

INFORMATION REQUIRED ON THE BASIS OF THE AVERMENTS
IN THE AFFIDAVIT FILED IN SUPPORT OF THE W.P.NO.
12180/1992.

(1) It is stated that the Industrial area consists of 136.04 acres. Get the information relating to the payments made by all the allottees towards premium amount. The premium amount paid from time to time should be furnished indicating the dates of payment if any.

(2) The total amount paid by the Government towards the compensation of the ~~land~~ land acquired (136.04 acres) This is to help to find out that the premium amount paid by the lessees were sufficient to meet the compensation of the land acquired as well as the expenditure involved in the development of the land, which according to the counter affidavit (page.no.169 of S.L.P.) was Rs.3.75 lakhs.

(2-A) Any transaction of sales by way of registered sale deeds between 1939 and 1945 to show the value of the land in the vicinity of Azamabad Industrial estate. Such sale should relate to the land which is very close to Azamabad industrial area.

(3) Copy of the circular letter C.G./105/21/36 (page.no. 142 of S.L.P.)

(4) The instrument or any communication during 1939-40 to find out the nature of rights conferred on the lessees when the possession was handed over to them.

(5) Documentary proof showing the sale of land of one acre in Himayatnagar at the rate of Rs.0-4-0.

B. Documentary proof to sale of land in favour of Dr. D.S.Reddy (page.no. 145 of S.L.P.).

C. Sale of land in favour of N.T.RamaRao with full details like value of land, conversion of the building into commercial complex, door nos of individual shops, names of lessees, nature of their business, A.P.G.S.T nos Rent being paid by them, Advances/deposits/goodwill amount paid if any the value of this land as per the records of the registration department.

NOTE: The above properties mentioned in A,B,C-obtained copies of master plan with relevant Zone to indicate their location with reference to the Azamabad industrial area.

(6) copies of all lease deeds.

(7) Statements of all leases with salient features like premium paid from time to time for each plot, quit rent from time to time, conditions of sub-lease, change of land use, nature of industry, no. of employees, value of the building, value of the plant and machinery.

NOTE: Documentary proof should be made available for the value of the building and plant and machinery. Provident fund statements with regard to the no. of employees working.

(8) Instances of specific cases of sales of Industrial plots in Sanatnagar, Balanagar, Kukatpally, Nacharam, Uppal, Katedan etc. with documentary proof.

(9) Cases where the Government permitted transfer of lease from one person to another any other leases under which land was allotted warehousing facilities in favour of F.C.A. etc.

(10) Copies of the O.S.NO. 205/85 Etc. (page.no. 149 of S.L.P.)

(11) Statements showing the notices issued by the Government for violation of conditions of lease such as using the land for residential purpose, warehousing activities, Sub-leasing, transferring plots, the entering into disguised partnerships.

(12) Information on the basis of the common Counter Affidavit.

(13) Common Counter Affidavit in reply to three Writ petitions. Indicate the nos of the three Writ petitions (page no 174 of S. L.P.)

(14) Copies of the Writ Petitions material papers and W.As (W.P.NO.18106/86, 18101/86, 16762/86, W.A.NOs 759/88, 760/88, 761/88)

This proceedings were taken up questioning the enhancement of premium to Rs.10,000/- annum.

Notes regarding points to be incorporated in the affidavit

In continuation of the order passed by the Hon'ble Court on 8-2-1995 that " State shall consider their cases sympathetically and shall consider making these leasehold rights into free hold rights" the petitioners hereby focus the following points in regard to conversion of leasehold rights into free hold rights:

- 1) The very notification of the then HEH The Nizam's State Railway indicating that several plots of 5 acres, 1.2 acres are available for sale in the industrial area at varying prices ranging from Rs 1,500/- to Rs 3,000/- per acre and the consequent allotment of the plots to the petitioners, although on 99 years lease basis, virtually amounting to perpetual sale wherein the industrialists have already invested money in building and plant machinery and had no opportunity but to enter into lease^{and} the Government have come with lease deed proposal after 10 years wherein 99 years lease is considered as sale.
- 2) The then Chief Minister who initiated the bill in this regard, who got allotted the land facing main road Musheerabad to Secunderabad situated in the heart of the city for film studio in 1983 at the rate of Rs 40/- per sq yard, immediately after becoming Chief Minister in 1984 got it reduced at the rate of Rs 15/- per sq yard and has converted the said property into huge profit fetching commercial complex giving up the activities of film studio.
- 3) Arbitrarily determining the lease deciding that the terms of the lease are violated due to the petitioners entering into partnership with others, even

approving such partnership in some cases ignoring the basic legal principle that it is for the courts to decide about the contravention of the terms of the lease and not for Executive who is one of the parties to the agreement.

4) Due to fast changing technology in the Industrial field requiring tie-up with foreign collaboration resulting in altering the nature of industrial activity stipulated in the lease deed, the Government's blind approach that such acts of diversion and arrangements with others result in contravention of the terms of the lease deed. We industrialist have to change as per market demand and technology upgradation as time demand. Hence we seek for several addition and changes such as additional power, partners, plant and machinery etc. we require change of manufacturing activity from one product to the other and additional power, change of partnership change of plant and machinery to bigger capacity Municipal permission for construction of shed and office building etc.

5) By the memo styled as show cause notice dated 3-12-1992 issued to one of the petitioners, after Act 15 of 1992 came into force while calling upon the petitioner as to why the lease should not be terminated due to the alleged contravention of the terms of the lease deed and thereby allotting the three portions of built up area in that particular petitioner's plot to the three industrial units

occupying as partners of their particular industries at the rate of Rs 10000/- premium per acre after the act was in force and depriving the petitioner. Thus the example of the Government acting as per their whims and fancies and we have to dance to their tune.

6) The offer made by the Government on 2-5-1995 in this Hon'ble Court suggesting Rs 500/- per sq. yard as premium amounting to Rs 25,00,000/- per acre highly fantastic and fanciful figure for leasehold rights with reducing lease period to 25 years.

7) Frequent changes in the Government in Andhra Pradesh resorting to whimsical and time-serving measures for any permission for industrial activity to ~~xxx~~ be granted interfering with rights of possession of the petitioners, driving the petitioners to become sick industries and forcibly turning into violators when permissions are not granted in a stipulated time.

8) Once for all to put an end to the frequent pressures exercised by Executive misusing the Executive powers, by not permitting us for free functioning of industries and to seek every now and then permission which are granted after months and years in this regard free hold is requested.

9) The petitioners request that the 99 years lease hold rights may be converted to free hold rights, without leaving the petitioners at the mercy of the Government, who will adopt arbitrary, partison and politically motivated methods to deprive the petitioners of their legal rights of occupation for the balance unexpired period (nearly 50 more years) of 99 years lease period taking into consideration the past experience.

10) The rate for conversion into free hold sale may be decided by this Hon'ble Court, taking into consideration the legal rights vested in the industrialists to enjoy possession of their respective lands for nearly 50 more years of the unexpired period of lease, in the background of the conduct of the predecessor of the present Government inducing the petitioners to occupy the respective plots with the promise that the same are available for sale at the rates suggested in the said notification Act and the petitioners having invested huge amounts for construction of factories and plant and machinery, without leaving to the arbitrary wishes of the Government.

11) As the time is passing by the situations are changing and what stand the Government is going to take is quite uncertain and as such it would be pertinent and in the interest of justice that this Hon'ble Court shall bind the respondent within the meaning and spirit of the order passed by this Hon'ble Court. Otherwise they may create problems in future

or permission in what we asked for and refuse for the same and again we may become sick or turn as violators forcibly. Further in the letter and spirit of the order passed by this Hon'ble Court and taking into consideration my uninterrupted leasehold occupation since 1967 onwards and the balance lease period of 71 years is a long period which we are foregoing the petitioners herein propose to pay to the respondent State Government at the rate of Rs 100/- per square metre for the consideration of making my leasehold land as free hold land and shall bear all the registration costs and request for instalments for the payments as Hon'ble Court decides.

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2) The total amount paid by the Government towards the compensation of the land acquired (136.04 acres). This is to help to findout that the premium amount paid by the lessees were sufficient to meet the compensation of the land acquired as well as the expenditure involved in the development of the land, which according to the counter affidavit (page No. 169 of S.L.P.) was Rs.3.75 lakhs.

a) Any transaction of sales by way of registered sale deeds between 1939 and 1945 to show the value of the land in the vicinity of Azamabad Industrial Estate. Such sale should relate to the land which is very close to Azamabad Industrial area.

3) Copy of the circular letter C.G./105/21/36 (Page No. 142 of S.L.P.)

4) The instrument or any communication during 1939-40 to findout the nature of rights conferred on the lessees when the possession was handed over to them.

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In the year 1935-36, the then H.E.H., the Nizam's Government through its Department of Commerce and Industry with the sole aim of Industrial Development in Hyderabad State, and to promote employment, took up the scheme of offering for sale, the then marshy and uninhabited land between the cities of Hyderabad and Secunderabad now called "Azamabad Industrial Area, Musheerabad, Hyderabad", to the extent of about 130 to 140 acres divided in to small plots of 5 acres and 1.2 acres, to the intending industrialists. The development of this area was energetically pursued by the Nizam's Government promising several infrastructure facilities for those interested in starting industries in this area. Ref : Circular of HEM Nizam Government a copy of the circular letter No.C.G/105/21/36 issued on behalf of the Secretary to Government Department of Industries & Commerce H.E.H. Nizam's Government with the H.E.H. the Nizam's State Railways in this regard is appended herein for your kind perusal.

In pursuance of the offer for sale, of the said plots at varying prices, between O.S. Rs. 1500 and O.S. Rs. 3,000 per acre, as will be seen from the plan of plots reproduced on the reverse of the circular referred above. Certain Industrialists came forward and took possession of the plots, after paying the price and constructed factories & developed infrastructure, investing huge amount in the allotted premises as early as 1938-40, and started running industries. It is submitted that the then market value of the land in the vicinity to the said Industrial area was not more than Rs. 1000/- per acre, on out right sale.

However, the erstwhile Nizam Government after police Action, offered the said plots to the industrialists already in possession since 1938-40, on 99 years lease. A plain reading of the lease deed leaves no doubt one's mind that the so called leased were actually sale deeds only subject to certain conditions.

All the occupying industrialists were in bonafidetrust that the 99 years lease is as good as sale of the land, as it was never contemplated that the plots of land given in possession of industrialists, for industrial development would at any time be taken back by the Government at their convenience. The Nizam Government levied a quit rent of about O.S.Rs.25/- per acre per year and also created a special "Industrial Trust Fund" to motivate the industrialists. The present industrialists who are the occupants of the said plots since the inception of the scheme of Industrialisation put forth by the Nizam Government have faced hardships and struggled very hard all these years and for the industrial existence in this area and have contributed leaps and bound to the state of Andhra Pradesh by way of Taxes, and employment and other indirect means.

The Government has introduced Azamabad Industrial Area (Termination and regularisation of leases) Act 1972. Terminating all the leases prematurely, and the rules made there under the Government in G.O.Ms.No.299 Industries & Commerce (IF cell) dated 1-9-93 ordered the leasees to pay once again an exorbitant premium of Rs. 25 lakhs per acre, and a quit rent of Rs. 6,000/- per acre per annum and further reduce the lease period of 25 years with other restrictions and terms and conditions that may be read in to the rules of the said act.

1. The original leasees of Azamabad Industrial area have already paid the premium amount which was much higher than the prevailing land value of that area when they took possession. (Contrary to the policies of industrialisation).

2. Demanding again for a premium for the industrial area totally developed due to the hardships and struggle of the occupied entrepreneurs and attitude of terminating the leases by the Govt. gives a negative growth to industrial environment and economy of the State. More over if the state Government goes back on the very agreement it executed with the lease holders in the 30s and 40s for 99 years and order for a fresh lease for 25 years would send negative signals to the industrialists, entrepreneurs, NRIs, Foreign Companies etc. whom the Govt. is trying to attract to invest in the state and moreover such Acts show unjust administration.

3. We suggest that the Govt. convert all the lease deed into free hold lands without any encumbrance and conditions or restrictions in line with the present policy of disinvestment and liberalisation oped by the Govt.

4. Sir, most of the industries located in the area are small-scale industries who find it difficult to meet both ends and any extra burden on them would simply displace them totally. Even the big industries would find it hard to finance the land again and again. Further industries would never be able to thrive on such costly lands and they would also find it difficult to shift their units as it would cost on them the burden of creating all the infrastructures again and thus would give rise to sickness apart from displacement of huge labour force engaged in the industries. Moreover if the state goes back on the very agreements it had executed with the industrialists the State would lose its credibility.

5. However, the lands were not actually transferred in the name of leasees even though the majority of industries had paid their monies to the then Govt and obtained the possession of land with a clear understanding. The lands were transferred by an agreement between the Govt and the Entrepreneur from 50-52 onwards. However it was very unfortunate on our part that we agreed to enter into these agreements wherein it was mentioned that these were to be given on 99 years lease. No objection was raised for this clause of 99 years case, in those days 99 years was equivalent to permanently given away of the lands.

6. In the year 1953-54 the then Hon'ble Minister for Industries Mr. Gurumurthy wanted to raise the premium of lands. However he was advised by the then Superintending Engineer that the prices of the land had not increased anyway from 1937-38 onwards. It has got to be remembered that when the erst while Hyderabad acceded to the Indian Union was mentioned that all the agreements, conditions, etc as existed in part B states will be totally protected and no changes shall be made in that respect.

7. Sir, it is pertenant to know that industrialisation began in and around Hyderabad only after 1977 when Industrial areas Sanatnagar and followed by Balanagar and other area took place, and the Govt assured that the Industrialists with their interest will always be protected and more and more concessions will be given to them.

8. In view of the above facts we earnestly request your goodself to revise the orders issued in G.O.Ms.No. 289 Industrial & Commerce (IF cell) Department dated 1-7-93 to the following effect.

- i) Payment of premium at Rs.500/- per 50. yard should not be insisted upon for the present occupants already on lease of 99 years as they have already paid premium at the time of occupation at the then prevailing rates.
- ii) We should be allowed to be on lease for the balance period of lease of 99 years.

Alternately we suggest that the Government as per its present policy of disinvestment should convert leases into free hold industrial land. Recently the Government solved the problem of other lease hold lands in other Industrial areas of Secunderabad / Hyderabad in a similar manner.

BRIEF FOR SUPREME COURT

Main Points related to Azamabad Industrial Area

- 1) As the existing lease holders were not being provided with the required permission, power requirement, financial support, hence to fulfill the requirement of raising funds the lease holders were forced to enter into genuine partnership with influential and financially strong entrepreneurs, which was being termed by the authority as violation of the terms of the lease deed ! and they had instructed all related authorities like, Municipality, electricity, water works, not to entertain any application from Azamabad Area, thus the lease holders were left with no option but to keep their huge investment blocked in the installed plant and machinery, furnitures without any returns thereon. In turn a few of the lease holders turned to sub leasing the land for non-industrial activity under permission from the authority. The authority could not understand the universally accepted fact that no industry can run as long as 99 years without upgradation diversification and modification of the activity of the industry.
- 2) As the lease holders were given to understand very clearly as per the lease deed that the lease land is to be in our possession for 99 years without any interruption in enjoying lease hold rights for 99 years. Under trust of the lease deed most of us never thought of acquiring any other land in the nearby or other vicinity. (which was available to us at throw-away price in ample) Now such an arbitrary act by the government would tender all the lease holders in a unbearable hardship and leave us nowhere.
- 3) After development of Azamabad Industrial area, there were many industrial area developed by the government in and around Hyderabad and secunderabad like Balanagar, Sanathnagar, Nacharam, Kattedan. All those lands and sheds were initially offered on lease and were at a later period these leases were converted into a sale deed. Apart from above cited conversion, during August 94 the government has passed a G.O. converting prime lease hold lands to freehold land in Secunderabad. We suggest that the government to convert the Azamabad Industrial area lease hold agreement into freehold lands without any encumbrance and conditions or restrictions which is also in line with the present policy of disinvestment and liberalization being opted by the Government of India.
- 4) Originally between 30's to 40's the Azamabad area was offered for sale by H.E.H.Nizam of Hyderabad for development of industrial activity in then state of Hyderabad. As per the offer the enterpruner applied for the land, paid the requisite amount towards value of the land and were handed over possession of land without any agreement of sale in writing for reasons unknown to us. Formal agreements were entered into by the state of Andhra Pradesh only after independence and that agreement was entered into a lease agreement but not a sale agreement. The enterpruner had to accept under bonafied trust that possessing land for a long period of 99 years is equivalent to a sale. Thus not objecting to lease deed they agreed to the terms of lease offered by the Government.

TO FILE ON ADDITIONAL AFFIDAVIT

Promisory Estoppel :

Process of the legislator to override any contract. Refer: Bhagwati Judgement in Padmapati Singhania - Sugar sales tax case - Not to levy tax for five year. Held legislative was bind by it.

Compare our case with above

Our lease deed is a contract for 99 years saleem contract under seal. No breach was proved complained against all lease holders. It means that if a lease holder is abiding the terms of lease it is the promise under the contract to keep possession for 99 years contract is bilateral, without the reservation of power can it be unilaterally revoked? If a private party could not have revoked it, can a state is in a better position?

Referring to the preamble of the act that many leasees have committed breach of terms of lease. As every lease contract with every leasee is an independent bilateral contract. A breach by some other leasee under some other contract cannot be used against the leasee who has not committed the breach. The vice in this approval lies in complete violation of article 14 of the constitution: mentions: unequal are treated equally which is impermissible. To compare numerous contracts in which lessor is the state and a common man is leasee. Each is a separate and an independent contract. One which commits the breach cannot be said to be equal to one who performs the contract and does not commit any breach. One who commit breach is not in the same class who does not commit the breach.

Article 14 forbid equal treatment among unequal. There are numerous Judgements related to this. The injustice suffered by the leasees are bracketed with those who have breached the contract. Such equal classification is unconstitutional.

Indian constitution is based on the theory of division of power. They are legislature, executive, and Judiciary.

Legislature enact laws, executives implements law, Judiciary interprets the law. In the event of breach of law, it is the function of Judiciary to decide whether there is breach of law or not. Breach of a law give rise to civil action cognizable by courts, a limb of Judiciary Legislature is not a limb of Judiciary. Legislator cannot arrogate the power of Judiciary to determine whether a breach of contract is occurred in so doing. In preamble of act legislature has usurped the power of Judiciary. Therefore the state legislature was not at all competent to enact such a law. Whereby it trenches upon the power of Judiciary, which under the constitution is reserved for Judiciary. This usurptiva is impermissible under the constitution. (Article 14)

Contracts which are otherwise legal and enforceable at law are binding on the parties. In the matter of contract there is no difference in the status of state as a contract cannot be revoked within the terms of contract. the legislature cannot revoke the contract baring it on a presumption which factually does not exist. To Illustrate each lessee is a separate petition founded on individual rights on upon a separate contract in which no breach is complained of. The principal of law is that no one shall suffer for wrong committed by another in Azamabad Industrial Area. It is injurious and evil consequences upon an individual who has not breached the contract.

- 1) This land 136.4 Acres belongs to ITF (Nizam) flats 1974-77. for ID in Nizam State. year
- 2) The area was acquired with funds of Industrial Trust Funds Hyderabad.
- 3) Year 1935-36 Nizam Government under Department of commerce and Industry with aim of promoting industries development allotted lands to Industries between Hyderabad and Secunderabad Known as Azamabad Industrial Area, Musheerabad, Hyderabad.
- 4) After the police action the ITF transfered the lease hold rights to DIC. So even DIC is not the owner of the lease hold property of the Azamabad.
- 5) After Police action in 1947/1948 the Andhra Pradesh State offered Industrial Plots for 99 years though it was out right issue earlier to Police action.
- 6) The Petitioners responded to the respondents offer and took possession of plots on 99 years lease.
- 7) Many plots where handed over earlier and lease deed was executed much after occupation by Industries say - possession in 19.3.1948 lease deed executed on 3.10.1956 and lease from 1945 for 99 years. Land was allotted in 1968 lease deed was executed in 1972.
- 8) Permission where granted at there will and pleasure after much protest reminders and what not in short some Industrialist would not diversification expansion and permission immediately or after long time as case may be after con't in our persuasion with the Industries Department.
- 9) There are many problems by holding lease deeds we lands are unable to mortgage to banks for funds, we have to approach for every such move for Industrial Development to DIC Hyderabad, for permission or sanction. Hence freehold is always advisable as cases in around Hyderabad, Secunderabad city Government of Andhra Pradesh has give lease come sale deed of Industrial land.
- 10) The Present Government of Industires did not allow any Industries to change line of manufacturing activity and hence the Industries went sick. When Industries went sick or rather forced to go sick there leases were forced to take the path of sublease or rent the premises.
- 11) Violation of lese deed in done by Industrialist because Industries department did not give various permission required to running of Industry or allow change of line of Manufacturing activity, and when time required or change of Partnership firm changes which is in no man's control) hence violation was forced on Industries and had to do so and continue without permission or sanction because of non co-operation of Industries Department.

12) Why Azamabad area has been chosen by the AP Government for not converting leaseholds rights into sale deeds where as 18-8-74 the district collector of licence has passed orders that lease hold lands in the are of Maredepally, Banchelalpet, R.P.road, etc. into convert to ownership clands by taking a nominal premium which are the best residential & commercial areas of the twin cities & Azamabad is targeted specially under the said act, which is the oldest & the first Industrial Estate of Nizam, Hyderabad, only to

13) APSEB, MCH, & various Government Departments donot give any permissions or fecilities or new licences, for expansion/modification/diversification which is nothing but a stright negative attitude of the government to demoralize Industrial development. No industry is expected to run Profitable/Flourish for a span of as long as 99 years with out any technological upgradation, modification or diversification and when such permission are not given by the departments the Industries were forced to either colse done, stop expansion programs keep the land idle or violate the deed & cover the necessary expenses.

14) We should be allowed and granted permission immediately for all expansion permission by the Industries department Government of Andhra Pradesh at any given time if lease deed is be continued by the Government-freehold lands should be considered.