WS.4.1/354

8852, 8853, 8854 9169, 9305-9310/94

CC 589/95

WP. 73/95

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 1994

(Against Order dated 18.08.1994 passed by the High Court of Judicature at Hyderabad in W.P.Nos.12180, 12181 and 1228 of 1992 : 558 of 1993, 5111, 11387, 6882, 7074 and 12235 of 1984)

IN THE MATTER OF

M/s.Allied Industries and Ors. Petitioners

VERSUS

State of Andhra Pradesh and Ors. Respondents.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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IN THE MATTER OF

M/s.Allied Industries and Ors. .. Petitioners

VERSUS

State of Andhra Pradesh & Ors. Respondents

OFFICE REPORT ON LIMITATION

The above mentioned Special Leave Petition is within time.

SECTION OFFICER

NEW DELHI

DATED -9-1994

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

4. M/s.Meera Industries, represented by its partner Vinod K.Desai.

5. Andhra Chemical Company, represented by its proprietor Rajesh Patel.

6. M/s.National Trading Agencies, represented by its partner K.V.Kotala.

7. Ladha Iron Casting represented by its partner Prakash Ladha.

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

9. Dig Vijay industries, represented by its Partner Lakshminarayana Rakhee

10. L.B.Industries, represented by its Partner Raghuveeriah.

11. M/s.Rahmania Machinery Factory, represented by its Managing Director Syed Osman Ali.

12. Preyanshu Industries Limited, represented by its Managing Director Raghunath.

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

14. Venkateshwara Non-Ferrous Foundry represented by its partner A.C.Khatri.

.... PETITIONERS

the state. In some of those industrial estates plots have been sold and in some of them, they are leased out at low rents. In some industrial estates even sheds were built and then leased out. For example, in Sanathnagar, Kukatpalli, Uppal and Kattedan Industrial Areas which are within the Hyderabad Urban Agglomeration, lands were acquired, development into Industrial Estates and plots therein were sold at Rs.5.40 per sq.yd as late as in the year 1976. The present market value in the Kattedan Industrial Area is Rs.500/- per sq.yd.

10. Coming to Azamabad Industrial Area, in some cases the State Government has permitted transfer of lease from one person to another and a view of the ordes granting such permission for transfer are enclosed as material papers in the Special Leave Petition. After transfers were effected, fresh lease deeds were executed in some cases charging additional amounts from time to time from the leave lease period as reckoned from the or[illegible]inal period. A copy of permission granting transfer is annexed hereto and marked as **ANNEXURE "D"**.

11. The main condition in the lease deeds is that the land should not be for non-industrial purposes and leases cannot be transferred without the permission of the Govern[illegible]nt. While so, the Govenment itself permitted transfer in a number of cases and there was no complaint that any of the lessees used them for non-industrial purposs.

12. To the knowledge and belief of the petitioners, in two cases in the Azamabad Industrial Area, when partners were taken by the original lessees, notices were issued and leases were terminated on the grounds that there was transfer of lease without permission. In both the cases, suits were filed in the City Civil Court, Hyderabad and in O.S.NO.205 of 1985, the court decreed the suit enabling the lessees to continue without hindrance. The decree in the said case is material papers t[illegible] this writ petition. Apart from the above, there are a few cases where notices had been issued complaining of violation of some of the conditions [illegible]d the aggriev[illegible] parties therein approached

due to the Government for the plots leased out and that therefore it is considered expedient in public interest to terminate by law existing leases or other arrangements made or entered into in respect of the demised plots or portion thereof with a view to curb misuse and unauthorised use of Government land, other irregularities, violations and to bring to non-industrial use including unauthorised constructions etc. and to regulate the leases afresh as may be decided by the Government with such uniform terms and conditions including reduced lease periods and revised rates of premium and quit rent and adoption of standard format and lease deed with a view to ensuring maximum use of the existing infrastructure facilities and proper management of valuable urban property of the Government.

14. The bill which was introduced in the Assembly on 11-9-1989 was reserved by the Government of Andhra Pradesh on 16-11-1989 for consideration and assent of the President of India. The President of India accorded assent on 27-5-1992 and it was published in the A.P.Gazette Part-IV B Extraordinary on ?-6-1992. Act 15 of 1992 being the Azamabad Industrial Area (Termination of Regulation of Leases)Act. 1992 has thus come into force. The preamble of the said act is in pari-materia the preamble to the bill introduced on 11-9-1989.

15. It is submitted that the A.P.Act 15 of 1992 is void ab initio, unconstitutional beyond the legislative competence of the State and Striken with the vice of being ultra vires of Articles 14, 19, 21 and 300-A of the Constitution of India for the following among the other grounds and without prejudice to each of the several grounds set out hereunder :-

16. The High Court vide its order dated 17.8.1994 dismissed the Writ Petition. Being aggrived by the judgement and order of the High Court, the petitioner is filing the present special lease petition, inter-alia, on the following grounds :-

violations even without the intervention of the minimum requirement of alternative and speedy speci.' judicial processes violates articles 14, 19, 21 and 300-A of the Constitution o. India. The impugned Act is therefore arbitrary nd suffers the vice of capricious classification. It also suffers from the vice of procedural, structural and substantive irrationality.

(B) The enacting part ofthe statusis not confined to achieve the said object and purposes of the Act, in as much as.3 of the Act provides for arbitrary termination of all leases and other arrangements, irrespectively of the fact whether the Lessees are guilty of violating the terms and the conditions of the lease by restorting to the above said acts of omission and commission referred to in the preamble of the act. Sec.3 in so far as it seeks to automatically terminate leases notwithstanding anything contained in Indian Contract Act and the Transfer of Property Act and vesting of the leased property in the Government is violative of Act.14 etc. of the constitution onthe ground that such provisions are unreasonable, unjust, unfair and arbitrary to the core could be urged as a ground for assuming the validity of the impugned statute. The High Court appears to be palpably in error in holding that thisis a case relatingto the determination of leases by operation of law and therefore, none of the provisions of the impugned act can be characterised as interferring with the right of any person to eke outhis livelihood.

(C) The impugned legislation amounts to legislative determination of alleged violations of the terms of leases and therefore amounts to legislative unurpation of essentially judicia' branch processes and therefore violates the Rule of Law andhence, Article.14 of the Constitution of Indi .

(D) The impugned legilsation suffers from the vice of irrational classification and hostile discrimination. Even as per the professed aims of the legilsation as set out in the preamble, not all the lessees violated

(J) Section.2(c) of the Impugned Act defines the competent authority to be an authority officer or person authorised by the Government, by notification, to p form the functi ns of the competent authority under the Act Section.4 of the Act provides for an application being made by a "Person in Occupation" to the competent authority, for a fresh lease. Under Sec.4(2) the competent authority is empowered to determine the violation or otherwise of the conditions of lease for the purpose of consideration of grant of a fresh lease. Apart from the absence of any procedural safe guards in the area of violation adjudication, the impugned act deprives the person in occupation of a right to independent judicial determination of the contractual terms which was available prior to the impugned Act. Now, such a safe guard is substituted by a creature subordinate of one of the contracting parties acting as an arbiter. The shifting of the adjudicatory process from an independent judicial forum to an administrative agency subject to the chilling administrative control of the party to the dispute, is subversive of the Rule of Law and renders the object of the impugned legislation arbitrary and unconstitutional.

(K) The preamble of the impugned Act, professes that the plots were leased out at incredibly low rents for long period upto 99 years and that certain lease deeds did not contain necessary provisions for revision of rate of premium and quit rent, resulting in substantial recurring loss to the Government. Now, this Statement is demonstrably irrational and founded on an ex-facie unsustainable basis. In a situation where the plots were advertised for out-right sale for prices ranging from Rs.1500/- to Rs.3000/- per acre, the Nizam's Government with a view to ensuring some regulatory cont ol over the Industrial Area and to ensure the development of the areafor exclusive industrial purposes gave out the plots on long 99 year leases at Rs.2000/- per acre.as premium. This premium for a plot in the outskirts of Hyderabad was beyond the marked price and on a satisfaction that the full market price is realised by way of premium, the quit rent was nominally fixed at Rs.25/- to Rs.50/- per acre this interaction of the facts from the foundation for the rationality of a fixed premium and quit rent. This fact the impugned act glosses over. In the factual matrix of the Azamabad Industrial

In the context of an automatic termination of the leases under sec.3 of the act coupled with the retroactive artificial definition of violation and the whole process of adjudication of violations entrusted to a nominee of the state (which is a contracting party) section.5 is a classic piece of expropriatory legislation enacted for unconstitutional purposes.

