

J303 - 10/11
Cvt 73/95

Adm. Santhi C.

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 1994

IN THE MATTER OF

Petition under Article 136 of the Constitution of India against the judgement and order of the High Court of judicature, at Andhra Pradesh at Hyderabad in Civil Misc. Writ Nos. 5111/94, 558/93, 11387/94, 12181/92, 6882/94 and 7074/94.)

AND

IN THE MATTER OF

AZAMABAD INDUSTRIAL AREA (TERMINATION AND REGULATION OF LEASES) ACT, 1992.

AND

IN THE MATTER OF

ARTICLES 14, 19, 21 AND 300-A OF THE CONSTITUTION OF INDIA.

AND

IN THE MATTER OF

1. