Allotment Committee of the Port and approved by the Port Trust. However, sub- clause (h) specifically provided that the land can be allotted on nomination basis to Government Department, Statutory/Local Bodies, and so on and so forth including State Public Sector Undertakings (SPSU). There is no dispute that MCL is a State Public Sector Undertaking and there can be no defect found in a project of the SPSU, having been granted on a nomination basis, without following the tender-auction methodology.

33. Coming back to the proposal made by the MCL, the application for allotment of land on lease from the Cochin Port Trust was made by Ext.R1(ae) dated 26.08.2014. The meeting of the Board of Trustees of the

Port Trust produced at Ext.R1(af) approved the same. The minutes produced at Ext.R1(af) shows that preliminary discussions were held with the senior officials of MCL on 20.08.2014, followed with a site visit by the officials of MCL along with the officials of the Port; upon which 7 acres of land was identified behind Q7 berth at Ernakulam wharf. It was for allotment of such land, that the MCL made an application and the same was granted as per Ext.R1(ae).

34. Ext.R1(f) produced in Ext.P20 counter statement filed by the respondents in W.P(C) 29436/2014 being the minutes of the Board meeting of the MCL on 21.11.2012 referring to setting up of facility at the Mattancherry wharf is of no import, since the same has reference to the earlier tender. The so called Government sanction dated 21.10.2014 G.O(Ms) No.145/14/ID does not

refer to the Mattancherry wharf and only refers to “setting up of Rs.160 crores Bulk Cement Handling Unit at Wellington Island in Kochi”. This Court is also not convinced that the MCL requires any sanction from the Government, to set up the project. The Government sanction is not of the project as such, but a sanction of the finance sought for by the MCL; to facilitate the project.

35. The discrepancies on facts as projected by the petitioners having been successfully dispelled by the Port Trust, this Court would not enter into the question whether the project of the MCL could be considered as one indigenous to that of the activity of the Port. The same has been held, by the learned Single Judge, in judgment dated 11.11.2014 in W.P(C) No.27972/2014 and it brooks of no further dispute or adjudication. Sanction has been accorded by the Government, which this Court is inclined

to think is only of the financial facilities and the setting up of the project itself is one coming within the discretion of the Board of Directors of the MCL. The allotment of the land to MCL on a nomination basis is in consonance with the Policy Guidelines. And this Court would respectfully follow the finding of the learned Single Judge in the earlier round of litigation. Though the petitioner in WP (C) No.19292/2014 is not a party therein, the other petitioners and many others, similarly situated agitated a similar cause earlier. This Court does not see any compelling reason to deviate from the earlier decision.

36. What now survives for consideration, is the claim for rehabilitation and compensation to the lessees. On these questions also the learned Senior Counsel for the petitioners would rely on the Policy Guidelines, specifically Clause 16.3 with respect to renewal of existing leases.

Clause 16.3 provides that before renewal of existing leases are made, the Port should verify as to whether the land is utilised for its own use and if not, it has to be examined as to whether the use to which the land is put, is consistent with the Land Use Plan. Where there is no automatic renewal stipulated in the lease agreement, the land has to be leased out by putting it to tender-auction, with the right of refusal extended to the existing lessee, to enable him to match the highest bid.

37. Hence, when tenders/auctions are conducted, the existing lessee would get the privilege of matching the highest bid, in which event, the lease would go to the existing lessee itself. If refused, then, the highest bidder would take possession as lessee, but, however, on condition that the value of the structures constructed by the earlier lessee would be compensated by such highest

bidder, to the Port Trust, for being passed on to the previous lessee. The question of compensation hence would arise only in the event of the Port resuming the land and proceeding with a tender-auction of the said resumed land, to be demised again on lease basis itself. When the Port intends to resume the property for its own use, as in the present case, no compensation would be payable.

38. The petitioners were all inducted as lessees on the understanding that the structures constructed in the leased out land would be removed and the demised premises restored to its original condition before it is handed over back, to the Port Trust, either on expiry of the lease or resumption of the land by the Port Trust. In the present case, admittedly, the leases of the respective petitioners have expired long back. It is also an admitted

fact that the petitioners were continued even after the expiry of the lease. The Government of India had sanctioned such continuance, but the lessees had failed to execute the agreements, as required by the Port Trust. Hence the petitioners did not continue on the basis of any valid lease agreement. Ignoring all that, if the petitioners are found to be entitled to be treated as tenants holding over, even then, they would not be entitled to any compensation. The eligibility for compensation would arise only if the existing lessees were evicted in pursuance to a tender/auction proceedings, so as to concede the demised premises, by a further lease to a third party.

