(1)

IN THE HIGH COURT OF JUDICATURE : ANDHRA PRADESH :
AT HYDERABAD

WRIT PETITIONS NOS., 12180, 12181 & 12228 OF 1992:
558 OF 1993, 51[illegible], 11387, 6882, 7074 AND 12235 OF 1994.

AND

WRIT APPEALS NOS. 741, & 800 OF 1993.

Acco/Hyd
18.8.94.

2nd Set

Gajanand
Hyderabad Const
Ram Chemicals
Hyderabad Co
[illegible] and Co
Viswajit-Cashiq

W.P.NO.12180/1992:

1. M/s. Allied Industries, represented by its Managing Partner, G.L. Sanghi. (1)

2. M/s. Dayaram Surajmal Lahoti Oil Mills & Refinery, represented by its Partner Vijay Kumar Lahoti, Azamabad Industrial Area, Hyderabad. (5) +1200

3. M/s. Gupta Steel & Wine Industries, represented by its Partner R.K.Kanodia. (1)

4. M/s. Indian Chemical & Pharmaceutical Works, represented by its Partner T.Vinaykumar. (1)

5. M/s. Meera Industries represented by its Partner Vinod K.Desai. (1)

6. Gurudev Engineering company, represented by its Partner Vinod K.Desai. (1)

7. Central India Engineering Company, represented by its Partner vinod K.Desai. (1)

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8. Soham Engineering Corporation, 1
represented by its partner Vinod K.desai.

9. Andhra Chemical Company, represented by 1
its Proprietor Rajesh Patel.

10. Dundoo Oil Industries, represented by 1
its partner Ramavatar Agarwal.

11. National Trading Agencies, represented by 1
its partner K.V.Kotala.

12. Ladha Iron Casting, represented by its 1
Partner Prakash Ladha.

13. Bikine Food Products, represented by its 1
partner C.S.Kumar.

14. Super Steel Distributors & Manufacturers, 3
represented by its Partner Ambika Pershad Agarwal.

15. Dig Vijay Industries, represented by its 2
partner Lakshminarayan Rakhee.

16. Agarwal Industries Limited, represented by its 1
Managing Director Anirudh pershad Agarwal.

17. L.B.Industries, represented by its 1
Partner Raghuveeriah.

18. M/s. Rahmania Machinery Factory 1
represented by its Managing Partner
Syed Osman Ali.

19. Preyanshu Industries Limited, 1
represented by its Managing Director
Raghunath.

20. Hind Metal Industries, represented by its partner P.K.Saglani.

21. Venkateshwara nonferrous foundry represented by its Partner A.C.Khatri.

(Writ Petition was dismissed against Petitioner No.10 as per this Court's Order dated 21.6.1993) .... Petitioners

W.P.No.12181/1992

M/s. Muzhar & Co., Azamabad, Hyderabad, represented by its Partner Sri Azizulla, Hyderabad. .... Petitioner

W.P.No.12228/1992

1. Mohd. Mahmood.

2. Mohd. Basheer.

3. Mohd. Khursheed.

(Represented by G.P.A holder Mr. A.P Agarwal) .... Petitioners.

W.P.No.558 of 1993

The Hyderabad Constructions Co., Ltd., represented by Mr.Ramesh Malani, Azamabad Industrial Area, Hyderabad .... petitioner.

W.P.No.5111/1994.

Sri.Gajanand Oil Mills, represented by
Proprietor Kanahayalal Jhawar,
Industrial Area, Azamabad, Hyderabad .... Petitioner.

W.P.No.11387/1994:

M/s. Ram Chemicals
plot No.15/4, Industrial Area, Azamabad,
Hyderabad, represented by its Partner.
Kaluram Gupta .... Petitioner.

Versus

State of Andhra Pradesh, represented by
its Chief Secretary to the Government,
General Administration Department,
Secretariat, Hyderabad. .... Respondent
(in all the WPs)

Counsel for petitioners in W.P.No.12181/1992.	:	Mr.P.Ramachandra Reddy.
Counsel for petitioner in W.P.No.12181/1992.	:	Mr.G.Raghuram.
Counsel for petitioners in W.P.Nos.12228/1993, 558/1993 & 5111/1994.	:	M/s. C.P.Sarathy & Smt.C.Jayasree Sarathy.
Counsel for petitioner in W.P.No.11387/1994.	:	Mr.G.S.Sanghi

Counsel for respondent in all the Writ Petitions.	:	Government Pleader for Industries.

....

W.P.No.6882/1994.

M/s.J.P. & Co., represented by
Proprietor Prakash Joshi,
Plot No.17/1, Industrial Area, Azamabad,
Hyderabad .... petitioner.

W.P.No.7074/1994:

M/s.Viswajit Casting & Engineering Works,
Owned by M & M Associates Trust, by Trustee
Satish Modi, Plot No.26/2, Industrial Area,
Azamabad, Hyderabad. .... Petitioner.

W.P.No.7101/1994:

M/s. Indian Hume Pipe Co, Limited
represented by G.P.A holder Mr. M.S. Ramanathan,
Plot No.4, Industrial Area, Azamabad, ... Petitioner
Hyderabad.

Versus

1. State of Andhra Pradesh,
represented by the Chief Secretary,
Secretariat, Hyderabad.

2. Competent Authority and the
Commissioner of Industries,
Chirag Ali Lane, Hyderabad. .... Respondents
(In 3 Writ Petitions)

Counsel for the petitioners in all the 3 writ petitions : Mr.C.Jayasree Sarathy.

Counsel for the respondents : Government pleader for Industries.

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W.P.No.12235/1994:

M/s. Hyderabad Chemical & Pharmaceutical Works Ltd.,
Plot No.5, Azamabad, Hyderabad.
represented by its Managing Director.
Narendra Gopal. .... Petitioner.

Versus

1. The Government of Andhra Pradesh represented by its Chief Secretary. General Administration Department . Secretariat, Hyderabad.
2. The Competent Authority and the Commissioner of industries, Chirag Ali Lane, Hyderabad.
3. The General Manager, Department of Industries, Twin Cities, Musheerabad, Hyderabad ....Respondents.

Counsel for the petitioner : Mr.Koka Satyanarayana Rao

Counsel for the respondents : Government pleader for industries.

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W.A..No.741/1993.

Mohd.Basheer.

2. Mohd. Mahmood

3. Mohd. Khursheed.

Carrying on business in the name and style of M/s.Yousuf & Co., Nizamshahi Road, Hyderabad.

(Represented by the G.P.A holder Sri A.P.Agarwal) .... Appellants.

Versus

1. State of Andhra Pradesh, represented by the Secretary, Industries & commerce Department. Secretariat, Hyderabad.

2. General Manager District Industrial Centre, Musheerabad, Hyderabad.

3. M/s. Navaneetha Oil Industries, 1-8-668, Azamabad, Hyderabad.

4. M/s. national Engineering Service, 1-8-668, Azamabad, Hyderabad.

5. M/s. Vaneskaran Industries, 1-8-668, Azamabad, Hyderabad. .... Respondent

(The cause title of the appellants is substituted by this Court's Order dated 14.7.1994 in W.A.M.P.No.548/1993.)

Counsel for the Appellants	:	Sri.C.P.Sarathy.
Counsel for the Respondents 1 & 2	:	Government Pleader for Industries.
Counsel for 3rd respondent	:	Mr.M.V.S.Suresh kumar Mr.Syed Shariff Ahmed.
Counsel for 4th respondent	:	Mr.R.Subash Reddy.
Counsel for 5th respondent	:	None appeared.

W.P.No.800/1993:

A.P.Agro Industries,
1-8-668, Industrial Area,
Azamabad, Hyderabad, represented
by its Managing Partner
A.P.Agarwal.

.... Appellant.

Versus

1. The State of Andhra Pradesh,
represented by its Secretary
Industries & Commerce Department,
Secretariat, Hyderabad.

Commissioner of Industries, Govt. of A.P,
Chirag Ali Lane, Hyderabad.

The General Manager, District Industries Centre,
Musheerabad, Hyderabad.

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4. M/s. Yousuf & Co.
Azamabad, Industrial Area,
Hyderabad. .... Respondents.

Counsel for the Appellant : Mr.Duba Mohan Rao.

Counsel for respondents 1 to 3 : Government Pleader for Industries.

Counsel for 4th respondent : Mr.C.P.Sarathy.

CORAM : THE HONORABLE SRI JUSTICE A.LAKSHMAN RAO
&
THE HONORABLE SRI JUSTICE N.Y.HANUMANTHAPPA

Thursday, the 18th day of August, 1994.

Judgment: (Per Lakshman Rao, J.)

In all these writ petitions, the constitutional validity of the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992, (for short, "the Act") is questioned. The petitioners are lessees in respect of different plots of land in Azamabad Industrial Area, Hyderabad. The lease period is 99 years. All leases or other arrangements made or entered into through a Registered Deed or otherwise in respect of all demised plots in the Azamabad Industrial Area stand terminated on July 11, 1992 by virtue of the provisions of Section 3 of the Act and every such demised plot vests in the Government free from all encumbrances. Before we advert to the various contentions raised on behalf of the petitioners challenging the provisions of the Act, it would be useful to refer to the relevant facts and circumstances relating to the Azamabad Industrial Area and granting of leases in favour of different persons, including the petitioners herein.

The scheme for establishing Azamabad Industrial Area by acquisition of the required land received the consent of the then HEH the Nizam through a "Firman" issued on 6th Zamadi-UL-Sani 1350 Hizri. An extent of Ac.136=04 guntas was acquired in the name of the then Director, Commerce and Industries, with the funds of the Industrial Trust Fund, Hyderabad. The expenditure for the acquisition and development of the area was estimated at Rs.3.75 lakhs. The City Improvement Board (presently the Andhra Pradesh Housing Board) developed the area with all infrastructural facilities such as roads, drains, water and electricity. The area was divided initially into 25 plots and over the period of time, the plots were sub-divided. The number of plots as on today are 86, spread over an extent of Ac.116.00 of land, leaving the rest of the land for roads etc.

On October 7, 1952, the Azamabad Industrial Area had been handed over to the industrial Trust Fund. By an Ordinance dated January 26, 1957 which was replaced by the Hyderabad Industrial Funds Rules (A.P.Amendment) Act, 1957, the Board, which hereto controlled the Industrial Fund, was dissolved and the Industries Department of the State Government was entrusted with the function of controlling and administering the industrial Fund.

The developed plots in the Industrial Area were originally allotted in favour of different persons on a quit rent of OS. Rs.25/- (IG Rs.21-75) per acre per annum. a premium was levied from the allottees to cover the cost of development of the area, apart from collection of quit rent. The premium was fixed originally at Os Rs.2,000/- (IG Rs.1740/-) per acre. The quit rent was raised to Os.Rs.100/- (IG Rs.87/-) per acre per annum during the year 1994. The premium was increased to Rs.7,500/- per acre in the year 1950. From the year 1990, 0.03 paise per square yard per month has been in the case of leaseholder transfers with effect from January 1, 1985, the quit rent was enhanced to 0.25 paise per square yard per month and premium was raised to Rs.10,000/- per acre. the enhancement was challenged by the lessees in Writ petition Nos.18106, 18101 and 16762 of 1986. They were dismissed on March 1, 1988. It is stated that the writ appeals filed against the orders of the learned single Judge are still pending and the operation of the order enhancing the quit rent and premium has been suspended, pending disposal of the writ appeals.

The Azamabad Industrial Area is situated in the heart of the Hyderabad City. According to the State Government, the highly valuable urban land of an extent of Ac.116.00 is at present fetching an income of about Rs.40,000/- per annum.

It is stated that lease deeds in respect of 60 plots with a quit rent of OS Rs.25/- (IG Rs.21-75) per acre per annum were executed prior to 1960. 17 plots are covered by the lease deeds, wherein a quit rent of 0.03 paise per square yard per month was stipulated. These lease deeds were executed on different dates during the period from 1935 to 1976. In respect of 7 plots, the quit rent is charged as OS Rs.100/- (IG Rs.87/-) per acre per annum and these lease deeds relate to the period from 1947 to 1957. Only one plot with a quit rent of 0.25 paise per square yard per month had been leased out in the year 1984.

The case of the State Government is that different lease formats were adopted from time to time. In the lease deed originally adopted, assignment was prohibited without permission and it was silent on sub-letting. There was also no provision for revision of quit rent and premium. The lease deeds adopted after 1965 provided for obtaining prior permission of the State Government for subletting and assignment and a clause for revision of quit rent and premium was incorporated. The lease deeds executed after 1974 totally prohibited assignment and sub-letting.

(12)

During the subsistence of the leases, (except in three cases where the leases were either terminated by the State Government for contravention of the terms and conditions of lease or a show-cause notice was issued for such termination) the impugned Act No.15 of 1992 was enacted. It received the assent of the President of India on May 27, 1992. It came into force on July 11, 1992. In the Preamble to the Act, the circumstances under which the Act came to be enacted have been explained this:

> "Whereas an industrial area known as Industrial Area Azamabad, Hyderabad, had been selected and established by the erstwhile Nizam's Government with the sole object of establishing industries and the said industrial area was developed into different sizes of plots with infrastructure facilities for leasing them out to persons intending to set up industries;
>
> And whereas the developed plots in the industrial Area Azamabad, Hyderabad, were leased out to various persons under varying terms and conditions including payment of rents by adopting different formats of lease deeds;
>
> And whereas it has come to the notice of the Government that certain lessees of occupants are putting the plots or portions of plots to unauthorized uses and certain other lessees or occupants are misusing valuable industrial urban land for residential purposes as also for warehousing activity;
>
> And whereas it has also come to the notice of the Government that some lessee's are subletting or transferring the plots or portions of plots by entering into disguised partnerships and transfer of shares of companies to secure lease hold transfers;
>
> And where such erring lessees or occupants are collecting huge amounts through such unauthorized use of the plots or portions of plots;

And whereas the Government is unable to resume possession of the plots or portions thereof held by persons or occupants even in cases of gross misuse and violation of the terms of lease or other arrangement due to adoption of different formats of lease deeds with varying terms and conditions, lacunae in the lease deeds executed or other arrangements made with such lessees or occupants regulating the relationship between the Government and such persons and also due to long drawn civil litigation that is resulting in during the course of curbing such misuse and violations;

And whereas the plots were leased out to different persons on long lease periods upto 99 years at incredibly low rents;

And whereas the Government has been sustaining substantial recurring loss in the absence of necessary provisions in certain lease deeds for revision of rates of premium and quit rend that is reasonably due to the Government for the plots leased out;

And whereas it is considered expedient in public interest, to terminate by law all existing leases or other arrangements made or entered into in respect of all demised plots or portions thereof in Industrial Area, Azamabad,Hyderabad, to curb misuse or unauthorized use of Government land, other irregularities, violations and to prevent the non-industrial use, including unauthorized constructions etc., and to regulate the leases afresh, as may be decided by the Government, with such uniform terms and conditions including reduced lease period and revised rates of premium and quit rent and adoption of standard format of lease deed, thereby ensuring maximum use of existing infrastructure facilities and proper management of valuable urban property of the Government."

The Act provides for termination and regulation of leases. Relevant provisions of such of those sections which arise for consideration in these petitions and writ appeals are extracted hereunder.

(14)

"Sec.3 Termination of leases (1)

Notwithstanding anything contained in the Indian Contract Act, 1872 (Central Act 9 of 1872), the Transfer of property Act, 1882 (Central Act 4 of 1882) or any other law for the time being in force and the terms and conditions of any lease entered into or other arrangement made with any person in respect of any demised plot either by the erstwhile Government of Hyderabad or by the Government of Andhra Pradesh prior to the appointed date all leases or other arrangements made or entered into through a registered deed or otherwise in respect of all demised plots in the Azamabad, Industrial Area shall stand terminated on the appointed date thereupon all subleases or any other arrangements whatever made by the person in occupation to hold possession of the demised plot shall vest in the Government from all encumbrances and shall be used subsequently for industrial purpose only.

(2) ....

'Appointed date' means a date appointed under subsection (2) of Section (1), i.e., July 11, 1992 (Notification dated July 11, 1992.).

"Section 4. Application for fresh lease.

(1) On the termination of the lease or other arrangement under sub section (1) of section 3, the person in occupation may at his option apply for a fresh lease in the manner prescribed.

(2) On receipt of an application under sub section (1) the Competent Authority may where he is satisfied that applicant is not guilty of violation of any conditions of the lease grant fresh lease in accordance with such terms and conditions as may be prescribed or refuse to grant a fresh lease for reasons to the recorded in writing;

Provided that where the person in occupation of the demised plot the lease of which if stands terminated under this Act was actually using the demised plot for industrial purpose and was not otherwise guilty of violation of any condition of lease, his applicable for fresh lease shall not be rejected and he shall be granted a fresh lease on such terms and conditions as may be prescribed.

(15)

Explanation : For the purpose of this Act, where a lessee enters into a partnership agreement or other cognate arrangement for carrying on any activity whatsoever on the demised plot then notwithstanding anything in the Indian partnership Act (Central Act 9 of 1932) it shall also be deemed to be a violation of the conditions of the lease."

The "Competent Authority" means any authority, officer or person authorized by the Government by notification to perform the functions of the Competent Authority under this Act.

"Sec.5.Eviction:(1) Where a lease or other arrangement with regard to a demised plot stands terminated under sub section (1) of section 3 and where no fresh lease has been granted under section 4, the person in occupation of such demised plot shall vacate the same and deliver possession thereof to the competent authority within thirty days from the date or receipt of orders refusing to grant a fresh lease;

Provided that the period of thirty days aforesaid may on the application by the person in occupation of the demised plot be extended by the Competent Authority for a further period of not exceeding thirty days:

Provided further that where there is a structure on the demised plot the person in occupation of such plot shall demolish such structure and deliver vacant possession of the demised plot to the Competent Authority within a period of thirty days after the expiry of the original period if any granted under this sub section.

(2) Where the person in occupation of the demised plot fails to demolish the structure within the stipulated time, the demised plot along with such structure shall vest in the Government and no compensation shall be payable in respect of such structure."

Section 6 prescribes the procedure for eviction, Any person who disobeys the order of eviction is punishable under Section 7 and he is also liable for payment of damages or mesne profits, as the case may be, under Section 8.
Right of appeal is provided under Section 9 against the order passed by the

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Competent Authority, to the State Government. Where the lease has been terminated under section 3 the State Government shall pay solatium to the lessee at the following rates specified in Section 11:

"(a) equivalent to four months rent for every year of unexpired period of lease where such unexpired period is nineteen years or less, or

(b)equivalent to three months rent for every year of unexpired period of lease where such unexpired period is more than nineteen years but does not exceed thirty nine years, subjects to a minimum of seventy six months rent, or

(c) equivalent to two months rent for every year of unexpired period of lease where such unexpired period is more than thirty nine years but does not exceed fifty nine years subject to a minimum of hundred and seventeen months rent, or

(d) equivalent to one month rent for every year of unexpired period of lease where such unexpired period is more than fifty nine years, subject to a minimum of hundred and eighteen months rent..."

Section 12 to 9 contain provisions relating to offenses by Companies, approval of plans by the Competent Authority for construction of any structure on the demised plot, power to stop further construction and other demolition of structures and bar of jurisdiction of the civil court to entertain any suit against any decision made or order passed by the Competent Authority or the Government under the Act. The provision of the Act and the Rules made thereunder have been given overriding effect over other laws, under Section 20. The State Government is conferred power under section 21 to make Rules for carrying out any of the purpose of the Act.. Section 23 contains a provision for validation, which reads as follows:

"23. Validation.. Notwithstanding anything in any

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judgment, decree or order of any court or other authority.

(a) no suit or other proceedings shall be maintained or continued in any court or before any authority for the continuance of the lease, sublease or other arrangement or for the lessee, sublessee or person in occupation staying on the demised plot and all such proceedings shall abate; and

(b)no court shall enforce any decree or order directing the continuance of the lease, sublease or other arrangement to be in occupation of the demised plot.

There cannot be any serious doubt about the competence of the State Legislature to make law in question having regard to the subject-matter of the impugned Act and Entries 6 and 7 in List III (Concurrent List) in Seventh schedule to the Constitution of India, Viz.,

"(6) Transfer of property other than agricultural land registration of deeds and documents:

(7) Contacts including partnership, agency, contracts of carriage and other special forms of contracts but not including contracts relating to agricultural land".

As a matter of fact, the learned counsel of the petitioners have been fair enough not to question the competence of the State Legislature.

It is, however contended by Mr.P.Ramachandra Reddy, learned counsel for the petitioners, that -

(1) Termination of lease is based on contravention of terms of lease. Without giving opportunity to a lessee as to the

contravention of the terms, a lease cannot be terminated. Whether lease is to be terminated or not is a matter to be adjudicated upon by the court and that power of the Judiciary is usurped by the Legislature in terminating the lease under the provisions of the Act;

(2) Termination of all leases and vesting of the demised plots in the State Government amounts to expropriation and termination of all leases when only some of the lessees are alleged to have violated the terms of the lease, is arbitrary;

(3) The provision of the Act are discriminatory and deprive the petitioners of their right to carry on the trade or business and their right to livelihood, apart from the right to property. Thus, they're violative of Articles 14, 19 (1)(g), 21 and 300-A of the Constitution of India;

(4)When the lessees had invested huge sums of money by setting up industries on the demised plots and a large number of workmen were employed in those industries, the termination of leases under the Act is subversive of the rule of law;

(5) The provisions of the Act are, even otherwise, oppressive in character and they impose unreasonable restrictions on the fundamental right of the petitioners under Article 19(1) (g) to carry on the trade or business;

(6)Explanation to Section 4 operates retrospectively and it is arbitrary;

(7)Solatium paid to the lessees is not the nature of compensation and it does not satisfy the requirements of Article 300-A read with Article 14 of the Constitution;

(8)When the land is being used for industrial purpose, it is unfair and unreasonable to terminate the existing leases and to consider applications for grant of fresh leases again for the very same purpose.

(9)The Competent Authority, who is subordinate to the State Government, is vested with the powers under Sections 4 and 5 to ev

ict lessees, demolish the structures and decide whether any contravention of the terms of the lease was committed by the lessee of not, for considering his/its application for grant of fresh lease in his/its favour. he, not being a judicial authority, the entire process of eviction and granting of fresh lease is arbitrary; and

(10)As a matter of policy, when the State Government is establishing industrial estates at various places in the State for the purpose of encouraging the establishment of industries either by letting out or selling the plots in favour of the entrepreneurs, the impugned Act under which the existing leases granted for industrial purpose stand terminated, is discriminatory.

While adjudicating upon the constitutional validity of an Act or a provision therein, we have to bear in mind some of the salient principles enunciated by the Supreme Court in that regard. It was observed in SARUP SINGH Vs. STATE OF PUNJAB (1) at page 864, thus:

> "....this Court cannot be called upon to embarked on an inquiry into public policy or investigate into questions of political wisdom nor even to pronounce upon motives of the legislature in enacting a law which it is otherwise competent to make"

In SAGHIR AHMAD Vs. STATE OF U.P.(2) , it is observed:

"In the last century when the 'laissez faire' doctrine held the field, the primary function of a State was considered to be maintenance of law and order and all other activities were left to private competitors. That conception is now changed and in place of the 'police State' of old, we are now having a 'Welfare State' Chapter IV of of our Constitution which lays down the Directive Principles of State policy clearly indicates what the functions of a State should be and many things which could not have been considered as State functions when the case of - 'P. and C. Steam Navigation Company's case' was decided, would certainly come within the legitimate scope of State duties......."

Whenever a question relating to constitutional validity of an Act is to be considered, three things

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1. A.I.R. 1959 SC 860
2. A.I.R. 1954 SC 728

have to be kept in mind, as was observed by a Division Bench of this Court in SATYANARAYANA V. E.G.C. & T. MARKET COMMITTEE (2) at page 401:

"As was pointed out by the Supreme Court when the validity of an Act is called in question, the first thing for the Court to do is to examine whether the Act is a law with respect to a topic assigned to the particular legislature which enacted it if it is, then the Court is next to consider whether, in the case of an Act passed by a legislature of a State, its operation extends beyond the boundaries of the State, for under the provisions conferring legislative powers on it, such legislature can only make a law for its territories or any part thereof and its laws cannot, in the absence of a territorial nexus, have any extraterritorial operation. If the impugned law satisfies both these tests, then finally the Court has to ascertain if there is anything in other part of the Constitution which places any fetter on the legislative powers of such legislature".

As we have already mentioned , there can be no controversy about the competence of the State Legislature to make the law in question in having regard to the Entries 6 and 7 List III of Seventh Schedule

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(3).A.I.R 1959 A.P.. 398

to the Constitution. It is true that the petitioners herein and some others have been granted leases of respective plots in Azamabad Industrial Area for using them for industrial purposes. A lease can be determined for contravention of any of the terms of lease or by operation of law. It is mentioned in the preamble to the impugned Act that it has come to the notice of the Government that certain lessees are putting the plots or portions of plots to unauthorized use and certain other lessees are misusing the valuable industrial urban land for residential purposes and also for warehousing activity. It has also come to the notice of the Government that some lessees are subletting or transferring the plots or portions of those plots by entering into disguised partnerships and transfer of shares of companies to secure leasehold transfers. It is stated that some of the lessees are collecting huge amounts through such unauthorized use of the plots or portions thereof. Even in cases of gross misuse and violation of terms of lease, the Government was unable to resume possession of the plots or portions thereof due to lacunae in the lease deeds and long drawn civil litigation.

In the counter affidavit filed on behalf of the State Government, various instances of the lessees having created various subleases in favour of third parties have been given. So also, particulars of large extents of leased out land being kept vacant for a number of years, have also been mentioned. It is averred that some of the lessees have made unauthorized constructions in violation of the terms of lease and have set up any industry.

There is no dispute that Azamabad Industrial Area is situated in the heart of the metropolis of this State and there has been abnormal appreciation in the value of the land over the period. It is the specific case of the State Government that the "Industrial Area has become the plaything of unscrupulous lessees subletting or transferring plots or portions of plots by entering into disguised partnerships or misusing the valuable industrial urban land for residential as also for warehousing activity and collecting huge amounts through such unauthorized use of plots or portions thereof. In most cases, major portions of plots are left unutilised because there was no burden on the lessees/occupants, as the rent being paid to the Government is very low. On account of these unlawful/unauthorised activities, the Government are put to huge loss and are subjected to long drawn civil litigation when corrective action is sought to be taken against the persons and meanwhile violation of terms of lease continues. Thus, the very purpose for which the industrial Area at Azamabad was established and the plots were leases out to various persons at low rents for long periods upto 99 years has been defeated and an unlawful real estate activity has set in. Such highly valuable and costly land is also yielding as at present a mere pittance of revenue to Government...."

In that back ground, we have to consider whether the provisions of the Act providing for termination of leases, vesting of the plots in the State Government, eviction of the lessees from the demised plots and consideration of the application of the lessees for granting fresh leases, are violative of Articles 14, 19 (1) (g), 21 and 300-A of the Constitution. In that context, the future question as to whether the provisions of the Act amount to usurpation of the powers of the Judiciary by the State Legislature is also pressed.

Whether the terms of lease have been violated by either the lessee or the lessor and whether the lease is liable to be terminated by reason of contravention of any of the terms of the lease, it is contended by the learned counsel for the petitioners, are matters which can be adjudicated upon by a civil court and under the guise of exercising legislative power, the

State Legislature cannot usurp the powers of the Judiciary. We do not find force in the contention of the learned counsel. A lease can be determined either by act of the parties to the lease deed or by operation of law. The State Legislature is competent to make law in respect of any matter relating to transfer of property and contracts including partnership. By virtue of the provisions of Section 3 of the Act, all leases entered into in respect of the demised plots in Azamabad industrial Area stand terminated notwithstanding anything contained in the Indian Contract Act, 1872, the Transfer of property Act, 1882 or any other law for the time being in force and the terms and conditions of any lease. Thus, by operation of law made by a competent legislature, the leases stand terminated.

However, it is urged by the learned counsel for the petitioners that the dispute regarding termination of leased, being a legal dispute, can be determined only by a properly constituted judicial body and a legislation providing for termination of leases without judicial adjudication, thereby depriving the petitioners of a valuable right to seek redressal in a civil court, which any other lessee is entitled to, offends Article 14 of the Constitution. This contention is sought to be supported by a decision of the Supreme Court in AMMERUNNISSA V.MAHBOOB BEGUM (4). In that case, the validity of Waliuddowala Succession act, 1950 came up for consideration before the Supreme Court. That Act was passed with the avowed object of terminating the disputed among the rival claimants in regard to succession to the estate of late Nawab Waliuddowala. For the following reason, it was held that; the provisions of the Act were violative of Article 14:

> "In the case before us what the legislature has done is to single out two groups of persons consisting of two ladies and their respective children out of those who claim to be related to late Nawab Waliuddowala and prevent them from getting any share in the personal property of the latter to which they might be entitled under the general law of the land. They claim to be wives

and children of the deceased and as such entitled to have shares in his personal estate and no competent court of law has as yet negatived their claims in this respect. On what

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(4) A.I.R 1953 SC 91

Principle then, it may be asked, was the disability imposed upon these persons alone while the claim of the other claimants was accepted? Nay, the legislation goes further than this and denies to these specified individuals a right to enforce their claim in a court of law, in accordance with the personal law that governs the community to which they belong. They, infact have been discriminated against from the rest of the community in respect of a valuable right which the law secures to them all and the question is, on what basis this apparently hostile and discriminatory legislation can be supported?"

"The dispute regarding succession to the estate of the Nawab was a legal dispute pure and simple and without determination of the points in issue by a properly constituted judicial tribunal a legislation based upon the report of a non-judicial authority and made applicable to specific individuals, who are deprived thereby of valuable rights which are enjoyed by all other persons, occupying the same position as themselves, does in our opinion, plainly come within the constitutional inhibition of Articles "14".

But, while striking down the provisions of the Act, the Supreme Court pertinently observed:

"It is well settled that a legislature which has to deal with diverse problems arising out-of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not 'per se' amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view."

That was a case of a dispute between number of claimants for succession to the estate of the deceased Nawab. By virtue of the impugned legislation, disability to claim succession to the property was imposed only on two sets of claimants while the claim of others was accepted. Such disability was imposed on the basis of the report of the legal advisors negativing the claims of one set of claimants. They were discriminated against and deprived of the right to enforce their claim in a court of law, in accordance with their personal law. In those circumstances, the provisions of the Act were held to be discriminatory and arbitrary. We will deal with the question relating to violation of Article 14 with reference to the provision of the impugned Act at a later stage.

But, at present, we have to consider whether the decision relied on by the learned counsel for the petitioners lays down any principle that a lease entered into between the Government and a private party cannot be terminated by operation of law because it is a pure and simple legal dispute that can be adjudicated by a Court of law. no such principle has been made enunciated by the Supreme Court. That was a case arising between rival parties relating to succession to the estate of a deceased Nawab. The question was whether one of the parties can be deprived to enforce their claim for succession in a court of law, while the right of others has been recognized of the Act, which was questioned. In that context, the learned Judges held that the dispute regarding succession to the estate of the Nawab was a legal dispute pure and simple and without determination of the points in issue by a properly constituted judicial tribunal, a legislation based upon the report of a non-judicial authority and make applicable to specific individuals was violative of Article 14 of the constitution of India. In the present case, the State legislature has given the reasons in the Preamble to the impugned Act justifying the incorporation of Section 3 terminating all the leases in respect of all the demised plots of Azamabad Industrial Area. Therefore, that decision in our view has no relevance to the facts of the present case.

In the other case, i.e. RAM PRASAD V. STATE OF BIHAR (5) cited by the learned counsel for the petitioners, the constitutional validity of Bihar Sathi Lands (Restoration) Act 34, of 1950 was challenged. Under the provisions of that Act, two individuals and one solitary transaction entered into between them and another private party viz, Bettiah Wards Estate, had been singled out and the transaction was declared to be a nullity. Therefore, the provisions were held to be discriminatory and arbitrary. Emphasis is laid by the learned counsel on the observation made by the Supreme Court while so declaring the law to be violative of Article 14 of the Constitution of India, that the legislature declared the transaction to be a nullity although there has been no adjudication on the point by a judicial tribunal. It was held that the legislature had singled out the two individuals and denied them the right" Which every Indian citizen possesses to have his rights adjudicated upon by a judicial tribunal in accordance with the law which applies to is case. The meanest of citizens has a right of access to a Court of law for the redress of his just grievances and it is from this right that the lessees have been deprived, by this Act.". For the very same reasons assigned by us with respect to the earlier decision relied on by the learned counsel for the petitioners, we hold that this decision also has no application to the facts of the present case.
It is, however, vehemently urged by the learned counsel for the petitioners that the provisions of section 3,4 and 5 violate Article 14 of the constitution of India and those provisions are both arbitrary and discriminatory. The object of the impugned Act is to terminate all leases on the ground that the lessees have committed breach of the terms of lease. The leases are determined without giving any opportunity to the lessees. Whether any lessee has violated the terms f lease, is a matter for decision by a civil court and the petitioners herein have been deprived of the right to

have an adjudication by the civil court regarding the violation of the terms of the lease as in the case of other persons who are similarly situated like the petitioners herein . The further object of the act is to enhance rents and to grant fresh leases in favour of such of those persons who are held to have not contravened the terms of the lease, by the Competent Authority. There is no reason why those lessees who have not acted in violation of any of the terms of the lease shall be subject to the ordeal of making an application for the grant of fresh lease. The Competent Authority, who is entrusted with the function of deciding whether any lessee is guilty of violation of any conditions of the lease, is the one who does not have any legal or judicial background and his decision is subject to appeal by the State Government. In respect of other industrial estates, the State Government is offering developed plots therein for sale or lease, as the case may be, to the persons interested but in the present case the State Government has meted out a differential treatment to the lessees of the Azamabad Industrial Area. For all these reasons, the provisions of Section 3,4 and 5 are arbitrary and discriminatory.

It is well settled principle of law that "a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not' per se' amount to discrimination within the inhibition of the equal protection clause. "(vide AMEERUNNISSA V. MAHBOOB BEGUM, 4 supra). A classification may properly be made on territorial basis if it is germane to the purposes of the enactment (KISHAN SINGH V. RAJASTHAN STATE (6). In the preamble to the Act, elaborate reasons which prompted the State Legislature to make the impugned Act have been mentioned in detail. The Azamabad Industrial Area is located in the heart of the city of Hyderabad and there was abnormal appreciation in the value of the land. It has come to the notice of the State Government that some of the lessees have sublet or transferred some plots or portions thereof by entering into disguised partnerships. They have been collecting huge amounts through such unauthorized use of the plots. Some of the lessees have been putting the plots to unauthorized use and certain other lessees have been misusing the valuable industrial urban land for residential purposes, as also for warehousing activity and collecting huge sums of money. Even in case of gross misuse and violation of the terms of lease, the State Government was unable to resume possession of the plots due to adoption of different formats of lease deeds with varying terms and conditions and lacunae in the lease deeds and also due to long drawn civil litigation. The State Government has been receiving paltry rent from such a large extent of valuable urban land. In those circumstances, the State Legislature thought it necessary to make law terminating all the leases in respect of the demised plots of Azamabad Industrial Area. This Industrial area is, thus not comparable to the other industrial areas which are mostly located on the outskirts of other towns or cities in the state. The location of the area, the value of the land, the low rate of income fetched by the State Government and the misuse to which many of the demised plots have been put to, justify the differentiation of this industrial area from the rest of the industrial areas. Some lessees have sublet or transferred the plots or portions thereof by entering into disguised partnerships and transfer of shares of companies. Due to adoption of different formats of lease deeds with varying terms and conditions, lacunae in the lease deeds and also due to long drawn civil litigation, the Government was unable to resume possession of the plots even in case of gross misuse. The plots were leased out to different persons for long periods upto 99 years and the State Government has been paid very low rent. The lessees in respect of lots situated in such an industrial area can be treated as a class by themselves and such a classification, for the purpose of termination of leases by operation of law, cannot be said to be discriminatory. The lessees in the present case cannot compare themselves with lessees of other industrial areas or lessees in general and claim that they shall not be deprived of the right to approach a civil court and get the matters relating to alleged violations of the conditions of the lease adjudicated upon.

But it is, however, submitted by the learned counsel for the petitioners that when the legislative policy is given concrete shape in the form of a statute and the provisions of such a statute violate any of the fundamental rights including the one under Article 14, the same shall be held to be invalid. In support of this contention, reliance is placed on the decision of the Supreme Court in A.L.KALRA V. P& E CORP.. OF INDIA LTD (7). As pointed out by the Supreme court in SARUP SINGH V. STATE OF PUNJAY (1 supra) the court cannot be called upon to embark on an inquiry into public policy or investigate into questions of political wisdom even to pronounce upon motives of the legislature of enacting a law which it is otherwise competent to make.

In the case of this nature where number of leases in respect of vast extent of valuable land are involved, it would be impossible to recover possession and prevent misuse of the land by the lessees within a reasonable time if a notice is to be given to each and every lessee before a decision is taken for determination of lease. When a lease stands terminated by operation of law, question of giving an opportunity to a lessee before such termination, will not arise. The legislature thought it fit to terminate all the leases and provide an opportunity to such of those lessees who have not contravened the terms and conditions of lease, to apply for a fresh lease. On receipt of the application, the competent authority may grant a fresh lease, if it is satisfied that the applicant is not guilty of violation of any conditions of the lease.

Because the land belongs to the State Government and the Competent Authority is appointed by the State Government, we have to consider whether it can be said that the State Government, acts as a Judge in its own cause, in particular in view of the fact that the decision of the Competent Authority is subject to appeal to the State Government ? Whether a lease can be granted or not and whether any violation of the terms and conditions of the lease has been committed by the applicants, are matters which can be dealt with by a responsible authority Under the impugned Act, the Competent Authority is required to record its reasons in support of the decision taken by it either granting or refusing to grant fresh lease and its decision is subject to appeal to the State Government. When the Legislature in its wisdom thought it fit to entrust the function of deciding whether a particular applicant had committed breach of the terms of the lease or not, for the purpose of granting a fresh lease to him, to an Authority appointed by the State Government, it cannot be said that the State Government is acting as a Judge in its own cause. The refusal or granting of fresh lease depends upon whether the applicant has violated any conditions of the lease or not and the decision has to be supported by reasons to be recorded by the Authority. It cannot be presumed that either the Competent Authority or the State Government will act with prejudice against any party. They are bound to decide a matter on its own merits. Therefore, we do not find force in the contention of the learned counsel.

Under the Orissa Forest Produce (Control of "Trade) Act 22 of 1981, the State Government issued a Notification dated December 9, 1982, directing that the Act shall come into force at once in the whole of the State of Orissa. Thereafter, the Government refused to accept royalty from the appellant in M/s. UTKAL C & J (P) LTD VS. STATE OF ORISSA (8) in respect of certain forest divisions on the ground that the notification had the effect of rescinding the existing contracts between the Government and the appellant. While considering the validity of the notification, the Supreme Court declared in A.I.R 1987 Sc 1954 that the notification was not applicable to the forest produce grown in Government forests and it will not, therefore, be open to the Government to treat the contract of the petitioners as rescinded. Subsequently, the Government of Orissa promulgated an Ordinance purporting to render the decision of the Supreme Court ineffective. The validity of the ordinance was challenged before the Supreme Court on the ground that the Ordinance encroached upon the judicial power. Repelling the contention, it was held that the notification dated December 9, 1982 had been validated under Section 5 of the Ordinance, notwithstanding any judgment, decree or order of any Court to the contrary. According to the ordinance, the Notification shall be deemed to have been issued in respect of sal seeds grown or found in Government forests. Therefore, the Supreme court held in the subsequent decision that the contracts for collection of sal seeds stood rescinded by the impugned notification, and the notification did not suffer from any infirmity as the defect pointed out by the Court was rectified.

The following observation made by the Supreme court in RADHAKRISHNA AGARWAL VS. STATE OF BIHAR (9) at page 1500 (paragraph 10) relating to the rights of a party to a contract, is apposite:

"In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract" (emphasis supplied)

Contractual rights are always subject to the statutory provisions which impinge upon either the contract as a whole or any right thereunder. The lessees of Azamabad Industrial Area constitute a distinct and separate class by themselves and the termination of all leases cannot be said to be either discriminatory or arbitrary.

Yet another contention which is vehemently urged by the learned counsel for the petitioners is that some of the lessees have established industries in the demised plots by investing huge sums of money and by virtue of the provisions of the impugned act, they are deprived of their fundamental right to carry on trade or business under Article 300-A of the Constitution of India. The provisions of the Act completely annihilate the fundamental right of the petitioners to carry on business and it is not a case of imposition of restriction on their right. In that context, it is submitted that even otherwise, the termination of leases and vesting of the demised plots in the State Government under Section 3 of the Act amounts to acquisition of property of the petitioners and as no provision is made for payment of compensation in the Act, the termination of leases is illegal and improper. This argument is countered by the learned Government Pleader stating that the petitioners do not have a fundamental right to carry on trade or business in a particular area or place. The petitioners are not prevented from carrying on any trade or business of their choice by the impugned legislation. Under the terms of a lease entered into by them with the State Government, they cannot claim a fundamental right to carry on trade or business. Right to property is no longer a fundamental right after the deletion of Article 31. Questions pertaining to payment of compensation and its adequacy are no longer justiciable and by virtue of Entry 42 in List III of the Seventh Schedule to, the Constitution of India, the petitioners cannot claim any right to compensation. Under the provisions of the Act, the leases have been terminated for valid reasons and vesting of demised plots in the State Government by reason of termination of leases, by operation of law cannot be characterized as acquisition of property and even otherwise provision is made under Section 11 for payment of amount by way of solatium, which is in the nature of compensation.

As to what constitutes reasonable restriction under Article 19(6) of the Constitution has been explained by the Supreme Court in a number of cases including ARUNACHALA NADAR VS. STATE OF MADRAS (10) and MD FARUK VS. STATE OF M.P (11). The question is whether a lessee can claim a fundamental right to carry on trade or business on the basis of the terms of a contract and whether the determination of contract for one reason or the other amounts to interference with that fundamental right. It is submitted by the learned counsel for the petitioners that in deciding the question relating to infringement of a fundamental right, the court has to consider the direct and inevitable consequence or effect of the impugned act on the fundamental right of the petitioners to carry on their trade or business. The right to property being the basis or foundation for the exercise of any fundamental right the validity of the action depriving a citizen of his property has to be decided on the touchstone of
Articles 14, 19 and 21 of the constitution of India. The learned counsel have drawn our attention to the decision of the Supreme Court in MANEKA GANDHI VS. UNION OF INDIA (12) wherein the learned Judges have held thus:

"The pith and substance theory was thus negatived in the clearest terms and the test applied was as to what is the direct and inevitable consequence or effect of the impugned State action on the fundamental right of the petitioner. It is possible that in a given case the pith and substance of the State action may deal with a particular fundamental right but its direct and inevitable effect may be on another fundamental right and in that case, the State action would have to meet the challenge of the latter fundamental right. The pith and substance doctrine looks only at the object and subject-matter of the State action but in testing the validity of the State action with reference to fundamental rights, what the court must consider is the direct and inevitable consequence of the State action. Otherwise, the protection of the fundamental rights would be subtly but surely eroded."

Relaying on the decision of the supreme court in M/s. Vij Resins Pvt. Ltd. VS State of J&K (13) wherein it was held that the right to ----------------------------

(12) A.I.R. 1978 SC 597
(13) A.I.R. 1989 SC 1629

exploit or utilize particular forest under Government orders or contracts amounts to 'poverty' and a citizen is entitled to protection under Article 19(1)(f) and Article 31(2) of the constitution, it is asserted by the learned counsel that the right to continue in possession of the demised plots and carry on trade or business amounts to right to property. That was a decision rendered under Articles 19(1)(f) and 31(2) of the Constitution of India. Apart from that, under the lease deeds executed in favour of the petitioners herein except the right to possession of the demised plots, no other right is conferred on the lessees. When the leases themselves are terminated, the right to possession automatically vanishes. After the cessation of the right to possession, one cannot claim any fundamental right referred to above in respect of such a property. If the contention of the petitioners is accepted, it leads to this result. Where the lessee has been carrying on trade or business in a demised plot, the lease can never be terminated even in a clear case of violation of the terms and conditions of the lease.

The decision of the Supreme Court in M.M. PATHAK VS. UNION OF INDIA (14) has no application to the facts of the present case. The question for consideration in that case was whether nullification of the settlement entered into between the workmen and the management of the Life Insurance Corporation of India for payment of annual cash bonus, under Section 18 of the Industrial Disputes Act, by the Life Insurance Corporation (Modification of Settlement) Act (72 of 1976) was valid, and whether it amounted to interference with the fundamental right to property and compulsory acquisition of property without payment of compensation. Another aspect which was dealt with in that case was

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(14) A.I.R. 1978 SC 803

Whether the effect of settlement, which was held to be valid by a Judgment of a High Court which became final, can be nullified and whether the provisions of the Act can take away the effect of the Judgment. The learned Judges held that there was nothing in the impugned Act, which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the writ of mandamus issued against the Life Insurance Corporation of India on the basis of the settlement of the Corporation. It was further held that the workmen had absolute right to receive annual cash bonus from the Corporation under the terms of the agreement and it was not competent to the Central Government to give any direction to the Corporation to refuse or withhold payment of the same. In view of Articles 19(1)(f) and Article 31, it was held that the provisions of the Act deprived the workmen of their right to property. Thus, it was a case of a settlement, the binding effect of which is governed by Section 18 of the Industrial Disputes Act. The right of the workmen to receive the annual cash bonus was considered with reference to the provisions of Article 19(1)(f) and Article 31. Apart from that, there was a specific direction by the Calcutta High Court to pay the bonus to the workmen in terms of the settlement. In those circumstances, it was held that the provisions of the impugned Act were unconstitutional.

A person can be deprived of the right to property under Article 300-A of the Constitution by law enacted by a competent legislature. In our view, the termination of lease by operation of law does not amount to taking away one's property. Assuming that the determination of a lease amounts to acquisition of property, provision is made under Section 11 of the Act for payment of amount by way of solatium and adequacy of compensation of the amount is no longer justiciable. Therefore, we do not find any substance in the contentions of the learned counsel for the petitioners.

In Writ Petition No.12228 of 1992, it is submitted by the learned counsel that the lease had been granted in respect of plot Nos.14/1 and 24/2 admeasuring Ac.2.366 in favour of late H.M. Yousuf and his sons, who are the petitioners herein, on 6-6-1352 Fasli and they have been delivered possession of the plots on that date. On September 1, 1965, a lease deed was executed between the respondent Government and late H.M. Yousuf and his sons. The period of lease if 99 years commencing from 6-6-1352 Fasli. It is stated that at the time of granting of lease on 6-6-1352 Fasli, a sum of OS Rs,4,056/- was collected by way of premium, which practically represented the sale price of the land at that time, apart from yearly rent of OS Rs.50.70. In the light of those facts, it is contended by the learned counsel for the petitioners that, the petitioners are the absolute owners of the land and the

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termination of lease under Section 3 is arbitrary and violative of Articles 19(1)(g), 21 and 300-A of the Constitution. It is further submitted that in respect of the very same land, orders have been passed by the State Government terminating the lease in G.O.Ms No.89 dated Feb. 18th, 1985. Questioning the validity of the same, the petitioners and their father filed O.S.No.209 of 1985 on the file of the Ii Additional Judge, City Civil Court, Hyderabad for a declaration that the termination of lease was illegal and improper and for permanent injunction restraining the State Government from interfering with their possession. The suit was decreed as prayed for on April 15, 1986. Aggrieved by that Judgment and Decree, the State Government preferred appeal in C.C.C.A No.118 of 1987 on the file of this Court and the same is still pending. In that context, it is submitted by the learned counsel for the petitioners that the impugned Act has been passed to defeat the decree of the Civil Court, and in particular, when the appeal is filed by the State Government is pending, the State Legislature is not competent to make a law reversing the decree of the civil court which amounts to exercise of judicial powers.

We are not inclined to accept any one of the contentions raised by the learned counsel. As we have already mentioned, the termination of lease by operation of law does not effect any one of the fundamental rights of the petitioners. Even if some amount had been collected by way of premium at the time of granting lease in 1352 Fasli in favour of the petitioners, the lease cannot be treated as an outright sale. The impugned Act contains specific provision for validation of the proceedings, incorporated in Section 23.

"23. Validation. Not withstanding anything in any judgment, decree or order of any court or other authority, -

(a) no suit or other proceeding shall be maintained or continued in any court or before any authority for the continuance of the lease, sublease or other arrangement or for the lessee, subleases or person in occupation staying on the demised plot and all such proceedings shall abate; and

(b) no court shall enforce any decree or order directing the continuance of the lease, sublease or other arrangement to be in occupation of the demised plot."

The suit referred to above was decreed by the civil court holding that entering into partnership and assigning land in favour of the partnership did not amount to sub-lease. That basis of the judgment had been taken away by the Explanation to Section 4 of the Act, which reads as follows:

"Explanation: For the purpose of this Act, where a lessee enters into a partnership agreement or other cognate arrangement for carrying on any activity whatsoever on the demised plot then notwithstanding anything in the Indian Partnership Act (Central Act 9 of 1932), it shall also be deemed to be a violation of the conditions of the lease."

It is a well settled principle of law that the legislature has the competence to make law removing the defect pointed out by a Court in its Judgment and by reason of such altered legal position, if the effect of the judgment is nullified, it cannot be held that the validating legislation is unconstitutional or invalid. Such exercise of legislative power does not amount to exercise of judicial power.

It is, however, vehemently urged by the learned counsel for the petitioners that by virtue of the Explanation to Section 4, which is a deeming provision, a new condition which is contrary to the existing provisions of the Indian Partnership Act, 1932, stands inserted in every lease deed, by reason of which a lease, which is otherwise not terminable, becomes terminable. Such a provision is arbitrary and unreasonable. We do not see force in the contention of the learned counsel. It is within the competence of the Legislature either to make law with retrospective effect or incorporate a deeming provision. Under Section 20, the provisions of the Act have overriding effect over any other law for the time being in force or any custom, usage or agreement, or decree or order of a court, tribunal or other authority. If a third party is inducted into possession of the demised plot under the guise of a partnership agreement thereby defeating the very purpose for which the lease has been granted in favour of the lessee, we are unable to persuade ourselves to hold that the Explanation is either arbitrary or unreasonable.

In Writ Petition No.12235 of 1994, it is contended by the learned counsel for the petitioner that about 100 employees have been working in the petitioner's industrial establishment and by reason of the termination of the lease, not only the lessee will be deprived of his livelihood but all the employees will be thrown out of employment and it amounts to violation of Article 21 of the Constitution. It is true that the right to life includes the right to livelihood and that "life in its extended horizon today includes all that gives meaning to a man's life including his tradition,

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culture and heritage...." As we have already pointed out, this is a case relating to determination of leases by operation of law. None of the provisions of the impugned Act can be characterized as interfering with the right of any person to eak out his livelihood. If a lessee has contravened the terms and conditions of a lease, such a lessee cannot seek any protection from the consequences that flow out of such contravention, by pleading that some persons employed by him will be deprived of their right to livelihood.

Writ Appeal Nos.741 and 800 of 1993:

Writ Appeal No.741 of 1993 arises out of Writ Petition No. 7696 of 1993 whereas Writ Appeal No.800 of 1993 arises out of Writ Petition No.9795 of 1993. Both these appeals pertain to the leasehold right in respect of the same land. In order to appreciate the questions that arise for consideration in both these appeals, it would be useful to refer to the relevant facts.

M/s.Mohammad Yousuf, Mohammad Basheer, Mohammad Mahmood and Mohammad Khursheed has been granted lease on 6-6-1352 Fasli corresponding to 10-3-1943 by the then Government in respect of plots bearing No.s14/1 and 24/2 admeasuring Ac.2.366 in Azamabad Industrial Area, on a rent of OS Rs.50-70 per annum. It is the case of lessees that they paid OS Rs.4066 as premium which represents the sale price at the time of granting of lease. It is stated that the lessees have been carrying on business on the demised plots under the name and style 'Yousuf & Co.' In the year 1957, the lessees inducted M/s.Navneetha Oil Industries (3rd respondent) into possession of a portion of the demised plot on a monthly rent basis. On November 7, 1960, the State Government informed the lessees that they shall terminate the existing sublease in respect of the demised plot and start Dyeing and Printing industry. On September 1, 1965, a lease deed was executed by the State Government in favour of the appellants in respect of the said plots for a period of 99 years from 6-6-1352 Fasli.

One of the covenants of the lease was as follows:

"..... and also will not without the previous consent in writing of the lessor use or permit the said premises or any part thereof to be used for any purpose whatsoever other than for use as dyeing and printing works and matters ancillary thereof."

Even after the execution of this lease deed, M/s. Navaneetha Oil Industries was allowed by the lessees to continue in possession of the demised land.

In the year 1965, the lessees inducted M/s. National Engineering Service (4th Respondent) into possession of a portion of the demised land. In the year 1974, M/s. Vaneskaran Industries (5th respondent) was also inducted into possession of some other portion of the demised land. In the year 1979, M/s. Sujatha Industries and M/s. Modern Aluminum Industries were inducted into possession of some portions of the land in the demised plot. But it is stated that, both of them had subsequently, vested the land. So far as the other three persons are concerned, it is the case of the Government that they were inducted into possession under the guise of entering into partnership by the lessees with them. On July 6, 1984, a partnership agreement was entered into by the appellants in W.A.No.741 of 1993 with M/s. A.P.Agro Industries, appellant in W.A.No.800 of 1993.

It is the case of M/s. A.P.Agro Industries that it invested about Rs.5 lakhs and paid advance for purchasing machinery worth Rs.10 Lakhs. On M/s. National Engineering Service and M/s. Vaneskaram Industries submitted a representation to the State Government to protect their interests by recognizing them as lessees in respect of the respective portions of land in their possession. When the State Government came to know that number of persons were inducted into possession illegally and unauthorized by the lessees, it issued show-cause notice dated December 17, 1984 why the lease shall not be terminated. Questioning the validity of the same, the lessees filed Writ Petition No.412 of 1985 on the file of this court. It was dismissed on February 19, 1985 directing this to pursue their remedy i civil court. The appellant in W.A.No.800 of 1993, M.s. A.P. Agro Industries filed OS No.1545 of 1984 on the file of the V additional Judge, City Civil Court, Hyderabad for a declaration that the said show-cause notice dated December 17, 1984 was illegal and arbitrary. In the suit, it filed I.A. No.772 of 1984 seeking to grant interim injunction restraining the State Government from interfering with its possession.

The said interlocutory application was disclosed. Against that order, CMA No.17 of 1985 on the file of the Chief Judge, City Civil Court, Hyderabad, was filed. That was also dismissed on February 26, 1985.

The State Government passed orders in G.O.Ms NO.89, Industries, Commerce & Power Department dated February 18, 1985 determining the lease with immediate effect. Challenging those orders, the lessees have filed OS NO.209

of 1985 on the file of the II Additional Judge City Civil Court, Hyderabad, for a declaration and perpetual injunction. That suit was decreed in the following terms, by the judgment dated April 15, 1986.

CO.MsNo.89 dated:18.2.85, Government of Andhra Pradesh Industries, Commerce and Power I.F. Cell department is declared as illegal, arbitrary and not binding on the plaintiffs. Defendants are restrained by means of permanent injunction from dispossessing or disturbing or in any way causing interference with the enjoyment of the property by the plaintiffs. Plaintiffs are restrained from using the said premises for any purpose other than the business of dyeing and printing and manufacturing or processing of other articles of things connected therewith and setting up of ancillary units connected with the aforesaid business until and subject to approval of the defendants....."

Against the said judgment and decree, the State Government preferred CCCA No.118 of 1986 of the file of this Court, which is pending.

M/s.AP Agro Industries, appellant in WA No.800 of 1993, filed CRP No.631 of 1985 on the file of this Court against the order dt:February 26, 1985, dismissing CMA No.17 of 1985 filed against the order in IA No.772 of 1984. The CRP was allowed on February 25, 1987 and consequently interim injunction restraining the Government from dispossessing them from the suit land was granted. It is stated that the State Government had preferred SLP No.9413 of 1987 seeking leave of the Supreme Court for preferring appeal against the order of the High Court and the same is still pending.

It is submitted that the lessees had filed OS No.3359 of 1984 on the file of the VIII Assistant Judge, City Civil Court, Hyderabad CS No.481 of 1986 on the file of the I Additional Judge, City Civil court Hyderabad and OS No.1991 of 1984 on the file of the IV Additional Judge City Civil Court Hyderabad against M/s.Navaneetha Oil Industries M/s.National Engineering Service and M/s.Vaneskaran Industries respectively for eviction and for recovery of rent. While so, it is stated that the Additional Director of Industries, Government of Andhra Pradesh, addressed a letter dated March 11, 1987 to the lessees informing them that without the approval of the State Government M/s.AP Agro Industries and their men, with whom the Government had no contract of any manner has started some activity on the demised plots on April 4, 1987 M/s.National Engineering Service submitted a representation to the State Government requesting it to recognize it as a direct lessee. On September 4, 1991 the lessees had submitted a representation to the State Government requesting it to transfer the lease in respect of the demised plots in favour of M/s.AP Agro Industries. It was further stated therein that M/s.Navneetha Oil Industries, M/s.National Engineering Service and M/s.Vanekaran Industries were in illegal occupation of the portions of the demised plots and therefore the lessees had initiated the proceedings for their eviction. On November 11, 1991 M/s.Navneetha Oil Industries and M/s. Vaneskaran Industries submitted a representation to the State Government requesting them to protect their interests by recognizing them as direct lessees. On April 3, 1992 the State Government issued notice to the lessees directing them to show cause why the lease in their favour shall not be terminated as they failed to start dyeing and printing industry. Questioning that show cause notice M/s.Yousuf & Company represented by the General Power of Attorney Holder Mr.AP Agarwal managing Director of AP Agro Industries filed WP NO.16294 of 1992 on the file of this Court. M/s.Yousuf & Company, represented by its GPA holder Ms.A.P Agarwal also filed contempt case No.537 of 1992 on the file of this court alleging that the judgment and decree in OS No.209 of 1985 on the file of the II Additional Judge City Civil Court, Hyderabad were violated by the State Government in issuing the show cause notice.

While so, the State Legislature enacting the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 which came into force with effect from July 11, 1992 Questioning the validity of this Act, the lessees filed WP No.12228 of 1992 on September 1 1992. In that writ Petition the lessees filed WPMP No.15407 of 1992 seeking suspension of enforcement of the provisions of the Act in regard to the demised land. Interim suspension was granted by the learned single judge on September 23, 1992.

On April 15, 1993 WP No.16294 of 1992 filed by M/s.Yousuf & Company represented by GPA holder Sri AP Agarwal and Contempt case NO.537 of 1992 were dismissed. Aggrieved by the order of dismissal M/s.Yousuf & Company represented by the GPA holder Mr.A.P Agarwal filed WA No.514 of 1993. It was also dismissed on May 11 1993 directing M/s.Yousuf & Co. to submit explanation to the show cause notice and also not to create third party interests on the demised plots. The lessees submitted their explanation on December 22, 1992. The Minister for Major Industries heard the lessees and Ms. Navneetha Oil Industries M/s.National Engineering Service and M/s.Vaneskaran Industries represented by their respective counsel on May 25, 1993. Thereafter, the State Government passed orders in CC Ms.No.223 dt:June 11 1993 and relevant portion of which reads as follows:

"For the above mentioned reason the Government hereby terminates the legal held rights granted to M/s.Yousuf & company for plot No.14/1 and 24/2 admeasuring No.WCS.No.2.366 situated at Azamabad Industrial Area Hyderabad with immediate effect and the said land is resumed to Government custody immediately without affecting the interests and functioning of the three SSI Units i.e. M/s.Navneeth Oil Industries, M/s.National Engineering Service and M/s.Veneskaran Industries.

The Government hereby further order that the said three SSI Units shall be treated as direct lessees to the Government and they are directed to pay the rents for the land to the extent under their occupation in plots No. 14/1 and 24/2 at Azamabad Industrial Area Hyderabad as per the rents fixed by the Government."

Questioning that order the lessees filed writ petition NO.7696 of 1993 and M/s.AP Agro Industries filed write petition No.9795 of 1993. Both those writ petitions were dismissed at the admission stage. Challenging those orders, these writ appeals have been preferred.

It is stated that the State Government had resumed possession of the plots from the lessees on June 12, 1993. The Lessees filed WA MP No.1352 of 1993 in WA No.741 of 1993 seeking suspension of operation of the order in GO MsNo.223 dt:June 11 1993. by an order dt:July 14, 1993, this Court appointed an Advocate commissioner to inspect the premises bearing No.14/1 and 24/2 excluding the land which is in possession of three SSI Units and submit a report regarding the structures constructed by M/s,Yousuf & company on the land in question the machinery installed by it and also whether any industrial activity is being carried out on the premises. The advocate commissioner submitted his report dt:July 19, 1993 stating as follows:

"(a) There are in all about 16 rooms of various sizes on the land in question. There are very old rooms. Zinc sheets or asbestos roof.

(b) I did not find any machinery in any of the rooms installed by the petitioner. No machinery is installed in the open space also.

(c) I did not find any record or even a paper in any of the rooms

(d) No industrial activity is being carried on by the petitioner in the premises"

Thereafter, this Court passed orders dt:July 22 1993 the relevant portion of which reads as follows:

In view of the facts and circumstances of the case, we direct that the status-quo obtaining as on today regarding possession shall be maintained pending disposal of the writ appeal."

It is stated that aggrieved by the said order, M/s.Yousuf & Company filed SLP No.12099 of 1993 in the ?Supreme Court and the same was dismissed. It is further stated that M/s.AP Agro Industries had filed contempt case No.421 of 1993 complaining that the order dt:February 25, 1987 in CRP No.631 of 1985 has been violated by the State Government by terminating the lease and interfering with their possession. So also, it is stated that M/s.Yousuf & company has filed contempt case No.575 of 1993 on the file of this court that the government has violated the Judgment and Decree dt: April 15, 1986 in OS NO.209 of 1985 on the file of the II Additional Judge City Civil Court Hyderabad and both those contempt cases are pending.

It is submitted by the learned counsel for the appellants that the impugned orders passed by the State Government in GO Ms.No.223 dt:June 11, 1993 terminating the lease under the terms of the agreement is illegal and improper as the agreement ceases to have any force after the Act came into force, in view of provisions of Section 3 and 20 of the Act. The expression person in occupation defined in Section 2(h) of the Act includes lessee, Subleases or any person who is in occupation of the demised plot under an arrangement with the erstwhile Nizam's Government or the erstwhile Government of Hyderabad or the Government of Andhra Pradesh or any other person who has been inducted into the demised plot. 'Demised plot' means any plot of land or part thereof in the Azamabad Industrial Area which has been leased out to any person for industrial use (vide section 2(d)). Section 3 provides that not withstanding anything contained in the Indian Contract Act, 1872 The transfer of Property Act 1882 or any other law for the time being in

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force and the terms and conditions of lease entered into in respect of the demised plots in the Azamabad Industrial Area all leases shall stand terminated and thereupon all subleases or any other arrangement whatever made by the person in occupation shall stand annulled and every such demised plot shall vest in the Government free from all encumbrances. The provisions of the Act have overriding effect by virtue of Section 20 over any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority. Therefore, on the appointed
date i.e. July 11, 1992 the lease entered into with the appellants in WA No.741 of 1993 by the State Government in respect of plot No.14/1 and 24/2 in Azamabad Industrial Area stands terminated and the demised plots have vested in the Government. In the circumstances, on the date when the impugned orders had been assed by the State Government terminating the lease, the lease was no longer in force. But a perusal of the impugned order discloses that the action for termination of the lease was initiated by issuing a show-cause notice dated December 3, 1992 for contravention of the terms and conditions of leas, and the lease was accordingly terminated. Elaborate reasons have been given for not taking action under the provisions of the Act. The relevant portion of the order reads as follows:

"The contention of the learned counsel that government is restrained from interfering is not correct in view of the judgment delivered on 15-4-93 by the Hon'ble High Court dismissing CC No.537/92 and WP No. 16294/92 and held that since admittedly the lease is one for carrying on dyeing and printing an d since the lease deed further shows that the government is entitled to enter the demised premises in the event of contravention of he conditions of the lease and since the same was also embodied in the judgment in OS No.209/85 on the file of the II Addl.Judge CCC Hyderabad. The Hon'ble Court in its judgment dt:11.5.93 also upheld the above judgment dt:15.4.93 in WA No.514/93 dismissing the two cases by the Hon'ble High Court. The lessees themselves obtained stay of operation of the Act 15/1992 by filling that action should only be taken under the provisions of the Act while continuing to contravene the terms and conditions enumerated in the lease deed dt:1.9.65 i.e. by not running the dyeing and printing industry in OS No.209/85. Therefore, the contention that action under the provisions of Act 15 of 1992 should be initiated is not correct, dehorse the provisions of Act 15, of 1992 as the government has grated lease with certain conditions and it is always open for the government to cancel the lease for violation of any of the conditions and to resume the land...."

The learned single judge of this court passed orders dt:Sept. 23, 1992 in WPMP No.15407 of 1992 in WP No.12228 of 1992 in the following terms:

> " It is ordered that all further proceedings only in respect of the petitioners is pursuance of the enforcement of the provisions of Act 15 of 1992 Azamabad Industrial Area (Termination and Regulation of leases) Act 1992 in regard to the petitioners' land at Azamabad Industrial Area, Hyderabad be and hereby are stayed pending further orders on this petition."

The petitioners therein are no other than the appellants in WA No.741 of 1993. The contention of the learned counsel for the appellants is tat the operation of the provisions of the Act has been not been stayed and only the enforcement of the provisions of the Act has been stayed, and therefore the lease in favour of the appellants stood terminated on the appointed date i.e. 11-7-1992 under section 3 of the act.

Obviously in view of the orders passed by this court in different cases referred to above and in particular the order dated Sept.23, 1992 in WPMP No.15407 of 1992 in WP No12228 of 1992, the state Government passed the impugned orders dated June 11, 1993 in GO Ms No.223 pointing out the violations of the terms and conditions of the lease committed by the appellants. If the case o the appellants is the lease stood terminated under Section 3 of the Act on the appointed date i.e 11-7-92, then as the provisions of that Section., the demised plot vested in the State Government free from all encumbrances, and all subleases also stood annulled. Thus, either by operation of Section 3 or by termination of lease under G.O.Ms.No.223 dated June 11, 1993, the lease in favour of the appellants stands terminated and the demised plot vested in the State Government. Therefore, it may not be necessary to go specifically into the question whether the lease stands terminated by operation of Section 3 of the Act or by the orders in GO Ws No.223 dt: June 11, 1993.

However, it is stressed by the learned counsel for the appellants that in case the lease is held to have been terminated by the orders of the State Government in GO Ms No.223 dt: June 11, 1993 those orders cannot be sustained in the eye of law as the basis for passing the said orders viz assignment of land under the partnership agreement amounts to sublease has been held to be invalid in the judgment and decree dt: April 15, 1986 in OS No.209 of 1985 on the file of the II Additional Judge City Civil Court Hyderabad. This contention cannot be accepted in view of the Explanation to Section 4 which provides that where a lessee enters into a

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partnership agreement in respect f the demised plot, then notwithstanding anything in the Indian Partnership Act, they shall also be deemed to be in violation f the conditions of the lease. Therefore, due to the subsequent alteration of the legal position, the judgment of he civil court in the suit may not operate as a bar.

It is urged by the learned counsel for the appellants that the State Government has come to the conclusion that the appellants have not started dyeing and printing industry solely on the basis of the letter dated May 6 1993 written by the Commissioner of Industries, Hyderabad and have consequently terminated the lease. This action of the State Government is violative of the principles of natural justice as the appellants have not been furnished a copy of the letter of the Commissioner of Industries before passing the impugned orders dt: June 11, 1993 terminating the lease and no opportunity has been given to appellants to explain whether dyeing and printing industry has been started or not. We have terminating that even the Advocate-Commissioner appointed by the court has stated in his report dt:July 19, 1993 submitted in WA MP No.1352 of 1993 in WA No.741 of 1993 that no Industrial activity is being carried out by the appellans in the demised plots and no machinery has been installed the reof. In the circumstances, the question of violation principles of natural justice may not be of much relevance.

However, it is submitted that the State Government has acted mala fide in terminating the lease of the appellants at the instance of M/s. Navneetha Oil Industries M/s. National Engineering Service and M/s.Vaneskaran Industries. On the basis of the material placed before us, we are unable to hold that the Government acted mala fide in this matter in terminating the lease. Unless specific allegations with reference to the relevant material are stated in the pleadings attributing mala fides it would not be proper for this court to inquire into the question of mala fides and render a decision. The order passed by the State Government, prima facie, reveals that the same has been passed taking into consideration all the relevant facts and circumstances, and not at the instance of any particular person. Therefore, this contention has to be rejected.

Serious objection is raised on behalf of the appellants against the method and manner of forcible eviction of the appellants from the demised plot on June 12 1993 and resumption of possession by the State Government. In this connection, our attention is drawn to the provisions of Section 5 and 6 of the Act to impress upon us that after the Act came into force, a lessee cannot be evicted except in accordance with the procedure prescribed thereunder:

Even if the termination if for the violation of the terms of the agreement, a lessor cannot evict the lessee except in accordance with law. But we are not inclined to go into the question relating to the possession in the exercise of jurisdiction under Article 226 of the Constitution of India.

On behalf of the appellants in Writ Appeal No.800 of 1993 it is urged by the learned counsel that if the impugned Act is held to be valid the State Government should have extended to the appellant M/s.AP Agro Industries the same benefit of recognizing sublease in its favour by M/s. yousuf & company as in the case of other sub-lessees, viz. M/s.Navneetha oil Industries M/s.National Engineering Service and M/s.Vaneskaran Industries. Otherwise the action of the State Government suffers from the vi ce of discrimination. It is further submitted that the impugned orders dated June 11, 1993 passed by the state Government in CO Ms. No.223 are illegal and improper as they were in violation of the orders dt:February 25, 1987 in CRP No.631 of 1985 on the file of this Court and the dispossession of M/s. AP Agro Industries from the demised plots is in direct contravention of the order of injunction granted by this Court in that CRP. As no opportunity was provided to M/s. AP Agro Industries before the impugned orders were passed by the State Government they are also violative of the principles of natural justice. It is submitted to the learned Government Pleader that the sublease in favour of the other three small scale units have been recognized by the State Government in its Orders dt: June 11, 1993 as they have established industries some time back and have been carrying on industrial activity on portions of the demised plot, whereas neither M/s.Yousuf & Company nor M/s.AP Agro Industries has started any industry, much less printing and dyeing industry, on the demised premises and therefore M/s.AP Agro Industries cannot be treated on par with M/s.Navneetha Oil Industries, M/s.national Engineering Services and M/s. Vaneskaran Industries. it is further stated that there is no privity of contract between the State Government and M/s.AP Agro Industries and therefore question of giving any opportunity to Ms.AP Agro Industries while terminating the lease, does not arise and M/s.AP Agro Industries was never in possession of the land in question.

However, without prejudice to their other submissions, it is finally urged by the learned counsel for the appellants in both the appeals that under the provisions of the Act, a lessee or a person in occupation is entitled t apply for a fresh lease in the prescribed manner, under Section 4, to the Competent Authority and a direction may be issued to the Competent Authority to consider the applications that may be submitted by the appellants. It is further urged by the appellants that while considering their applications, sublease in its favour may also be considered.

There is no dispute that the impugned order dt: June 11, 1993 in GO Ms.No.223 was passed by the State Government without reference to the provisions of the Act. On the appointed date i.e., 11-7-1992, all leases or other arrangements made or entered into in respect of all demised plots in the Azamabad Industrial Area shall stand terminated and every such demised plot shall vest in the Government. On the termination of the lease under the Act, the person in occupation has the right to apply for a fresh lease in the prescribed manner. It is the case of the appellants that they are in occupation of the land on the appointed date i.e., 11-7-1992. In view of the provisions of the Act, it appears to us that it would be proper and appropriate to permit the appellants to make application/applications for grant of fresh lease, under Section 4 of the Act. If applications are submitted to the Competent Authority within 30 days from the date of this judgment the competent Authority shall consider the same on merits and in accordance with the provisions of the Act and the Rules made thereunder and pass appropriate orders. We, However, reiterate that the Competent Authority shall exercise its jurisdiction independently by considering the matter afresh. So also, if any appeal is preferred against the orders that may be passed by the Competent Authority, under Section 9 of the Act, the State Government shall dispose of the appeal on merits and in accordance with considering the matter afresh, without reference to the earlier orders dt: June 11, 1993 passed in GO Ms No.223. Pending disposal of the application by the Competent Authority status-quo obtaining as on today regarding possession of the land shall be maintained.

For the foregoing reasons, the writ petitions are dismissed.

The Writ Appeals are disposed of in accordance with the direction referred to above. In the writ petitions and writ appeals, there shall be no order as to costs.

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