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W.P.No.7890 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2023

PRONOUNCED ON : 25.05.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7890 of 2015

and

M.P.No.1 of 2015

and

W.M.P.No.12726 of 2016

Pandyan Hotels Limited,
Represented by its Managing Director,
Race Course,
Alagarkovil Road,
Madurai – 625 002.

...Petitioner

Vs.

- 1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Land Administration,
Chepauk,
Chennai – 600 005.
- 3.The District Collector,
Madurai District, Madurai.
- 4.The District Revenue Officer,
Madurai District, Madurai.



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5. The Thasildhar,
Madurai North Taluk,
Madurai.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records ending with the order of 5th Respondent made in proceedings Na.Ka.29593/2007/E3 dated 26.02.2015 and to quash the same and consequently forbear the 1st respondent from cancelling the assignment made in G.O.Ms.No.201, Revenue dated 03.04.2008 without considering the representation of the Petitioner made to the 3rd Respondent on 27.01.2015.

For Petitioner : Mr. K. Doraisami
Senior Advocate
For Mr.Kandhan Doraisami

For Respondents : Mr.R. Ramanlal
Additional Advocate General
Assisted by
Mr.U.Baranidharan
Additional Government Pleader

ORDER

The *lis* on hand has been instituted, questioning the validity of the order dated 26.02.2015 issued by the 5th respondent, cancelling the assignment made in G.O.Ms.No.201, Revenue, dated 03.04.2008 without considering the representation of the petitioner to the respondents made on 27.01.2015.



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Petitioner's Case:

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2. The petitioner is Pandyan Hotels Limited. Under G.O.Ms.No.148, Revenue Department, dated 10.01.1963, orders were passed by the first respondent to lease the land measuring 1 acre 31,264 sq.ft. in T.S. No.823/1 and 3 acres 29,800 sq.ft in T.S.No.822/6, comprised in Madurai North Village for a period of 25 years on a monthly lease in favour of M/s.P.C.M. Sons.

3. The Petitioner Hotel after reclaiming the land, put up construction by spending their own funds and the Hotel was commissioned on 31.12.1968. In G.O.Ms.No.1075, Revenue, dated 06.05.1981, orders were passed, granting additional land comprised in T.S.No.822/7 of Madurai North Taluk, measuring an extent of 22,830 sq.ft on lease for the purpose of providing entrance to the Petitioner Hotel. The petitioner states that the lands were leased out for promotion of tourism in Madurai City.

4. In G.O.Ms.No.1640, Revenue, dated 28.10.1987, the lease rent for the said lands of the Petitioner were revised and the Government has stated that the lease rent has to be fixed on market value. An option was given to the petitioner to seek assignment of land on the market value and the 2nd



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Respondent was permitted to send proposal to the Government. The Petitioner by their letter dated 05.02.1988, addressed to the 5th Respondent had expressed their willingness to seek assignment of the subject land on the market value to be fixed as prevailed in 1963 and also in 1969.

5. On 31.01.1990, the Petitioner wrote a letter to the 1st Respondent to assign the lands in their favour. Under G.O.Ms.No.1962, Revenue, dated 09.05.1990, the 1st Respondent passed orders, re-fixing the lease rent and has stated that the lease is to be assigned in favour of the Petitioner on the prevailing market value. The 3rd Respondent was instructed to submit a proposal based on the market value prevailing in the year 1980. On 24.12.1990, the Petitioner wrote to the 3rd Respondent, requesting for an assignment of subject land on the market value as prevailed on 11.02.1988.

6. The 4th Respondent on 09.06.1992, sent proposals to Government through the 2nd Respondent for assignment of lands in favour of Petitioner and the value of the land was fixed at Rs.49,72,405/- by letter dated 03.06.1998.



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7. By letter dated 10.10.2002, the Petitioner wrote to the 3rd Respondent to recommend to the Government to fix the land value as it prevailed in the year 1990 along with the request to collect money in easy installments. The 4th Respondent sent a report dated 14.1.2003. Another report was sent by the 4th Respondent to the 2nd Respondent and the value of the subject land was fixed at Rs. 11,91,04,480/- being the market value as it prevailed in the year 2004. On 14.11.2007, the 4th Respondent wrote to the 2nd Respondent, re-fixing the land value at the rate of Rs.1,296 per sq.ft and the total value for the lands that will be assigned to the Petitioner was arrived at Rs.33,33,83,040/-.

8. The 1st Respondent under G.O.Ms.No.201, Revenue, dated 03.04.2008 had passed order to assign the lands to the Petitioner on collection of land value on the basis of present market value. Even though the assignment was on payment of market value, the Government imposed conditions. The Petitioner made a request to the Government to reconsider the issues. On 16.08.2010, the Petitioner gave a memo to the Hon'ble Revenue Minister to reconsider the land value for assignment of land by examining the grounds put forth in letter dated 16.04.2008. Thereafter, the



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petitioner had submitted representations. The petitioner paid a sum of Rs.2,00,00,000/- on 12.07.2011 as advance. The 3rd Respondent in his proceedings dated 15.12.2011, had fixed the value of the land at Rs.38,58,60,000/- calculated at the rate of Rs.1,500/- per sq.ft.

9. The petitioner states that despite the efforts taken by them to secure loans from the Bank, they could not do so and the private parties are not willing to part with their money since the assignment of land is a conditional one. In between the period from 30.07.2012 to 27.11.2014, the Petitioner had paid a sum of Rs.2,03,83,940/-. Thus as on 27.11.2014, the total sum paid by the petitioner was Rs.4,03,83,940/-.

10. The 4th Respondent by letter dated 21.01.2013, directed the Petitioner to pay a sum of Rs.31,08,83,940/- immediately and the petitioner sought for time to pay the money as the Indian Overseas Bank had expressed its inability to sanction the loan. By notice dated 05.08.2013, the 3rd Respondent called upon the Petitioner to pay the entire amount with interest. The petitioner requested for further time. Another notice was issued on 12.12.2014 and the petitioner submitted a reply, expressing their



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inability to pay the amount. Thereafter, the 5th respondent had issued an order dated 26.02.2015, under which, the Petitioner was called upon to pay a sum of Rs. 36,58,60,000/- immediately, failing which, steps will be taken to cancel the order of assignment. The said notice is under challenge in the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER:

11. The learned Senior counsel appearing on behalf of the writ petitioner mainly contended that about 5 acres of land was leased out to the writ petitioner for a period of 25 years and the land was 9 ft low at the time of granting lease. The petitioner spent huge amount for levelling the land and thereafter, constructed a hotel in order to develop tourism. A sum of Rs.2,00,00,000/- (Rupees Two Crore only) was paid by way of an advance and thereafter, a sum of Rs.10 Crore was paid pursuant to the interim order passed by this Court in the present writ petition. Totally the petitioner has paid a sum of Rs.14,23,83,940/- as advance. Since the petitioner was not in a position to mobilize funds and the Banks were not willing to sanction loan and the private persons are also not willing, since it is a conditional assignment. The petitioner requested for time to mobilize funds and



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sufficient time was not provided by the respondents to the writ petitioner.

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12. The learned Senior Counsel appearing on behalf of the petitioner drew the attention of this Court regarding the Government order passed in G.O.Ms.No.1962, Revenue dated 05.09.1990, wherein the lease was extended for further period of 20 years up to the year 2008.

13. The Special Commissioner and Commissioner of Land Administration in letter dated 06.11.2006, has stated that if the lands are ordered to be assigned based on the market value prevailing in the year 1990 and by adding notional increase till date and accordingly, the amount to be remitted is asked for. The Special Commissioner in the said letter has made an observation that the lands leased out to them were shallow lands of 9 feet deep and transferred from Fisheries Department and the petitioners had incurred large sum of money and enormous effort to reclaim those lands into developed lands. At the time of handing over of the land to the petitioner, it was away from the heart of Madurai City and surrounded by Government Poramboke lands and most of the developments that are now seen were totally absent at that point of time in the year 1963. Thus, the



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Special Commissioner also recommended the case of the petitioner to assign the land. The District Revenue Officer in his letter dated 14.11.2007, determined the guideline value at Rs.33,33,83,040/-. Thereafter, the Government issued G.O.Ms.No.201, Revenue Department dated 03.04.2008, assigning the land in favour of the petitioner on condition and fixing the land cost as Rs.33,33,83,040/-. The condition imposed was that the land is to be utilised for the purpose for which it is assigned and the extent of land proposed to be assigned was 5.90 acres.

14. The proceedings of the District Collector, Madurai dated 15.12.2011, states that because of the increased land cost, which was prevailing in the year 2011, Rs.1,500/- per sq.ft. was fixed as selling price and a total land cost was fixed at Rs.38,58,60,000/-. The condition imposed was that the land has to be used only for the purpose to which it is assigned. On breach of the condition, the land would be taken back by the Government. The petitioner has repeatedly sending letters, expressing their inability to pay such a huge amount, since the Banks refused to grant loan and even the private persons are not interested to invest, since it is a conditional assignment. The District Collector in letter dated 21.01.2013,



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issued a notice to pay a sum of Rs.31,08,83,940/- immediately to the Government accounts and only after depositing the amount, the request of the petitioner will be considered by the Government.

15. The petitioner again expressed its inability to settle the amount. A Show cause notice was issued in proceedings dated 12.12.2014, stating that petitioner paid an advance amount of Rs.4,03,83,940/- and the balance amount was asked to be paid along with the compounding interest at the rate of 12%. The petitioner replied for extension of time. Finally, on 26.02.2015, the impugned memo was issued, stating that the petitioner should pay the entire sum of Rs.36,58,60,000/- along with the compound interest at the rate of 12%, failing which, action will be taken to cancel the assignment.

16. The learned Senior Counsel appearing on behalf of the writ petitioner contended that the petitioner though was willing to settle the amount during the relevant point of time, could not do so on account of the fact that the Banks refused to grant loan and the private persons also were not interested to invest their money. When the writ petition was taken up for final hearing, the learned Senior counsel requested for time to negotiate



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with the Government. Accordingly, time was granted. On instructions from the petitioner, the learned Senior counsel made a submission before this Court that the petitioner is willing to settle the amount of Rs.36,58,60,000/- without compound interest.

17. When the arguments of both the parties are heard, thereafter the learned Senior counsel for the petitioner made a submission that the petitioner is ready to pay the sum of Rs.51,65,78,040/- (Rupees Fifty One Crore Sixty Five Lakh Seventy Eight Thousand and Forty only), which is the guideline value as stated in the additional counter affidavit filed by the third respondent. In the additional counter affidavit, the third respondent has indicated the guideline value and the petitioner is willing to pay the said guideline value. In this regard, the learned Senior counsel has stated that the case of the petitioner may be considered for assignment of land as per the guideline value indicated by the third respondent in their additional counter affidavit filed in the present writ petition.

18. Yet another proposal submitted by the petitioner before this Court



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is that they are willing to hand over three acres of land, which is not in their active usage and remained un-utilized. Therefore, 2.90 acres alone may be assigned to the petitioner for running the hotel. With these proposals, the learned Senior counsel requested that the case of the petitioner is to be considered in either way, enabling them to continue their hotel business.

REPLY BY THE RESPONDENTS:

19. The learned Additional Advocate General appearing on behalf of the respondents at the first instance contended that the Government is not willing to assign the land, since the petitioner has not utilized the opportunity afforded to them and is dragging on the issues, one way or other and enjoying the Government land for commercial purpose and making huge profits for several years. Though the land was leased out for construction of hotel during the World Tamil Conference, the original lease was granted for 25 years and it was extended for another 20 years up to the year 2008 and thereafter the lease was not extended. Thus, the petitioner as of now is in unauthorized occupation under the guise of settling the amount for assigning the land. The petitioner is prolonging the issue with an intention to utilize the Government land for commercial purpose by causing



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prejudice to the public interest. Now several established hotels are functioning in Madurai City and therefore, the submission of the petitioner that they are promoting Tourism in Madurai is unacceptable.

20. Regarding the proposal submitted on behalf of the petitioner, the learned Additional Advocate General has submitted that the guideline value indicated in the additional affidavit is irrelevant, since the Government order issued in the year 2008 unambiguously stipulates that the guideline value or the market value, whichever is higher. The market value as of now for the subject land is about Rs.300 Crores and therefore, now the petitioner cannot conveniently say that they are willing to pay the guideline value as indicated in the additional counter affidavit. The public interest in this regard is to be protected. The Government cannot sell the land, causing financial loss to the State Exchequer. Thus, the proposal now submitted during the final hearing of the writ petition before this Court cannot be accepted by the Government.

21. The learned Additional Advocate General reiterated that the



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Government, no doubt, assigned the land, comprising of an extent of 5.90 acres in S.Nos.822/6, 822/7 and 823/1 of North Madurai village, then Madurai South Taluk, Madurai Town in favour of M/s.PCM Sons and ordered to collect either the rate fixed in the Guideline Register or existing market value, whichever is higher.

22. In fact, an extent of 5 acres 17504 sq.ft of lands comprised in T.S.Nos.823/1 and 822/6 classified as 'European Quarters-Poromboke' of North Madurai Village, Madurai District were handed over to M/s.PCM Sons, Madurai towards construction of "Tourist Hotel" (Pandyan Hotel) by G.O.Ms.No.148, Revenue dated 10.01.1963 on collection of lease rent. Fixing up of meagre lease rent of Rs.200/- per month during 1963-1968 itself is indicative of the fact that the Government considered it necessary to promote tourism and to induce foreign tourists to visit Madurai as there were paucity of quality hotels in Tamil Nadu.

23. In G.O.Ms.No.1075, Revenue Department dated 06.05.1981, the Government granted additional land measuring an extent of 28,830 sq.ft. comprised in T.S.No.822/7 of North Madurai Village on lease for the



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purpose of providing entrance to the Hotel. The hotel did services at the time of World Tamil Conference during 1980s and thus, the Government of Tamil Nadu leased out the land on a meagre lease rent over a long period of time which is as follows:-

Sl.No.	Land given to Pandyan Hotel	Lease rent in Rupees
1	5 acres 17504 sq.ft of land given in the year 1963	i)1963-68 : 200 per month ii)1969-78 : 600 per month iii)1979-83 : 1200 per month iv) 1984-88 : 3600 per month
2	Additional extent of 28830 sq.ft. of land given in the year 1979	Rs.1000/- per month

24. In G.O.Ms.No.1075, it has been observed that beyond 1988, the lease rent has to be fixed on market value, by taking into consideration of the fact that the Hotel has carved a fair name and that the business has been increased manifold. The Government had given an option to the petitioner hotel either to agree to the enhanced lease rent on the basis of market value or to seek assignment on the market value. The petitioner hotel expressed their willingness to seek for assignment on market value as fixed by the Government. The Government in letter dated 04.11.1988, fixed the lease



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rent at Rs.4,600/- which was later revised at Rs.16,000/- with effect from 11.02.1988 as per G.O.Ms.No.1962, Revenue Department dated 05.09.1990 and extended the lease for further period of 20 years from 11.02.1988 by imposing a condition that the lease rent is liable for increase once in five years. The Government has also expressed its decision to grant assignment of the said lands in favour of the Petitioner Hotel.

25. Initially, the land value was fixed at Rs.49,72,405/- and the petitioner did not come forward to settle the amount for considering the assignment of lands. Subsequently, the District Collector, Madurai in proceedings dated 15.12.2011, fixed the land value of the entire extent of land at Rs.38,58,60,000 with a condition that the land has to be used only for the purpose for which it was assigned and on breach of this condition, the land is liable to be resumed by the Government. The petitioner on agreeing to the said order, remitted an advance amount of Rs.2,00,00,000/- towards sale consideration and requested six months time to pay the balance amount and the District Collector, Madurai had graciously granted time as requested by the petitioner. However, the petitioner did not paid the entire assignment cost. The petitioner hotel failed to meet the dead-line,



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consequently, the District Collector, Madurai was constrained to cause notice dated 29.11.2012, calling forth the Petitioner Hotel to pay the balance Rs.36,58,60,000/- with 12% compound interest immediately, failing which, action will be taken to cancel the land assignment and the lands will be resumed back by the Government. The petitioner was going on submitting representation to reconsider the land cost and fix the land value as it prevailed in the year 1963, and so on and so far. However, the petitioner failed to settle the amount as fixed by the Government and was in the habit of submitting representation after representation in order to evade the payment of land cost and retained the Government land for their commercial use and was earning huge amount. Several opportunities were granted to the petitioner and the communications as referred by the petitioner itself would indicate that the Government was lenient in granting time to pay the land cost fixed by the competent authorities. Despite several opportunities granted to the petitioner, they failed to settle the amount and therefore, the Government thought fit that the land cannot be assigned based on the old fixation, since the petitioner failed to pay the land cost and at present, the valuable land worth about Rs.300 Crores, cannot be assigned in favour of the petitioner either for 38 Crores or for 51 Crores as requested by the



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petitioner. The public interest requires that the Government has to assign the land without causing financial loss to the State Ex-Chequer. Thus, the contention of the petitioner at this length of time cannot be considered by the Government.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:

26. The learned Additional Advocate General appearing on behalf of the respondents, on instructions from the officials, who all are present before this Court, made a submission that the petitioner's request was rejected on several occasions and therefore, the present proposal made by the learned Senior counsel appearing on behalf of the petitioner cannot be accepted, since the market value of the Government land in the possession of the petitioner is about Rs.300 Crores.

27. The learned Additional Advocate General appearing on behalf of the respondents brought to the notice of this Court that the petitioner has not even paid one rupee from the year 2015 to 2023. But the petitioner was running the hotel and made lot of profits. They have not even paid single rupee for the past about 8 years and even on earlier occasions, they have



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paid Rs.2 Crores as advance and thereafter paid meagre amounts only with an intention to drag on the proceedings and to avoid further actions by the Government. Thus, the conduct of the petitioner as expressed by them is unambiguous that they are not willing to pay the land cost, but to prolong the matter one way or other and to grab the land without paying the land cost to the Government. The petitioners have already been granted lease for about 45 years and the lease was not extended beyond the year 2008 and thereafter, the petitioner is in unauthorized occupation without any valid lease and they are liable to vacate the premises without any further loss of time.

28. The learned Additional Advocate General appearing on behalf of the respondents referred the Government order issued in G.O.Ms.No.1962, Revenue, dated 05.09.1990, wherein the Government has extended the lease for a period of 20 years from 11.02.1988 and the said lease expired in the year 2008. In letter dated 17.11.1995, the Government has clearly stated that the proposal for assignment of land in favour of the petitioner was kept in abeyance. The Special Commissioner and Commissioner of Land Administration addressed a letter to the Accountant General on 01.12.2003,



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11.12.2008.”

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29. Pertinently, in letter dated 16.06.2010, the Secretary to Government, Revenue Department has categorically stated that the claim of the writ petitioner was rejected since the petitioner has not paid the land cost fixed. Even in letter dated 15.12.2011, the District Collector, Madurai has stated about the land cost and intimated to the petitioner to settle the amount. Since the petitioner has not settled the land cost, the District Collector, Madurai issued notice to settle the amount, failing which, further action will be initiated. The petitioner in their letter dated 10.12.2012 has stated that they are ready and willing to settle a sum of Rs.31,08,83,040/-. Though they have stated so in their letter, they have not paid any amount. Several such promises were made by the petitioner's Hotel time and again and they have not honoured their own commitments for several years and the leniency shown by the Government is sufficient enough and finally, the Government passed an order, not to grant any further time and informed the petitioner about initiation of further action to resume the land. Even in letter dated 05.09.2013, the petitioners have stated that they were very eager to pay the balance amount at the earliest. Further, they have stated that they are



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running the hotel for 45 years and despite their eagerness expressed, they have failed to pay the said amount. An urgent memo was issued by the Tahsildar, Madurai (South) dated 12.09.2013 to settle the amount, failing which, action will be initiated to recover the amount under the Revenue Recovery Act. Even that letter was not acted upon and thus, the District Collector, Madurai issued a show cause notice on 12.12.2014, setting out the payments so long made by the petitioners, which all are detailed as under:

“M/s.Pandian Hotel limited has remitted a sum of Rs.4,03,83,940/- being the cost of the land as detailed below:-

Sl.No.	Name of the Sub Treasury	Date of Remittance with Chalan No.	Amount Remitted
1	Madurai South	12.07.2011	Rs. 2,00,00,000/-
2	Madurai South	30.07.2012	Rs. 25,00,000/-
3	Madurai South	11.02.2013	Rs. 8,83,940/-
4	Madurai South	12.04.2013	Rs. 30,00,000/-
5	Madurai South	18.07.2013	Rs. 30,00,000/-
6	Madurai South	16.09.2013	Rs. 30,00,000/-
7	Madurai South	04.11.2013	Rs. 10,00,000/-
8	Madurai North	11.01.2014	Rs. 10,00,000/-
9	Madurai North	21.03.2014	Rs. 15,00,000/-
10	Madurai North	09.06.2014	Rs. 10,00,000/-
11	Madurai North	08.08.2014	Rs. 10,00,000/-
12	Madurai North	04.09.2014	Rs. 10,00,000/-
13	Madurai North	30.10.2014	Rs. 10,00,000/-
14	Madurai North	27.11.2014	Rs. 5,00,000/-



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Sl.No.	Name of the Sub Treasury	Date of Remittance with Chalan No.	Amount Remitted
		Total	Rs. 4,03,83,940/-

Total amount due :: Rs.38,58,60,000/-

Land Value remitted by
M/s.Pandian Hotel Limited :: Rs. 4,03,83,940/-

Balance to be remitted :: Rs. 34,54,76,060/-

30. In support of the case of the respondents, the learned Additional Advocate General relied on the judgment of Hon'ble Supreme Court of India in the case of **Indian Oil Corporation Limited and Others Vs. Shashi Prabha Shukla and another, reported in (2018) 12 SCC 85** and the relevant paragraphs 22 and 23 are extracted hereunder:

“22. In the facts of the present case, we subscribe to the view of the High Court of Allahabad that with the termination of the dealership, the lease between the parties also stood extinguished and therefore, the respondent being the owner of the land and she having expressed her disinclination to sell or part with it, the Corporation by no means could have contemplated to award the new dealership to a third party on her land. On this clear premise, the failure of the Corporation to act in terms of the directions containing in the judgment and order of the Delhi High Court and in contending that the land of the respondent was available for



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commissioning the new dealership is patently wrong besides being contumaciously irreverent and abusively non-compliant thereof. The approach and attitude of the Corporation in making the advertisement dated 5-10-1998 with the corrigendum dated 13-10-1998 and in taking the apparently untenable stand that notwithstanding the cancellation of the dealership of the respondent, her land was available for the new process, is thus visibly militative of the rule of law besides being destructive of the salutary objective with which the High Court of Delhi had directed cancellation of the dealership/distributorship of the respondent along with others, being vitiated by the vice of nepotism and favouritism. This we say, as having regard to the progression of events, we are left with the impression, in view of the persistent omissions and commissions of the Corporation, that it is not unlikely that all these might have been strategised to eventually benefit the respondent in the long run. The pleaded stand of the Corporation that despite the cancellation of the dealership of the respondent, her land was still available, flies in the face of the determination to the contrary as recorded in the judgment and order dated 29-8-1997 [Centre for Public Interest Litigation v. Union of India, 1997 SCC OnLine Del 700 : (1997) 68 DLT 650] and only reflects the predetermined mind of its functionaries for reasons unknown, though inferable. It is really incomprehensible as to how in spite of such explicit and clear observations and directions of the High Court of Delhi in its judgment and order dated 29-8-1997 [Centre for Public Interest Litigation v. Union of India, 1997 SCC OnLine Del 700 : (1997) 68 DLT 650] , either such a stand could have been taken or the fresh auction process could have been initiated without undertaking the



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initiatives required for specifying/identifying the new location. To reiterate, no material has been placed before us to demonstrate to the contrary. This is more so, as in the advertisement dated 5-10-1998, there is a reference of the judgment and order dated 29-8-1997 [Centre for Public Interest Litigation v. Union of India, 1997 SCC OnLine Del 700 : (1997) 68 DLT 650] of the Delhi High Court. A bare perusal of this document would show the venue to be “NH Phutahia Chauraha place: Basti (U.P.)”, the same as of the dealership of the respondent.

23. It is no longer res integra that a public authority, be a person or an administrative body is entrusted with the role to perform for the benefit of the public and not for private profit and when a prima facie case of misuse of power is made out, it is open to a court to draw the inference that unauthorised purposes have been pursued, if the competent authority fails to adduce any ground supporting the validity of its conduct.”

31. Relying on the above judgment, the learned Additional Advocate General reiterated that the public interest is to be protected and the Government cannot assign the land, causing financial loss to the State Exchequer and further, the request made by the petitioner is absolutely unreasonable and the petitioner is in illegal occupation of the premises and utilizing the Government land for commercial purposes and earning huge amount without paying even a rupee to the Government for the past about 8



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years. Thus, the writ petition is to be rejected.

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LEGAL PRINCIPLES:

Concept of Public Interest in the matter of Public Policy:

32. The Hon'ble Apex Court in the case of ***Kasturi Lal Lakshmi Reddy vs State Of Jammu And Kashmir & another on 9 May, 1980, 1980 SCR (3) 1338***, made a detailed discussion on Government contracts, Limitations on the Government to grant contracts, Test of reasonableness, **concept of public interest** and Articles 14 & 19 of the Constitution and held :

“While others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion.

(i) There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other. In regard to the persons who may be recipients of such largess.



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(ii) So far as the **first limitation** is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. **If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be Liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.**



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WEB CC **Concept of Reasonableness:**

33. (i) The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by the Supreme Court in the case of **Maneka Gandhi v. Union of India reported in (1978) 1 SCC 248**, clearly demonstrated that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of the Apex Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice, which inspires and animates the Directive Principles.

(ii) It has been laid down by the Apex Court in the case of **E.P. Royappa v. State of Tamil Nadu reported in (1974) 4 SCC 3**, and **Maneka Gandhi's case (supra)** that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is protected by this article, it must characterize every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of



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reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable.

(iii) Similarly Article 21 in the full plenitude of its activist magnitude as discovered by *Maneka Gandhi's case*, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. **The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights.** By defining the national aims and the constitutional goals, they set forth the standards or norms of reasonableness, which must guide and animate governmental action. Any action taken by the Government with a view to give effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action, which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable.”



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WEB COUNCIL **Concept of Public Interest:**

34. “Concept of public interest must as far as possible receive its orientation from the Directive Principles.

What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody par excellence the constitutional concept of public interest.

If, therefore, any governmental action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid.

It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest.



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The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property.

Illustratively, there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that **the Court would have to decide whether the action of the Government is reasonable and in public interest.**

But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the



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Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material.

The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action **and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law.**

The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted.



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35. It is now well settled as a result of the decision of this Court in the case of ***Ramana D. Shetty v. International Airport Authority of India & Ors reported in (1979) 3 SCC 489***, that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone. but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess. the Government cannot act arbitrarily at its, sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14.



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36. The Court referred to the activist **magnitude of Article 14 as evolved in E. P. Royappa v. State of Tamil Nadu (supra) and Maneka Gandhi's case (supra)** and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground." This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure.

37. The Hon'ble Supreme Court in the case of ***Ram and Shyam company vs State of Haryana and ors***, dealt with the aspect of disposal of the public property and held that :

"...disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and



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*that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. **This is subject to one important limitation** that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. **But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy.***

An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur.

A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare.



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activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages.

38. In the case of **Ramana Dayaram Shetty v. The International Airport Authority of India and Ors** in which **Bhagwati, J.** speaking for the Court observed:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award to jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the



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*departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. At another place it was observed that the Government must act in public interest, it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated. It was further observed that the object of holding the auction is generally to raise the highest revenue. The Government is entitled to reject the highest bid if it thought that the price offered was inadequate. But after rejecting the offer, it is obligatory upon the Government to act fairly and at any rate it cannot act arbitrarily. Following this line of thought, in **Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir and Anr.** (page 10, 11).*

39. In the case of **Netai Bag and ors vs State of West Bengal and ors** reported in (2000) 8 SCC 262, the Hon'ble Apex Court has held :

“It has been consistently held by this Court that in a democracy governed by the rule of law, the Executive Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the Executive Government must be in conformity with reason and should be free from arbitrariness. The Government cannot be equated with an individual in the matter of selection of the



receptient for its largesse.(page 7)

Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action initial burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the Court. In State of M.P. & Ors. vs. Nandlal Jaiswal & Ors. [1986 (4) SCC 566] it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or malafide.(page 8)

40. In the case of ***Sachidanand Pandey & Anotherr. vs. State of West Bengal & Ors. [1987 (2) SCC 295]***, it was held that as regards the question of propriety of private negotiation with an individual or corporation, it should be borne in mind that **State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed, public interest being the paramount consideration.**

41. In the case of ***Ramana Dayaram Shetty's case (supra)***, it was held: "It is imperative in a democracy governed by the rule of law that



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governmental action must be kept within the limits of law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

42. In the case of *M.P. Oil Extraction & Another. vs. State of M.P. & others [1997 (7) SCC 592]*, it was held that principle of reasonableness and non- arbitrariness in governmental action is the core of our entire Constitutional scheme and structure. On the facts of that case, the action of the State Government in granting a contract by way of negotiation was held not arbitrary or irrational.



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43. In the case of *M/S Style (dress land) vs. Union Territory*

Chandigarh and another reported in (1999) 7 SCC 89, the Hon'ble

Supreme Court of India reiterated the observations of Mathew, J., in

Punnan Thomas v. State of Kerala AIR 1969 Ker 81 (FB) that:

"The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal" **The same point was made by the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West bengal (1975) 2 SCR 674; (AIR 1975 SC 266)** where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. **But the court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering**



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largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness....The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non- discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the



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action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

While exercising the powers of judicial review the Court can look into the reasons given by the Government in support of its action but cannot substitute its own reasons. **The Court can strike down an executive order, if it finds the reasons assigned were irrelevant and extraneous.**

44. The Constitution of India invokes the term "Public Interest" at nine places in its Article 22, 31A(b) and 31A(c) of Fundamental Rights of the Citizen, 263, 302, Entries 52, 54, 56 of the Union List and Entry 33 of the Concurrent List.

45. In the absence of the specific interpretation (do's and don'ts) of the term "Public Interest" by the Courts in India, these Articles are being misused by the Law makers to usurp the Constitutional Powers.

ANALYSIS:

46. It is not in dispute that 5.90 acres of Government land was leased



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out for a period of 25 years in the year 1963 by fixing the monthly rent as Rs.200/- and subsequently, from the year 1969 to 1978, the rent was Rs.600/- and from the year 1979 to 1983, it was Rs.1,200/- and from the year 1984 to 1988, Rs.3,600/- was fixed. An additional extent of Rs.28,830/- sq.ft of land was leased out to the petitioner in the year 1979, re-fixing the rent at the rate of Rs.1,000/- per month. The petitioner reclaimed the land and constructed a hotel and is running hotel business for the past about 60 years. Admittedly, the lease expired in the year 2008. Even before expiry of the lease, a proposal was submitted to assign the land in favour of the petitioner on payment of land cost on guideline value or on market value, whichever is higher. The initial land cost was fixed at Rs.49,72,405/-. Admittedly, the petitioner has not paid the land cost at that point of time and therefore, the land was not assigned in favour of the petitioner. The lease was further extended for a period of 20 years from 11.02.1988 and it expired in the year 2008 and thereafter, the lease was admittedly not extended. The proposal for grant of assignment in favour of the petitioner was kept in abeyance in letter dated 17.11.1995. There was an Audit objection on the ground that the lease rent fixed by the Government in the case of the petitioner was far below than that of the rate to be adopted



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for non commercial purposes. It is not in dispute that during World Tamil Conference the petitioner provided services to the foreign delegates.

However in due course, many such hotels came into existence in Madurai city and the lease period continued for about 45 years and expired in the year 2008. Even before expiry of the lease, the competent authorities fixed the revised land costs as Rs.33,33,83,040/-, at the rate of Rs.1,296/- per sq.ft.

47. The Government issued G.O.Ms.No.201, Revenue Department dated 03.04.2008 ordering that the subject land belonging to the Government to an extent of 5.90 acres may be assigned in favour of the petitioner by recovering the prevailing guideline value of the year 2008 or prevailing market value of the land in that particular locality, whichever is higher. A special condition was imposed that the land must be utilised for the purpose to which it is assigned. Pursuant to the Government order, the District Collector, Madurai fixed the land cost, which was not paid by the petitioner. No action was taken by the Government for about two years and the petitioner was submitting several representations. By letter dated 16.06.2010, the Government rejected the request of the petitioner to



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reconsider the land cost. The petitioner continued to submit his representation and the District Collector, Madurai in proceedings dated 15.12.2011 provided further opportunity to the writ petitioner to pay the land cost. Accordingly, the land cost was calculated as Rs.38,58,60,000/-. The land is to be utilised only for the purpose to which it is assigned and breach of condition will result in resumption of land by the Government. Without settling the land cost, the petitioner submitted further representation stating that he applied bank loan and on receipt of the same, the petitioner will pay the land cost. No action was taken by the District Collector for more than one year and thereafter, the Tahsildar issued a notice on 30.11.2012, stating that the petitioner has not settled the land cost and therefore, the petitioner is liable to pay the arrears along with the compound interest at the rate of 12% per annum. The District Collector in memo dated 21.01.2013 asked the petitioner to pay a sum of Rs.31,08,83,940/- immediately. The petitioner informed the District Collector that he has paid a sum of Rs.8,83,940/- and the balance amount will be paid through bank loan. The petitioner failed to honour its commitment. The District Collector in memo dated 05.08.2013 again informed the petitioner to pay the land cost with compound interest. The



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petitioner requested to grant nine months time for settling all balance cost.

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48. The petitioner was in unauthorised occupation of the Government land after the year 2008 and failed to pay the land cost as demanded by the Government. Pertinently, the petitioner has not even paid the rent. A show cause notice was issued by the District Collector on 12.12.2014, informing the petitioner to settle the arrears with compound interest at the rate of 12% per annum. Again the petitioner submitted a representation and finally the Tahsildar initiated action stating that the recommendations will be made to cancel the assignment proposal issued by the Government in G.O.Ms.No.201, Revenue Department dated 03.04.2008.

49. Perusal of the representations continuously submitted by the petitioner and the response made by the Government authorities would indicate that the petitioner has no intention to settle the land cost as fixed by the Government, but sent several representations seeking time to settle the land cost. The petitioner has succeeded in occupation of the Government land even after the expiry of the lease period unauthorisedly without paying the rent. The petitioner is in unauthorised occupation of the land for about



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14 years and running his hotel business and earning huge profit without paying any amount to the Government.

50. The learned Additional Advocate General drew the attention of this Court that the petitioner has not paid even a Rupee to the Government from the year 2015 to 2023. The Public Coffers suffered unparalleled monetary loss despite the fact that the current market value of the land is about Rs.300 Crores. Several opportunities granted to the petitioner were not utilised by them and the petitioner continued to be in unauthorised occupation of the Government land. On fixing the land cost, the petitioner ought to have settled the same, failing which the competent authorities ought to have initiated action to resume the Government land. Unfortunately, the authorities have given a long rope to the petitioner unnecessarily and for the reasons best known to them. Continuous evasive conduct of the petitioner ought not to have been permitted by the competent authorities in the interest of the public at large. Unfortunately, the competent authorities failed to perform their public duties efficiently and failed to protect the financial interest of the State, as expected and mandated.



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51. Article 5 of the Tamil Nadu Financial Code Volume – I stipulates

“Every Government servant should see that proper accounts are maintained for all Government financial transactions with which he is concerned and render accurately and promptly all such accounts and returns relating to them as may have been prescribed by the Government to the Accountant-General or the competent departmental authorities”. In the event of failure or irregularity or misappropriation or otherwise, the Government will hold him personally responsible, for any loss that may be found to be due to any neglect of the duties laid upon him.

52. Article 294 of the Tamil Nadu Financial Code Volume – I states that When any facts indicating that a **defalcation or loss of public moneys** **has occurred come to the notice of any Government servant, he should inform the head of the office immediately. The financial interest of the State has been well protected through the procedures contemplated under the Tamil Nadu Financial Code.** Therefore, allowing any defaulter to continue the default for a continuous period without initiating action would be violative of various provisions of the Tamil Nadu Financial Code. In such circumstances, all the authorities, who have committed such lapses, negligence and dereliction of duty are personally responsible and



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accountable for the financial loss occurred to the State Exchequer.

Procedures are also contemplated to recover the financial losses occurred to the State.

53. It is needless to state that the Government properties are to be protected prudently and vigilantly by the competent authorities. The authorities have no discretion to show any leniency in such matters. The lease rent must be recovered punctually and in the event of failure by any lessee, the authorities are bound to institute prompt action for recovery of rent or arrears of rent.

54. In the present case, the petitioner is a defaulter in payment of rent. Opportunity provided by the Government to pay the land cost and get the land assigned, has also not been utilised by the petitioner. The permission for assignment was granted by the Government in the year 2008 directing the District Collector to fix the guideline value or the market value of the land whichever is higher towards the land cost. Even after fixing the land cost by the District Collector, Madurai, the petitioner has failed to pay it. Instead, he was submitting representation after representation by citing one



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or other reason and continued to be in occupation of the Government land without even paying the rent and making huge profit by running the hotel business for several years. Thus, the petitioner lost its credibility to claim any leniency from the hands of this Court.

55. The learned Senior Counsel for the petitioner on instructions submitted a proposal that the petitioner is ready and willing to pay the land cost of Rs.51,65,78,040/- as indicated in the additional counter affidavit filed by the 3rd respondent. Yet another proposal mooted-out by the petitioner is that they are not in need of portion of 3 acres of land out of 5.90 acres of total area and the petitioner is willing to surrender the said 3 acres and pay the land cost for 2.90 acres.

56. Regarding the above submissions made on behalf of the petitioner, the learned Additional Advocate General on instructions from the Government made a submission that the facts provided in the additional counter affidavit regarding guideline value is of no avail to the petitioner and the market value of the subject property is more than Rs.300 Crores. In the Government order issued in G.O.Ms.No.201 dated 03.04.2008, the



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Government proposed to assign the land in favour of the petitioner stating that the land to be assigned on payment of guideline value prevailing or the market value, whichever is higher. Thus, the indication regarding the guideline value of the subject property in the additional counter affidavit cannot be a ground to claim that the said amount is the land cost fixed by the Government. It is one of the fact placed before this Court and certainly not the land cost agreed by the Government. The land cost fixed on earlier occasions were not paid by the petitioner. The petitioner committed series of defaults and is in unauthorised occupation of the Government property without even paying the rent. The lease expired in the year 2008. The market value of the land is above Rs.300 Crores. Thus, by granting largees, the Executives cannot cause financial loss to the State Coffers.

57. The language adopted in G.O.Ms.No.201 reads as under:

“7. மொத்தம் 5.90 ஏக்கர் நிலத்தை தற்போது நிலவம் வழிகாட்டி பதிவேட்டின்படியான மதிப்பு அல்லது தற்கால சந்தை மதிப்பு இதில் எது அதிகமோ அதனை வசூல் செய்து கொண்டு எந்த நோக்கத்திற்காக நிலம் வழங்கப்படுகிறதோ அந்த நோக்கத்திற்கு மட்டுமே நிலம் பயன்படுத்தப்பட வேண்டும் என்ற சிறப்பு நிபந்தனையுடன் ஒப்படை வழங்கலாம் என அரசு ஆணையிடுகிறது.”



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58. The land cost initially fixed by the District Collector, Madurai was not settled by the petitioner. Several years lapsed and the value of the land in Madurai City was sky rocketing and at present the market value of the subject land is more than Rs.300 Crores. Thus, the Government property cannot be assigned by causing great financial loss to the State Exchequer. The Government is duty bound to protect the public interest. The Government while dealing with the Government land cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it likes, but its action must be in conformity with some standard or norm, which is not arbitrary, irrational or irrelevant. The power of discretion in the matter of granting of largees if departs from such standard or norm in a particular case or cases, the action of the Government would be liable to be struck down.

59. State owned or Public owned property is not dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed, public interest being the paramount consideration.



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60. The correspondences made throughout between the petitioner and the respondents would reflect that the assignment will be granted in favour of the petitioner only on payment of land cost to be fixed by the competent authority. The land cost is to be fixed based on the guideline value or the actual market value prevailing, whichever is higher. The land cost initially fixed by the District Collector, Madurai was not settled by the petitioner and therefore, the petitioner has no locus to seek any further leniency or submit further proposal at this length of time, which would cause unparalleled financial loss to the State Coffers.

61. The suggestion made on behalf of the petitioner to accept the guideline value of Rs.51,65,78,040/- cannot be accepted. In the event of considering the said proposal, it will cause infringement of public rights, since the current market value of the property is above Rs.300 crores. A high value property situated in heart of Madurai City cannot be assigned in favour of the hotelier / petitioner by compromising the public interest and causing financial loss. Thus, the decision taken by the Government in this regard not to assign the land in favour of the petitioner is well founded and in consonance with the established principles of the Constitution of India.



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The leniency if any shown to the petitioner alone would result in unconstitutionality and opposed to public policy.

62. Doctrine of prudence requires that the Government policy must anticipate possible future losses in respect of the Government lands leased out to private persons. The actual market value of the property is running to Rs.300 Crores and the authorities are not sensitive enough to resume the property, despite the fact that the petitioner had committed default in payment of land cost and the rent. Though the lease expired in the year 2008, the petitioner is continuing as an unauthorised occupant for the past about 14 years. The Constitutional Courts are bound to protect the Constitutional mandates and its principles in the interest of public at large. When the public rights are infringed and the inaction of the Government result in huge financial loss to the State Exchequer, the Constitutional Courts are bound to step in and rescue “We, the People of India”, in order to protect economic and social justice as enunciated under the Constitution and for the public good of “Future India”. If the Government is allowed to cause such a huge monetary loss to the State Exchequer due to their inaction, slow action, commission or omission, then the Constitutional Courts are bound to



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go to any extent and protect the public interest by upholding the Constitutional philosophy and Ethos.

63. An inevitable question is, whether any bureaucrat of the State or any other authority or person will lease out their own property for a meagre rent or sell the land based on the guideline value, which is far below the market value prevailing in a particular locality. The authorities ought to have initiated all appropriate actions on expiry of the lease period in the present case. Unfortunately, even after the commission of default by the petitioner in payment of land cost no speedy action was taken to resume the land. Pertinently, the lease expired in the year 2008.

64. The concept of “Public Policy” and “Public Interest” as defined is that, the practical implications concerning strategies for protecting human rights and promoting democracy and the rule of law. “Public Interest” means **“People”** thereafter, **“which is best for the society as a whole”**. General welfare of the public that warrants, recognition and protection and something in which the public as a whole has a stake.



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65. *The true measure of whether someone is acting in the public*

interest lies in the confidence of those affected, not those making the pronouncements. The way a public action is determined, and seen to be determined, and the public interest appropriateness of the solution, will influence the acceptance of the measure. Justification in influences, the amount of trust endangered in the relevant public. The purpose of seeking to invoke the public interest is also to be looked into. Whether the matter is really intended to be for the benefit of the society and public interest theory is a part of welfare economics. It is the outcome attained, when the Government discharged its obligations for long run survival and well being of the society. Serving the public is the Fundamental Mission of the Government. *Unfortunately, individualism dominates today's public life at the expense of common benefit. A policy is purposive or goal oriented action. The policy consists of courses of action rather than mere decisions. The public confidence rest on the fairness and impartiality.*



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66. As discussed above omission, negligence or dereliction on the part of authorities is an offence warranting action, since there is a failure to protect the public property and the public interest. The petitioner has successfully prolonged and protracted the issues by merely submitting representations to the authorities either directly or through the Hon'ble Minister. However, the petitioner has no intention to settle the land cost as fixed by the authorities, nor paid the rent for several years.

67. The Government of Tamil Nadu as per their announcement is facing financial crunch. Thus, the Government is duty bound to revisit all such Government agreements/ Leases / Contracts in respect of Government lands, properties etc., across the state of Tamil Nadu and ensure that the public interest and the Revenue of the State has been protected.

68. The petitioner is a chronic defaulter in payment of land cost and the rent. The petitioner is enjoying the Government property without paying the rent for several years in an important locality in Madurai City. The proposal now submitted by the petitioner to accept the guideline value deserves no merit consideration, since the market value of the Government



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land is more than Rs.300 Crores. The proposal regarding surrendering of 3 acres of land made by the petitioner is also unacceptable to the Government, since the petitioner is a defaulter and not even paid a Rupee to the Government for more than seven and half years and enjoying the vast extent of Government city property and making huge profit by running hotel business. Running a hotel business in Madurai City as of now cannot be construed as public interest. Thus, the decision of the Government not to accept the proposal is well founded.

69. Before parting with the present case, it is imminent to consider the principles of transparency in public administration, which is the Constitutional Principle. In order to avert irregularities and illegalities in the matter of dealing with the Government properties and to grant largees, the respective District Collectors across the State of Tamil Nadu shall ensure that the Government contracts, leases, assignments etc., are published in the Government website along with the details including name of the village, lease amount or the rent fixed or otherwise, period of lease, purpose for which the Government property was leased out or assigned or otherwise,



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recovery of rent or arrears of rent as the case may be and also the name of the defaulters and the actions taken.

CONCLUSION:

70. In view of the facts and circumstances, the petitioner/Hotel has not established even a semblance of legal right for the purpose of considering the relief and therefore, this Court is inclined to pass the following orders;

1. The relief as such sought for in the present writ petition stands rejected.
2. The respondents are directed to resume the land by evicting the petitioner/Hotel within a period of one (1) month from the date of receipt of a copy of this order.
3. The respondents are directed to calculate the rental arrears and other charges due to the Government and recover the same from the petitioner by following the procedures as contemplated and without causing any undue delay.
4. The respondents are directed to revisit all such leases / contracts etc., in respect of the Government properties and



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ensure that the Revenue interest of the State has been protected in the public interest.

5. The respondents 1 and 2 are directed to upload the details of the contracts, leases, assignments etc., in respect of the Government properties (along with the details more fully described in the paragraph 69 of this order) in the Tamil Nadu Government Official Website both at District Level and State Level within a period of one (1) month from the date of receipt of a copy of this order.

71. With the above directions, this Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no orders as to costs.

72. The Registry, High Court is directed to list the matter before this Court on 28.06.2023 under the caption “For Reporting Compliance”.

25.05.2023

Index : Yes
Speaking order
Neutral Citation: Yes
kak/Jeni



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To
WEB COPY

- 1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Land Administration,
Chepauk,
Chennai – 600 005.
- 3.The District Collector,
Madurai District,
Madurai.
- 4.The District Revenue Officer,
Madurai District,
Madurai.
- 5.The Thasildhar,
Madurai North Taluk,
Madurai.



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S.M.SUBRAMANIAM, J.

Kak/Jeni

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25.05.2023