(N) Sec.6 of the impugned act contains coercive procedures which taken in conjunction with the arbitrary contents of sec.3 to 5 of the Act would also be Ipso Facto arbitrary and unconstitutional.

(O) Sec.7 of the impugned act provides that any person continuing in occupation beyond the period specified in the order of eviction issued under sub-section.1 of section.6 shall be punishable with imprisonment or with fine or with both as provided therein. Sec.3 to 7 read together show that a determination of violations and the conseqential coercive steps including the penal sanctions are to be orchestrated under the aegis of the competent authority who is a nominee of the State Government which is a party to the Contract. The legislation is therefore wholly arbitrary and subverts the right to property, life and liberty without a procedure established under law and in circumstances whereof the law itself is substantively arbitrary and the classification of the law is discriminatory, illusory and irrational.

(P) Sec.8 of the impugned act further provides that persons failing to deliver possession of the demised plot within the time specified under sec.6 shall be liable for payment of damages or meshe profits in addition to any penalty [illegible] r this Act, for each day of such unauthorised occupation. All these penalties and prescription of damages under the act is founded on a party's unwillingness to abide by the terms of the contract duly and lawfully entered into and this irrational and illegal intent is legitimised by the device of alegislation which a classic piece of class legilsation. The impugned act is in the nature of a bill of Attainder.

erstwhile Nizam's Government is governed by the terms of lease and is a right to property Both within the meaning of Articles 19(1)(g) and Articles 300A of the Constitution of India. In view of the 44th Amendment Act of the Constitution, not only is Articles 31 deleted but all the constitutional limitations on the enjoyment of rights under Article 31 also stand deleted. Therefore, the validity of the Legislative Act depriving a person of his property would have to answer the test not only of Art 19(1)(g) but also Article 14. In the circumstances no property can be acquired without payment of a just compensation. All of the leasehold peoperties which are the subject matter of the impugned legislation, bear existing industries together with all the necessary infrastructure such as the buildings, plant and machinery. The unilateral determination of the leases brought about by the impugned legislation would extinguish these integral componnents of the petitioners fundamental rights and under the terms of the impugned legislation, the entirety of the property would stand acquired by the State. The compensation payable for such acquisition will have to meet the requirement of rationality and just compensation rationality related to the deprivation brought about. This is the hostile result of the compoulative applicable of Article 300A read with Articles 14 and 19 of the Constitution of India.

5) The provisions of Sec. 14 of the impugned Act also impose unreasonable restrictions on the petitioner's right to the enjoyment of the plots demised under the lease and in so far as they are contrary with the terms of lease validity entered into are striken with the vice of arbitrariness.

on which [illegible] function, number of employees would be rendered unemployed and irreversible consequences would follow leading to chaotic conditions.

Y) The judgement of the High Court did not refer to the factual basis pleaded by the petitioners elaborately in the affidavit petition filed by the Petitioners. The judgement starts with the fact as pleaded by the respondent.

Z) The High Court did not consider the salient features of the matter. It has been pleaded speficically that the then Nizam of Hyderabad in 1937 had offered the land at outright sale at price varying between RS.1,500/- and Rs.3,000/- per acre. Since the response was not encouraging, the alterantive proposal of lease with the rental proposition of 51-6% of the capital cost was also made. In as much as the petitioners paid entire cost of the land, for all practical purposesthe plots were sold to them. However, for regulating control and for promotion of industrial development, leases, instead of sale deeds were executed. In as much as the entire cost of the land has been paid to the Govt. of Nizam or its successors, the present state Government, the petitioners acquired a valid right in respect of the said lands. This was not even adverted to the High Court.

ZA) The question of law raised by the petitioners were not adequately met and answered by the High Court. Xome of the contentions though noted by the High Court were not dealt with.

ZB) The High Court failed to see that a reading of preamble to the Act reveals that the intention underlying it was not to set right any defects in the lease or to equip the Government to deal with the earning leases. On the other hand the Act terminated the lease, with one storke, irrespective of the fact whether the leasses have violated the terms of the leases.

The very same person had moved this bill by stating that Government was getting uneconomical Rent. Though no intention can be attributed to the legislature, the alone do throw light on the fact that the entire action was arbitrary and discriminatory and malafide.

2F) The High Court erred in treating the authority created under the Act who is none other than than a State Government employee who is not vested judicial powers, as equivalent to court. The question as to whether there was any violation by any particular leases has to be decided only with reference to the provisions contained in the lease deed and on the basis, of oral and documentary evidence. This can be done only by a preperly consitituted Civil Court and the departmental employee cannot substitute civil court. This resulted the procedure arbitraryness.

2G) Having accepted that the rights under the leases constituted "property" as held in the decisions of the Supreme Court in AIR 1978 Supreme Court 587 and AIR, 1 9 Supreme Court 1629, the High Court did not meet the contention at all.

2H) The observation of the High Court "when the leases themselves are terminated the right to possession automatically vanishes. After the cessatior of the right to possession, one can not claim any fundamental right referred to above in respect of such a property", is nothing but begging the question and it is clear that the High Court did not consider t! ratio underlying the decisions of the Supreme Court.

2I) The observation of the High Court that the decision of the Supr me Court in AIR 1978 Supreme Court 803 is not applicable to the present case is unsustainable. The Supreme Court had categorically decided in that case that rights acquired under the settlement cannot be done away by legislative fets. The decisions squarely applies to the present case.

ZN) The Government itself is coming forward with various scheme to reconstruct sick industries by invest by huge amounts under BIFR declaring tax holidays and providing various incentives. Here is a case of breaking the backbone of industries which are running on healthy lines with their own funds and providing employment to several thousand of persons. The survival of industries and sources of livelihood of their employees is kept in the hands of official of the department who in his dicretion may or may not grant fresh lease. With the increased rate of premium and rent, even if a person is granted fresh lease, it is just impossible to accept this condition and Petitioners will have no other alternative but to close down the industry and forgo the rights which have accrued to them for the last so many decades. As a result of the termination of the leases oernight, the lessees are required to vacate the premises by removing their plant and machinery which they have installed by their life long earnings. Even in the most dictatorial countries such steps are not taken.

ZO) The legislation on the face of it is palpable, unreasonable and discriminatory and the selection of lessees made by it cannot be justified on any conceivable or rational ground.

ZP) The High Court was also in error in holding that the termination of lease by operation of law does not affect any one of the fundamental rights of the petetioners.

ZQ) The High Court has gravely erred in holding that termination of lease by operation of law does not affect any one of the fundamental rights of the petitioners. Whether termination of leases and that too without specifying any valid grounds for effecting unilateral termination of the leases amounts to interference with the fundamental rights to property and compulsory acquisition of property without payment

8853/ mr

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION [CIVIL] NO. OF 1994

IN THE MATTER OF SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA AGAINST THE JUDGEMENT AND ORDER DATED 18.08.1994 IN WRIT PETITION NOS.12180 OF 1992 PASSED BY THE HIGH COURT OF JUDICATURE AT HYDERABAD

BETWEEN

1 M/S ALLIED INDUSTRIES, REPRESENTED BY ITS MANAGING PARTNER

2 M/S DAYARAM SURAJMAL LAHOTI OIL MILLS AND REFINERY, REPRESENTED BY ITS PARTNER

3 M/S GUPTA STEEL AND WINE INDUSTRIES REPRESENTED BY ITS PROPRIETOR

4 M/S MEERA INDUSTRIES, VINOD K DESAI

5 GURUDEV ENGINEERING COMPANY, REPRESENTED BY ITS PARTNER

6 CENTRAL INDIA ENGINEERING COMPANY, REPRESENTED BY ITS PARTNER

7 SOHAM ENGINEERING CORPORATION, REPRESENTED BY ITS PARTNER

8 ANDHRA CHEMICAL COMPANY, REPRESENTED BY ITS PROPRIETOR

9 NATIONAL TRADING AGENCIES REPRESENTED BY ITS PARTNER

10 LADHA IRON CASTING, REPRESENTED BY ITS PARTNER

3 DUNDOO OIL INDUSTRIES, REPRESENTED BY ITS PARTNER RAMAVATAR AGARWAL

[Respondents No.2 and 3 are proforma Respondents who were Petitioners before the High Court]

...RESPONDENTS

TO

THE HONOURABLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH :-

1 The above Special Leave Petitions are filed against the Judgement and order dated 18.08.1994 in Writ Petition Nos.12180 of 1992 and 5111 of 1994 passed by the High Court of Judicature at Hyderabad whereby the High Court dismissed the Writ Petitions filed by the petitioners.

2 The above Special Leave Petitions arise in the following circumstances :-

i] During the year 1935-36, the then Nizam's Government through its Department of Commerce and Industry with the sole aim of promoting industrial development in the Nizam State and with a view to promote employment, took up the scheme of offering for sale the then marshy and un-inhabited land on the outskirts of Hyderabad between Hyderabad and

(17)

already in possession since 1939-40, on a 99 year lease. According to the Petitioners a plain reading and true and fair construction of the lease deeds makes it manifest that the leases so called were in substance sale deeds subject to certain regulatory controls. All the industries were bonafide buildings with 99 years of lease which was as good as the sale of the land, as it was never in contemplation that the plots of the land given in possession to industrialists for industrial development would at any time be taken over or expropriated by the Government at their pleasure. Having regard to the fact that the premium for the lease was fixed at Rs.2,000/- which was the market value of the land, a quit rent of Rs.50/- per acre only was fixed. In the totality of circumstances stated above, it was not considered either rational or fair that the lease deeds contain a stipulation for increase of either the premium or the quit rent. A special trust fund known as the Industrial Trust Fund was also created by the erstwhile Hyderabad State for industrial development of the state. Most of the present industrialists of the said plots since 1940s and later had, struggled very hard in the formative stages and are pioneers in the industrial development of the State. During all these five decades, they struggled very hard and expended huge amounts of money on setting up of buildings, sheds and towards capital expenditure for purchase of plants and machinery, maintenance of the same and they also contributed enarmously to

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industrial estates plots have been sold and in some of them, they are leased out at low rents. In some industrial estates even sheds were built and then leased out. For example, in Sanathnagar Kukatpalli, Uppal and Kattedan Industrial Areas which are within the Hyderabad Urban Agglomeration, lands were acquired, developed into industrial estates and plots therein were sold at Rs.5.40 per Sq. Yd. as late as in the year 1976. The present market value in the Kattedan Industrial Area Rs.500/- per sq. yd.

vi] Coming to Azamabad Industrial Area, in some cases the State Government has permitted transfer of lease from one person to another and a view of the orders granting such permission for transfer are enclosed as material papers in this Writ Petition. After transfers were effected, fresh lease deeds were executed in some cases charging additional amounts from time to time from the lease period as reckoned from the original period.

vii] A perusal of the Lease Deeds and other documents mentioned above will show that the Petitioners had not violated any of the terms of the Lease Deed and were in legal occupation of the lands. To cite a few instances, in the case of Gurudev Engineering Company [Petitioner No.5], a Family Partnership Firm constituted by Sri Vinod Desai, Mrs Praveena Desai, Shri Kanti Lal Desai and Smt. Amita Desai, all residing at the same address, the Government of

Industries. In the same year the Government permitted Shri Jayantibai Patel to transfer the lease hold rights in respect of a portion of Plot No.23/6 in favour of one Shri Anurudh Prasad Agarwal of M/s Agarwal Industries.

ix] Similarly in the case of National Trading Agencies [Petitioner No.9], which was the original lessee by virtue of Lease Deed dated 06.02.1945, the Government had entered into a fresh lease with its Proprietor in the year 1955 at revised rates. In the year 1978 the Government gave permission to run another unit Ms Sonal Varnish Company in the premises under a separate partnership.

x] In the case of M/s Hind Metal Industries [Petitioner No.18], as also the case of Shri Venkateswara Non-Ferrous Foundry [Petitioner No.8], all transations including transfer of lease hold rights in whole or in part were made with the permission of the Government.

xi] The main condition in the lease deeds was that the land should not be for non-industrial purposes and leases could not be transferred without the permission of the Government. While so, as stated herein above, the Government itself permitted transfer in a number of cases and there was no complaint that any of the Petitioners used them for non-industrial purposes.

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consideration and assent of the President of India. The President of India accorded assent on 27-5-1992 and it was published in the A.P. Gazzette Part-IVB Extraordinary on 3-6-1992. Act 15 of 1992 being the Azamabad Industrial Area(Termination and Regulation of Leases) Act,1992.

xiv] Section 3 of the said Act provides for termination on the appointed date of all leases of the demised plots in the Azamabad Industrial Area, notwithstanding the Indian Contract Act,1872, The Transfer of Property Act,1882 and any other law in force, and upon such termination the demised plots were to vest in the Government free from all encumbrances. Section 4 provides for application for fresh lease and the power of the Competent Authority to grant a fresh lease on such terms and conditions as may be prescribed. Section 5 provides for eviction of the person in occupation of the demised plot with Section 6 providing for the manner in which such eviction had to be carried out. Section 7 provides for punishment for disobedience of the eviction order Section 8 provides for liability to damages. Section 9 provides for appeal to the Government against the order of the Competent Authority Section 10 provides for a suo-motu revision by the Government. Section 11 provides for the solatium payable to the lessees depending on the unexpired portion of the lease. Sections 14 to 16 of the Act provide for penalties, the power to stop erection

(10)

functioning pursuant to the permission from the Industries Department and in so far as the second firm mentioned herein above the same is non-existent.

4. The High Court, after referring to the contentions of the parties, held that a lease can be determined either by the act of parties to the lease or by operation of law and that in the present cases, by operation of law made by a competent legislature, the leases stand terminated. In coming to this conclusion, the High Court referred to the preamble of the Act and distinguished the decisions cited by the petitioners before it. The High Court also held that the provisions of Sections 3,4 and 5 are not arbitrary and violative of Article 14. While coming to this conclusion, the High court held that 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. The High Court also found that the leases had been validly terminated by operation of law and such termination could not be characterised as an acquisition and that in any event Section 11 provides for payment of solatium which is in the nature of compensation. The High Court also rejected the other contentions raised by the petitioners with specific reference to the provisions of the Act as being violative of

(10)

III The High Court erred in holding that the Act is liable to be sustained even as a piece of compulsory acquisition for the reason that Section 11 of the Act provides for payment of solatium. In so hodling the High Court ignored the rights of the Petitioners under Article 300 A of the Constitution.

IV The High Court overlooked that the very concept of legislation providing for payment of solatium to all lessees or acquisition on the termination of the leases clearly manifests that in truth and substance the Act is one of compulsory acquisition as in the event of resumption for alleged violation of the terms of lease no question of paying any solatium to lessees would arise as it will be a case of forfeiture.

V The High Court overlooked that the Act is a piece of legislation for acquisition operates in the same field in which the Land Acquisition Act operates, under which the rights of lessees under the Government for 99 years could be acquired and that as the Land Acquisition Act and the present enactment operate in the same field there is provision for payment of compensation in the form of solatium being illusory and too far less than what it will be if acquired under the Land Acquisition Act and the Act is clearly, arbitrary and discriminatory and liable to be struck down under Article 14 of the Constitution.

a less drastic step than forfeiture effected by the Act which is a more severe and drastic step is, therefore, violative of Article 19 [1] [g] and not protected by Article 19 [c] of the Constitution.

IX The High Court overlooked that the Transfer of Property Act itself contains provisions for relief against forfeiture and inter alia provides under Section 114-A of the Act that a lease of immoveable property has to be determined by forfeiture for a breach of an express condition which provides that on breach thereof, the lessor may re-enter, the lessor can not so re-enter by filing a suit in ejectment unless the lessor has served on the lessee a notice in writing specifying the particular breach complained of and if the breach is capable of the remedy the lessor has to give an opportunity to the lessee to remedy the breach, that this is an example of a statutory provision of less drastic nature which would operate in a just, fair and reasonable manner and that the failure not to resort to such statutory provision and to proceed to forfeit the leasses by legislation and that too without an opportunity to meet the case of alleged breach of condition of the lease and without adjudication after complying with natural justice, is therefore, arbitrary unreasonable, unjust and violative of Article 14 of the Constitution.