39. For the purpose of urging rehabilitation, the learned Senior Counsel would take this Court to sub-clause (J) of Clause 17. If the resumption of land, for the Ports activities, is accepted, then, necessarily

rehabilitation is mandated by the Policy Guidelines; is the contention. As was noticed above, the learned Single Judge as also the Division Bench in the earlier proceedings specifically directed consideration of the rehabilitation on the basis of the Policy Guidelines. Sub Clause (J) referred to by the Senior Counsel indicates that the rehabilitation, would be subject to availability of land and would be at the discretion of the Port Trust.

40. The discretion to be exercised by the Port Trust has to be governed by the Policy Guidelines, the objectives of which were extracted hereinabove. The focus is on the retention of and the attraction of Port traffic, with maximum resource generation as the ultimate goal. The practice of continuing lessees, who do not generate any activity, to utilise the facility of the Port are discouraged. Essentially the Policy Guidelines discourage

a conduit, as has been the practice with the earlier leases.

True, the petitioners were all inducted in 1960 and they would have contributed to the development of the Port.

They too have benefited insofar as the income generated,

which they enjoyed over the years with only the initial

investment of the construction and the recurring

expenditure confined to maintenance. The petitioners had

been sub-letting the premises to carry on the offices of

entities, utilising the Port facilities as also to provide

godowns for the goods being shipped in and out of the

Port. The petitioners, admittedly, have no activity to

directly utilise the facilities of the Port. The petitioners

merely assert, on the basis of their continuance for long

periods, that they ought to be rehabilitated. Their original

lease conditions provided neither for compensation nor

for rehabilitation, either on expiry of the period of lease

nor on resumption of land in public interest.

41. The specific terms of the Policy Guidelines would also disentitle the petitioners from claiming any rehabilitation. The Land Use Policy also emphasizes the need to concede leases, only to the extent of the use of the lessees having, a direct nexus with and utilisation of port facilities. The use to which such leased premises are put, should augment the throughput to the Port. The petitioners cannot project any perceivable use, to which they would put the leased premises, but only assert their right to continue in occupation and then sub-lease it to other entities, whose activities generate throughput to the Port. Over the years, the policy has changed and changing times require changing measures. No arbitrariness can be found in the Policy Guidelines, nor can the same be interfered with by this Court. The petitioners cannot have

a claim for continuance, rehabilitation or compensation.

42. It is also to be noticed that the petitioners were allowed to participate in the auction conducted for alternate premises, as is indicated by Annexure (c) in the statement dated 25.2.2015 filed by the respondent Port Trust in W.P(C) 5284/2015. None participated in such bids and they cannot now seek for any rehabilitation de hors the terms of the Policy Guidelines.

43. When the writ appeals were pending, at the earlier instance, the Division Bench is said to have directed consideration of the claims by the Chairman of the Port Trust. The two petitioners herein, who were parties therein, as also the petitioner in WP(C) 19292/2015, were given an opportunity in pursuance of which Ext.P16 order was passed. The orders impugned are similar in all the writ petitions and consideration of the same is also

necessitated since the learned Senior Counsel for the petitioner picks holes in the reasoning adopted by the Chairman. The primary contention raised is with respect to the finding of fixity of tenure, which; arising in a different context under Section 106 of the KLR Act has been negatived hereinabove. The reasoning in Ext.P16 may not be strictly in tune with the provisions of the KLR. But this Court having found that the contention even based on Section 106 to be unsustainable, there is no warrant for a reconsideration, especially since it is a question purely of law.

44. The other findings in Ext.P16 also are in consonance with the Policy Guidelines. There is no substance in the argument that the terms of the lease and the Policy Guidelines cannot be alternatively relied upon. Both are relevant in consideration of a claim raised by the

petitioners. For continuance, rehabilitation or compensation the terms of the lease and the present Policy Guidelines have equal significance and are to be correlated. Continuation has been found against the lessees, on the terms of the Policy Guidelines, as also the original lease agreement. The alternate question of rehabilitation and compensation also is on the basis of the terms of the lease and the Policy Guidelines. Neither the terms of the lease nor the Policy Guidelines provide for a compensation when a resumption of land is made, in public interest, to further, herein, the activities of the Port. Rehabilitation cannot at all be claimed on the terms of the lease, but has to, if at all, find sustenance from the provisions of the Policy Guidelines. The right if any for rehabilitation, only emanate from the Policy Guidelines. It has been found that the petitioners are dis-entitled to

claim such rehabilitation. The petitioners also have not attempted to respond to the offer made by the Port Trust to rehabilitate them.

For all the above reasons the writ petitions would stand dismissed. Parties to suffer their respective costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge