



WEB COPY

W.P.(MD).No.1491 of 2010
& W.P.No.25533 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2023

PRONOUNCED ON : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.1491 of 2010 & W.P.No.25533 of 2018

and

M.P.(MD).Nos.1 and 2 of 2010

W.P.(MD).No.1491 of 2010:

M/s. Southern Petrochemical Industries
Corporation Limited,
Rep. by Asst. General Manager (Admn),
M.Jeyabalan
Having Office at
SPIC Nagar,
Tuticorin – 626 005.

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Land Administration,
Office of the Commissioner for Land Administration,
Chepauk,
Chennai 600 005.



3.The District Collector,
Tuticorin District,
Tuticorin.

4.The Revenue Divisional Officer,
Tuticorin District,
Tuticorin.

5.The Tahsildar,
Tuticorin District,
Tuticorin.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records viz. proceedings in Na.Ka.A1/3605/04 dated 20.08.2009 of the 5th respondent, Na.Ka.D5/97162/98 dated 21.08.2009 and Na.Ka.D5/97162/98 dated 21.01.2010 of the 3rd respondent herein and quash the same and direct the respondents herein to grant assignment of the Poromboke lands of an extent of 415.19 acres in Mullakadu Village, Tuticorin District in favour of the petitioner herein.

For Petitioner : Mr.AL.Somayaji
Senior Counsel
For Mr.AR.Karthik Lakshmanan

For Respondents : Mr.R.Ramanlaal
Additional Advocate General IV
Assisted by Mr.T.Arun Kumar
Additional Government Pleader



W.P.(MD).No.1491 of 2
& W.P.No.25533 of 2018

W.P.No.25533 of 2018:

WEB COPY

Southern Petrochemical Industries
Corporation Limited,
Rep. by Assistant Vice President,
Mr.K.Gopalakrishnan,
SPIC HOUSE,
No.88, Mount Road,
Guindy,
Chennai – 600 032.

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Commissioner for Land Administration,
Office of the Commissioner for Land Administration,
Chepauk, Chennai 600 005.
- 3.The District Collector,
Tuticorin District,
Tuticorin.
- 4.The Revenue Divisional Officer,
Tuticorin District,
Tuticorin.
- 5.The Tahsildar,
Tuticorin District,
Tuticorin.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India



W.P.(MD).No.1491 of 2010
& W.P.No.25533 of 2018

for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to forthwith to adopt G.O.Ms.No.172 dated 09.05.2017 issued by the 1st respondent and assign the land of an extent of around 380.19 acres of land in Mullakadu Village, Tuticorin District, pursuant to the representation of the petitioner dated 07.06.2018 and the letter by the 2nd respondent to the 3rd respondent in Letter No.E1/13726/2018 dated 29.06.2018.

For Petitioner : Mrs.AL.Gandhimathi
Senior Counsel
For Mr.AR.Karthik Lakshmanan

For Respondents : Mr.R.Ramanlaal
Additional Advocate General IV
Assisted by Mr.T.Arun Kumar
Additional Government Pleader

COMMON ORDER

The writ petition in W.P.No.1491 of 2010 has been instituted challenging the demand notice dated 20.08.2009 issued by the Tahsildar, Tuticorin and the order dated 21.08.2009 passed by the District Collector informing the petitioner to pay the arrears of lease rent failing which action will be taken to resume the property to recover the arrears of lease rent.

1. (a) The writ petition in W.P.No.25533 of 2018 has been instituted challenging the proceeding dated 20.08.2009 of the 5th respondent, and



WEB COPY



proceedings dated 21.08.2009 and 21.01.2010 of the 3rd respondent and quash the same and further direct the respondents to grant assignment of the Poromboke lands to an extent of 415.19 acres in Mullakadu Village, Tuticorin District in favour of the petitioner.

PETITIONER'S CASE:

2. The petitioner is the Company incorporated under the Companies Act, 1956. It was started in the year 1969 as a Joint Sector Company promoted by the Government of Tamil Nadu through TIDCO and the private promoter group on the initiation of the Government of Tamil Nadu headed by Thiru M.A.Chidambaram, to set up a capital-intensive Fertilizer Complex. The Government of Tamil Nadu extended all facilities to the Company. The Government allowed the petitioner / Company to use sand quarry lands at Mullakadu Village for storing effluent water and slurry emanated from its Fertilizer Plant. The lands in S.No.385 to 398, 399/1, 399/2B and 470 of Mullakadu Village were actually allowed to be entered upon by the proceedings of the then Assistant Collector, Tuticorin dated 09.01.1975 pending finalisation of assignment proposals. The Government lands were allowed to be entered upon by the petitioner for its industrial



WEB COPY



use. On the understanding that the lands would be assigned to the Company, the petitioner had entered upon the said lands and used the same for storing effluent water.

3. The petitioner states that they have invested huge amount for establishing the Fertilizer Plant, which is in operation since 1975. The petitioner had been approaching the Government from 1975 for finalisation of assignment of lands in accordance with the conditions. Further, it was not materialised. A portion of land was subsequently assigned to Department of Atomic Energy. The petitioner made several representations to the Government to assign the land. A representation dated 25.05.1988 was made by the petitioner to the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai-5. The District Revenue Officer, Tuticorin in the year 1988 requested the petitioner to convey its willingness to take the aforesaid lands on lease and also recommended to the Government that lands should be given to the petitioner on lease basis on account of the policy decision taken by the Government not to assign the Government lands to private individuals.



WEB COPY



4. The petitioner made representations to the Government seeking assignment of the land in respect of lease. The petitioner states that they entered upon with permission granted in the year 1975 on a promise that the Government lands will be assigned in favour of the petitioner. Therefore, the said lands are to be assigned.

5. The District Collector, Tuticorin in his letter dated 03.03.1993 to the Joint Commissioner of Land Administration, Chepauk, Chennai-5 has stated that the lands to an extent of 415.19 acres comprised in in S.No.385 to 398, 440 to 443, 445 to 449, 455 to 468 and 470 to 472 are under occupation and effective enjoyment of the petitioner Company for the purpose of storage of effluent water let out from the factory premises and also for evaporation of Gypsum slurry and petitioner had represented for allotment of the aforesaid lands on assignment basis and the said proposals are pending. No final decision was taken by the Government. While so, the impugned demand notice has been issued claiming lease rent for the period from 1975 to 2008 a sum of Rs.168,73,96,880/-. The lease rent was fixed by effecting revision of lease rent once in three years. In continuation of the demand notice, the District Collector also issued an order stating that the



arrears of the lease rent is to be paid failing which further action will be initiated to resume the Government land and to recover the lease rent. Thus, the petitioner is constrained to move the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER:

6. Mr.A.L.Somayaji, learned Senior Counsel appearing on behalf of the writ petitioner in W.P.No.1491 of 2010 made a submission that in proceedings dated 09.01.1975, the then Assistant Collector, Tuticorin permitted the petitioner company to enter upon into the Government lands in Mullakadu Village for storing effluent water, pending finalisation of assignment proposals. Therefore, even at the time of grant of enter upon order, assignment proposal was pending before the competent authorities. Once an assignment has been promised thereafter, the respondents cannot turn around and ask the petitioner to use the Government land on lease basis. Thus, the principles of Promissory Estoppel would be applicable in the present case, since it is an undertaking given by the authorities that the Government lands will be assigned for storing effluent water. After a lapse of 13 years in the year 1988, the respondents have taken action to recover the lease rent without any basis. The Government land was not leased out to



the petitioner and Enter Upon permission was granted pending finalisation of the assignment proposals and therefore imposing lease would not arise at all. Nearly about 37 acres of Government land were transferred to the Department of Atomic Energy. Pertinently, no opportunity was given to the petitioner before issuing the impugned demand notice which caused an inequity. Therefore, the order impugned is liable to be set aside.

7. The learned Senior Counsel in support of his contentions relied on the judgment of the Honble, Supreme Court of India in the case of *M/s.Motilal Padampat Sugar Mills Company Private Limited vs. State of Uttar Pradesh and Others* reported in *1979 AIR 621*. The Doctrine of Promissory Estoppel, its contours and parameters were explained by the Hon'ble Supreme Court in the said judgment. The relevant observations in the judgment reads as under:

“Public law-Doctrine of Promissory Estoppel, its contours and parameters, explained. Estoppel-Estoppel in pais-Promissory Estoppel Applicability of the doctrine against the Government and extent thereof-Doctrine of executive necessity



WEB COPY



whether could be a valid defence and if so under what circumstance. Representations de futuro by public body if enforceable ex-contractu by a person who acts upon such representation or promise intended to be acted on-Burden of proof-Degree of standard of proof in such cases.

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. The classic exposition of detriment in this sense is to be found in the following passage from the judgment of Dixon, J in the Australian case of Grundt v. The Great Boulder Pty. Gold Mines Ltd. (1): ”



ARGUMENTS MADE BY THE PETITIONER IN W.P.NO.25533 OF 2018:

8. Mrs.A.L.Gandhimathi, the learned Senior Counsel appearing on behalf of the petitioner in W.P.No.25533 of 2018 reiterated that the procedures through which the demand notice was issued is not in consonance with the principles. The Government has assigned land in favour of other organisations. In this context, the learned Senior Counsel referred the Government order issued in G.O.Ms.No.172, Revenue Department (Land Disposal Wing) dated 09.05.2017, wherein Government lands were assigned in favour of TANCIDCO. Applying the principles adopted by the Government for assigning the land in favour of TANCIDCO the case of the petitioner is also to be considered for assignment of Government land. However, the Government has not considered the case of the petitioner without any valid reason. The District Collector in his letter dated 03.03.1993 has stated that the District Revenue Officer has inspected the concerned lands on 23.02.1993. The subject lands fall within the Mulakkadu Village Panchayat limit. A total extent of 415.19 acres as enumerated in the list enclosed are under active and effective enjoyment of



SPIC for the purpose of the storage of effluent water let out from the factory site and also for storage of gypsum slurry discharged from the factory. The firm has represented that the allotment of land is pending for several years and the proposal pending is yet to be considered. Relying on the above letter of the District Collector, the learned Senior Counsel reiterated that the Government order issued in G.O.Ms.No.172 dated 09.05.2017 is adopted for the purpose of grant of assignment in favour of the writ petitioner in respect of the government lands, wherein Entered Upon permission was granted by the then Assistant Collector, Tuticorin.

REPLY BY THE RESPONDENTS:

9. The District Collector filed counter affidavit stating that the writ petitioner has initially applied for assignment of the land. But since the Government has decided to grant the land only on long term lease, the Managing Director of the Writ petitioner Company in his letter dated 17.9.2004 addressed to the District Collector, Thoothukudi District has offered the following submission; “Government of Tamil Nadu vide their letter Ref.R8/4671/74 dated 9.1.1975, had given permission to use Poromboke land of 415.19 acres adjacent to our fertiliser complex for



storing gypsum and treated effluent water. We have been using part of this land measuring only 143.16 acres to store gypsum and the remaining portion is lying vacant and unused. As our appeal to the Government is pending since 1976 we once again request your good self to either assign the above land to us as agreed by Government of Tamil Nadu vide letter cited above or to allot us the land on Long Term lease basis". This clearly reveals that the land in question is under the enjoyment of the Writ Petitioner Company from the year 1975 without payment of any amount to Government or with any valid orders, except the Enter Upon Permission issued by the Assistant Collector. As it is the position, the Government decided to realise lease amount at the prevailing rate for the period of enjoyment from the Writ Petitioner's Company and arrived at the total lease amount due from the Company upto the year 2008 at Rs. 168,73,96,880/- as detailed below:

<i>Year</i>	<i>Lease amount fixed Rs.</i>
1975	2,23,18,411/-
1976	2,23,18,411/-
1977	2,23,18,411/-
1978	2,23,18,411/-
1979	2,23,18,411/-
1980	2,23,18,411/-



WEB COPY

W.P.(MD).No.1491 of 2010
& W.P.No.25533 of 2010



<i>Year</i>	<i>Lease amount fixed Rs.</i>
1981	2,23,18,411/-
1982	2,23,18,411/-
1983	2,23,18,411/-
1984	2,69,20,145/-
1985	2,69,20,145/-
1986	2,69,20,145/-
1987	4,60,17,342/-
1988	4,60,17,342/-
1989	4,60,17,342/-
1990	4,60,17,342/-
1991	4,60,17,342/-
1992 1.1.1992 to 30.6.1992	2,30,08,671/-
1.7.1992 to 31.12.1992	4,07,74,860/-
1993	12,82,36,935/-
1994	12,82,36,935/-
1995	12,82,36,935/-
1996	12,82,36,935/-
1997	12,82,36,935/-
1998 1.1.1998 to 30.6.1998	6,41,18,468/-
1.7.1998 to 31.12.1998	98,58,779/-
1999	1,97,17,557/-
2000	3,55,23,058/-
2001	3,55,23,058/-
2002	3,55,23,058/-
2003	3,55,23,058/-
2004	3,55,23,058/-
2005	3,55,23,058/-
2006	3,55,23,058/-
2007	3,55,23,058/-



WEB COPY

W.P.(MD).No.1491 of 2
& W.P.No.25533 of 2010



<i>Year</i>	<i>Lease amount fixed Rs.</i>
2008	9,28,36,562/-

10. The Managing Director of the writ petitioner / Company in his letter dated 17.09.2004 has preferred his submission stating that "as our appeal to the Government is pending since 1976 we once again request your good self to either assign the above land to us as agreed by Government of Tamilnadu vide letter cited above or to allot us the land on Long Term lease basis" and for finalization of the proposal, the Government decided to realize the lease amount from the Petitioner Company for the entire utilization period of the land in question. Hence the lease amount was arrived and the demand was made for remittance into Government account.

11. The demand of lease amount has been arrived according to the regulations in force then and there. The demand was made only for the extent of lands enjoyed by the Writ Petitioner's Company for the period from which it was under their enjoyment up to the year 2008. It is legal and valid. The demand of lease amount has been arrived and demanded only for the extent of Government Poramboke land enjoyed by Writ Petitioner



Company from the year 1975. The demand is valid and legal.

WEB COPY

12. The lease amount has been arrived and fixed only based on the market value of the adjacent lands by correctly following the procedure existing in force. The Assistant Collector in his order has only granted Enter Upon Permission to enter into the land without imposing any condition. But it is not the valid document for enjoying the land without any payment to Government for a long duration. The Government due for the lands in question is from the year 1975 onwards and the extent of land is more than 415 acres. Hence, the total amount upto the year 2008 comes around Rs.168 Crores.

13. Even though the matter relates to the year 1975, the matter has not been finalized so far. The Government took a decision to place the land at the disposal of the Writ Petitioner's Company on long term lease basis. Even though the Managing Director of the Writ Petitioner Company offered his submission in the year 2004 either to grant the land in question on assignment or on lease, the subsequent authorities of the Company did not



come forward to get it on lease and ready to remit the lease amount. Hence the matter is dragging on endlessly.

14. The demand of lease amount has been arrived and fixed for the extent of the land enjoyed by the Writ Petitioner Company from the year 1975 onwards. When the demand has not been settled it has to be realized from the defaulter by invoking the provisions of the Revenue Recovery Act. Before entering into this provision, the matter was taken to the notice of the concerned Company correctly. It is not a threat as alleged in the grounds of the Counter affidavit.

15. The Writ Petitioner's Company authorities have been intimated each and every happenings in this regard through letters. The fixation of lease amount was also as per the provisions in existence. The demand has not so far been settled by the Writ Petitioner Company. The pending Revenue to Government has to be realized only by invoking the provisions of Revenue Recovery Act. In this case even before invoking the provisions of Revenue Recovery Act. the position has been properly intimated to the



Writ Petitioner Company. The action taken in this case by the officials is legal, valid and reasonable in law.

16. Even though the matter is pending from the year 1975 as alleged, it is not possible to let such a huge extent of Government Poramboke land solely at the disposal of a Private individual or a Company and it is only possible that the land can be placed on lease basis with some stipulated conditions according to the Government policy now in existence. As the land is held under their enjoyment till date, the demand of lease amount is correct and valid

17. The lands in question were originally owned by Private pattadars and were acquired from them by the Sand Quarry for construction of Tuticorin New Harbour in the year 1963 and after the use of the sand for harbour is over the lands were placed with the Public Works Department. Since the lands were required by the Writ Petitioner Company, they are to pay the due rent for it by way of lease amount of cost according to the policy decision prevailing then and there. Now the Government's policy is



not to let the Government Poramboke lands in larger extent to Private company or individual on assignment, but it can be let on lease basis only.

This has correctly been followed in this case also.

18. The demand raised in this case as lease amount is only for the huge extent of land used by the company for various purposes by raising compound wall around the total extent up to a height of 8 feet following the procedures in existence is correct and valid. As such the Writ Petition has to be dismissed summarily.

ARGUMENTS ON BEHALF OF THE LEARNED ADDITIONAL ADVOCATE GENERAL:

19. The learned Additional Advocate General drew the attention of this Court with reference to the order passed by the District Revenue Officer, Tuticorin addressed to the petitioner / Company in letter dated 21.01.1988. In the said letter, the District Revenue Officer in unambiguous terms communicated the petitioner / Company that “As per present land policy of the Government all poramboke lands should be granted on lease basis instead of assignment. Hence I request you to inform the willingness



of the company to get the lands on lease basis”.

WEB COPY

20. The contentions of the petitioner that there was a delay in granting assignment is unacceptable since the Government has taken a policy decision not to assign the Government lands in favour of the private individuals across the State of Tamil Nadu and such policy decisions are to be implemented uniformly in respect of all Government lands. Therefore, in order to protect the industrial welfare and enable the petitioner / company to utilise the portion of the Government land for storing of effluent water option was granted to the petitioner to agree for lease.

21. Pertinently, the petitioner has not given any consent or reply for the said letter dated 21.01.1988. Therefore, the petitioner Company was aware of the policy of the Government and letter communicated by the District Revenue Officer, Tuticorin to them. The petitioner has not given any consent for lease and therefore the question of claiming assignment does not arise at all. When the Government Policy was informed to the petitioner, the petitioner / Company has failed to utilise the opportunity and is in an unlawful occupation of the Government land without even paying



WEB COPY



the lease rent as demanded by the competent authorities based on the Government orders in force. Lease rent in respect of the Government lands are periodically enhanced once in three years based on the guideline value / market value prevailing in that locality. Therefore, the demand was made based on the Government orders and by following the procedures as contemplated. When the option to enter into a lease was granted, the petitioner has not utilised the same in the year 1988 itself. But they are utilising the Government land, at free of cost without paying any lease rent to the Government, which is causing financial loss to the State Exchequer and therefore, the writ petitions are to be rejected.

22. The learned Additional Advocate General relied on the letter of the Executive Engineer, Public Works Department to the petitioner / Company on 23.08.1975. The said letter unambiguously states that “concurrence for the allotment of an area of 218.75 acres of land comprising Revenue Survey No.399/2B, 387, 390, 393, 396/Part, 470, 385, 388, 391, 394, 397, 399/1B, 386, 389, 392, 395 & 398 has already been given. The Assistant Collector, Tuticorin in his proceedings No.R8/4671/74-9/75 permitted you to enter upon the above said lands. It is understood that the



quarrying of sand by Tuticorin Harbour Project authorities has been completed in Revenue S.No.460 to 468, 471 & 472. The Concurrence of the Chief Engineer, Tuticorin Harbour Project has been sought for the assignment of land to an extent of 137.94 Acres. The formal orders of the Chief Engineer (Buildings) for assignment of the lands has also been requested for pending formal orders from the chief Engineer (Buildings) Permission is given to enter upon the lands 460 to 468, 471 & 472 for storing gypsum and coal”.

23. In this Connection, it is pointed out that the lands in question has been already encroached upon by the petitioner / Company by installing barbed wire fencing as early as in 1973.

24. Pertinently, the petitioner / company had encroached upon the larger extent of the Government land even before passing of the order granting Enter Upon Permission on 09.01.1975. Thus, the petitioner was an encroacher and subsequently, enter upon order was passed in the year 1975. When an opportunity was granted to the petitioner to enter into the lease, they, with an ulterior motive, had not agreed and in unlawful possession of



the vast extent of the Government lands without paying lease rent.

WEB COPY

25. The learned Additional Advocate General submitted the copy of the sketch to establish that vast extent of Government lands are fenced without any permission or authority by the petitioner / Company . Those lands are vacant lands and has not been used for any industrial purposes. The petitioners have encroached upon the Government land more than their requirement for the purpose of storage of effluent water. Therefore, the petitioners are not the bonafide applicants approaching the Government seeking assignment or lease, but attempting to grab the land for their personal and unjust gains.

26. The petitioner / Company is making huge profit from and out of the Fertilizer manufacture. Therefore, they are not entitled for any concession. From the M/s.SPIC Limited having book profit of Rs.53.34 Crores as per their Annual Report 2018-2019 and pending a case with VOC Port Trust, Thoothukudi (90.98 acres) in District Revenue Court, possessing private land holdings of 434.94 acres (SPIC 219.94 acres, Green Star 215 acres) has been trying to evade Government procedures with no penny paid



to the Government so far. The delay has resulted in a heavy loss to Government Exchequer as the land cost in the said area is very high.

27. In respect of the Government order referred in G.O.Ms.No.172 dated 09.05.2017, the learned Additional Advocate General appearing on behalf of the State reiterated that the subject lands were assigned in favour of TNEB and TANSIDCO being a part of the Tamil Nadu Electricity Board, the comparison made by the petitioner / Company is untenable. Therefore, considering the case of the writ petitioner by adopting the G.O.Ms.No.172 dated 09.05.2017 does not arise at all.

28. The arguments advanced on behalf of the petitioners that the principles of promissory estoppel is to be pressed into service cannot be considered as there is no such promise made by the Government in the present case. The petitioner company encroached upon the Government land to a larger extent and was illegally utilising the land for their purpose. The Government issued an enter upon order pending finalisation of the assignment. The Government took a policy decision not to assign the Government land to any private company or individual across the State of



WEB COPY



Tamil Nadu and therefore, has given an option to the petitioner / Company entered into a lease. The petitioner has not given their willingness to execute the lease agreement. Contrarily, the petitioner company continue to be in unlawfull occupation and not even paying the lease rent, which caused huge financial loss to the State Exchequer. Therefore, the principles of promissory estoppel is inapplicable in respect of the present case.

29. Regarding the judgment relied on by the petitioners in the case of M/s.Motilal Padampat Sugar Mills Company Private Limited (cited *supra*), the learned Additional Advocate General contended that the principles laid down in the said case was considered in the subsequent judgment in the case of ***Hira Tikkoo Vs. Union Territory, Chandigarh and others in Appeal (Civil) No.4725 of 2022*** dated 13.04.2004., wherein the Supreme Court has considered the principles laid down in M/s.Motilal's Case and following observations are made.

20.The learned Senior Counsel then made some attempts to rely on the doctrines of “promissory estoppel” and “legitimate expectation”. The doctrine of “legitimate expectation” has developed as a principle of



WEB COPY



reasonableness and fairness and is used against statutory bodies and government authorities on whose representations or promises, parties or citizens act and some detrimental consequences ensue because of refusal of authorities to fulfil their promises or honour their commitments. The argument under the label of “estoppel” and “legitimate expectation” are substantially the same. The Administration herein no doubt is guilty of gross mistake in including in its development scheme, a portion of land covered by the forest and land with restrictions under the Aircraft Act. A vital mistake has been committed by the Chandigarh Administration in overlooking the notification reserving land under the Forest Act and the restrictions imposed under the Aircraft Act, but overriding public interest outweighs the obligation of a promise or representation made on behalf of the Administration. Where public interest is likely to be harmed, neither the doctrine of “legitimate expectation” nor “estoppel” can be allowed to be pressed into service by any citizen against the State authorities. In Jit Ram Shiv Kumar v. State of



WEB COPY



Haryana [(1981) 1 SCC 11] a two-Judge Bench of this Court by explaining and distinguishing Union of India v. Anglo Afghan Agencies [AIR 1968 SC 718 : (1968) 2 SCR 366] and Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [(1979) 2 SCC 409 : 1979 SCC (Tax) 144] observed thus: (SCC p. 23, para 16)

“16. It is only in public interest that it is recognised that an authority acting on behalf of the Government or by virtue of statutory powers cannot exceed his authority. Rule of ultra vires will become applicable when he exceeds his authority and the Government would not be bound by such action. Any person who enters into an arrangement with the Government has to ascertain and satisfy himself that the authority who purports to act for the Government, acts within the scope of his authority and cannot urge that the Government is in the position of any other litigant liable to be charged with liability.

21. In the aforesaid case of Jit Ram Shiv Kumar [(1981) 1 SCC 11] the Municipal Committee of Bahadurgarh town to develop a mandi promised that the traders who purchase plots in the mandi



WEB COPY



*would be exempted from paying octroi duty on goods imported for trade to the mandi. The State Government in exercise of powers under the Punjab Municipal Act directed the Municipal Committee to withdraw the exemption from payment of octroi duty. When the traders, who had set up their business in the mandi on promise of getting exemption from octroi duty, challenged the action of the Municipality and the Punjab Government and raised on plea of “estoppel” — it was rejected by this Court by relying on the decision of a Constitution Bench of this Court in the case of *M. Ramanatha Pillai v. State of Kerala* [(1973) 2 SCC 650 : 1973 SCC (L&S) 560] and *State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* [(1973) 2 SCC 713] This Court in *Jit Ram Shiv Kumar* [(1981) 1 SCC 11] recorded the following conclusion which supports the view we propose to take in the circumstances of the present case: (SCC pp. 41-42, para 51)*

“51. On a consideration of the decisions of this Court, it is clear that there can be no promissory estoppel against the exercise of legislative power of the State. So also the



WEB COPY



doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority. The court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest.”

22.In public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of “legitimate expectation” but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into



WEB COPY



service. We may usefully call in aid the legal maxim: “Salus populi est suprema lex: regard for the public welfare is the highest law.” This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good.

30. The learned Additional Advocate General brought to the notice of this Court that the Comptroller and Auditor General of India raised an audit objection with reference to the financial loss to the State Exchequer. The writ petition is pending for long years and therefore the respondents are unable to initiate any action. Thus, the writ petitions are to be rejected.

DISCUSSION:

31. It is not in dispute that the petitioner company is in occupation of the Government Land and utilising the portion of the land for storing effluent water. The letter dated 09.01.1975, issued by the Assistant Collector, Tuticorin, reveals that M/s. Southern PetroChemical Industries



WEB COPY



Corporation Limited, situated at Tuticorin are permitted to enter upon the following lands in Mullakadu Village for storing effluent water, pending finalization of assignment proposals. S.No.385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399/1B, 399/2B and 470. The total land measures about 108 acres, and permission to enter upon was granted in favour of the petitioner.

32. The letter dated 23.08.1975, issued by the Executive Engineer Public Works Department, Tuticorin Division, addressed to the petitioner company, reveals that concurrence for the allotment of an area of 218.75 acres of land has been given as per the enter upon order dated 09.01.1975. However, it is understood that the quarrying of sand by Tuticorin Harbour Project authorities has been completed in Revenue Survey No.460 to 468, 471 & 472. The lands in question has already been encroached upon by the petitioner company by installing barbed wire fencing as early as in 1973. Therefore, it is unambiguous that even before passing of the enter upon order by the Assistant Collector on 09.01.1975, the petitioner company had encroached upon the Government lands to a larger extent. Enter upon



permission was granted only in respect of certain survey numbers, but the petitioners are in occupation of larger extent of Government land by encroaching upon the same. Therefore, the petitioner Company has not acted in accordance with the law, even in respect of the Government lands where permission has been granted to enter upon. In other words, the petitioner company cannot be construed as a bona fide occupant of the Government land, wherein permission was granted to enter upon. They had encroached upon the Government land and in respect of a portion of the land, the authority granted permission to enter upon but the remaining lands continue to be under the encroachment of the petitioner / Company.

33. The letter dated 21.01.1988 issued by the District Revenue Officer Tuticorin, addressing to the petitioner / Company reveals that as per the land policy of the Government of Tamil Nadu, all Poramboke lands should be granted on lease basis instead of assignment. Accordingly, the petitioner was provided with an opportunity to give their consent for the purpose of grant of lease of the Government land for their own purposes. On receipt of the said letter, the petitioner company has not given any consent. Contrarily,



WEB COPY



they continue to be in possession of the Government lands to a larger extent without any assignment or lease and in an unlawful manner. The respondents in their counter have clearly stated that the petitioner is a profit-making company and they are not doing any public service. Thus, they are not entitled for the assignment of the Government lands. The Government has taken a decision to grant lease of the portion of the Government land for the usage of the petitioner company and the said option given has not been availed of by the petitioner and they continue to be in unlawful occupation and has not been paying the lease rent and therefore, the petitioner cannot be construed as bonafide occupant of the Government land in entirety.

34. In the present case, the Government lands, admittedly, were not assigned in favour of the petitioner company. A mere enter upon permission was granted to a limited extent of 108 acres. However, the petitioner encroached upon the larger extent of Government land and is in possession of the same in an unlawful manner. **The petitioner company has not even paid any charges and the Collector with anguish in his counter has stated that the petitioner has been trying to evade the Government**



procedures with no penny paid to the government so far. The delay has resulted in a heavy loss to the Government Exchequer as the land cost in the said area is very high.

35. Beyond all these, the counter affidavit filed by the District Collector in W.P.No.1491 of 2010 reveals that the petitioners themselves have admitted that they are using part of the land measuring 143.16 acres to store gypsum and the remaining portion is lying vacant and unused. Therefore, the petitioner has made a request to the Government to either assign the above lands to the petitioner or to allot the land on long-term lease basis. Though such an expression was made subsequently by the petitioners in the letter dated 17.09.2004, no steps are taken by the petitioner company to execute the lease nor the lease rent has been paid by the petitioner company right from the year 1975 onwards.

36. Though the petitioner is an encroacher and is in occupation of vast extent of Government lands, the Court has to consider that the industry is functional in that location. The petitioner is a manufacturer of fertilizers



in the state of Tamil Nadu. The industrial benefits are to be protected for the welfare of the people since the fertilizers are used for agricultural purposes.

More so, the petitioner company requires a portion of the land for storing effluent water for which permission was granted to enter upon. Taking note of the fact that the life of an industry is to be protected for the benefit of the people of that locality, this Court is inclined to pass the following orders:

- (1) The reliefs as such sought for in both the writ petitions are rejected.
- (2) The respondents are directed to constitute an Expert Committee consisting members nominated by the Tamil Nadu Pollution Control Board, Revenue Department, Public Works Department or from any other Department within a period of four (4) weeks from the date of receipt of a copy of this order.
- (3) The Expert Committee constituted is directed to conduct field inspections and assess the extent of Government lands under the occupation of the petitioner / Company and accordingly, determine required extent of Government lands for storing effluent water by the petitioner / Company and submit a report to the appropriate authority, within a period of two weeks from the date of constitution of the Committee.



WEB COPY



- (4) The respondents / Government, thereafter, shall enter into a lease agreement with the petitioner / Company only to an extent of Government land required for storing effluent water by fixing usual conditions, lease rent, etc.
- (5) The remaining Government lands under the occupation of the petitioner / Company are directed to be resumed immediately and to be utilised for other public purposes.
- (6) The petitioner / Company is directed to pay damages for use and occupation of the Government lands as demanded by the respondents within a period of four (4) weeks from the date of receipt of a copy of this order.
- (7) The respondents are directed to calculate the arrears of use and occupation charges and communicate the same to the writ petitioner within a period of four (4) weeks from the date of receipt of a copy of this order, granting two weeks time to the petitioner to settle the charges. In the event of failure on the part of the petitioner, the respondents are directed to initiate all appropriate actions to recover the entire arrears of damages for use and occupation and other charges admissible by following the procedures as contemplated under law.



WEB COPY

W.P.(MD).No.1491 of 2
& W.P.No.25533 of 2010



37. With the above directions, these Writ Petitions stand disposed of. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

38. List the matter before this Court on 22nd January, 2024 under the caption “For Reporting Compliance”.

29.09.2023

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

Note: Registry is directed to list the matter before this Court on 22nd January, 2024 under the caption “For Reporting Compliance”.



W.P.(MD).No.1491 of 2010
& W.P.No.25533 of 2010

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Revenue Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Land Administration,
Office of the Commissioner of Land Administration,
Chepauk,
Chennai 600 005.
- 3.The District Collector,
Tuticorin District,
Tuticorin.
- 4.The Revenue Divisional Officer,
Tuticorin District,
Tuticorin.
- 5.The Tahsildar,
Tuticorin District,
Tuticorin.



WEB COPY



W.P.(MD).No.1491 of 2010
& W.P.No.25533 of 2018

S.M.SUBRAMANIAM, J.

Jeni

W.P.MD.No.1491 of 2010
& W.P.No.25533 of 2018

29.09.2023