X The High Court misdirected itself as to the

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decision or judgment, giving the legislation retrospective effect and then providing for validation. Merely stating that the Act was to override any decree or order is ,it is respectfully submitted, to rendering the judicial process nugatory.

XIII The High Court failed to appreciate that all the facts as set out in the preamble which is the ostensible purpose of the Act are facts which are adjudicatory facts in nature in a lis between the parties and the legislature could not usurp the powers of the courts which alone are competent to adjudicate disputed questions of fact and arrive at findings after providing a reasonable opportunity.

XIV The High Court failed to appreciate that individual leases have different terms and conditions. The lessor in certain cases has on individual facts permitted transfer, change in partnership etc..To treat different cases with different recitals in different lease deeds as one category and purporting to terminate the same by legislation is to effectively prevent individual lessees from highlighting differences and seeking relief in an appropriate court of law.

XV The High Court failed to appreciate that though the Act provides for making a fresh application before the Competent Authority yet the Act envisages such a procedure to be adopted as would have been done by a civil court.

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XIX The High Court erred in holding that even if it was taken to be an acquisition the provision for solatium under the Act is to be treated as Compensation. It is respectfully submitted that the findings of the High Court are contradictory and the High Court failed to give a specific finding in this regard.

XX The High Court ought to have held that the provision contained in Explanation to Sec.4 is violative of Art.14 of the Constitution of India as it purports to make an action taken which was when legal rendered retrospectively illegal so as to justify the act of acquisition. The effect of the explanation is to give a go by to partnership agreements which had been earlier recognised by the Government and where the Government had passed appropriate orders.

XXI It is respectfully submitted that the explanation to section 4 is arbitrary not only in that it seeks to override the provisions of the Indian Partnership Act,1932 but also because it seeks to club all partnerships formed after the execution of different leases overlooking that in several cases the partnerships were themselves formed for purposes of carrying out the objects of the lease.

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the terms and conditions of the leases already entered into and to compel them to enter into fresh leases on fresh conditions would result in huge losses to them. It would seriously impair their right to livelihood guaranteed under Article 21 of the Constitution. Further, the employees of the petitioners would also be rendered unemployed.

XXVI The High Court failed to consider in its proper perspective the various decisions of this Hon'ble Court cited before it. It is submitted that the High Court has merely extracted portions of the said decisions and has failed to apply the ratio of the same or in the alternative has erred in distinguishin the same. The petitioner craves leave to refer and rely on the cases cited before the High Court in support of the above submission.

XXVII The High Court failed to appreciate that 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 enterprneurs, the provisions of the impugned Act are violative of Articles 14,19(1)(g),21 and 300-A of the Constitution.

XXVIII The High Court ought to have struck down the Act as being unjust, unfair, unreasoanble and arbitrary to the core.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION [CIVIL] NO. OF 1994

BETWEEN

M/S ALLIED INDUSTRIES
REPRESENTED BY PARTNER
G L SANGHI

...PETITIONERS

VERSUS

STATE OF ANDHRA PRADESH AND OTHERS ...RESPONDENTS

AFFIDAVIT

I, G L Sanghi S/o Late Lalita Prasad Sanghi, Hindu, aged 62, Resident of Hyderabad, do hereby solemnly and sincerely affirm and state as follows:-

1 I state that I am the Petitioner in the above Special Leave Petition and I am fully conversant with the facts and circumstances of the case.

2 I state that I have read and understood the contents of the Special Leave Petition, application for stay and I state that the contents stated therein are true to my knowledge and I believe the same to be true.

3 I state that I have not filed any other Special Leave Petition against the judgment and order dated 18.08.1994, in Writ Petition No.12180 of 1992 passed by the High Court of Andhra Pradesh at Hyderabad claiming similar relief.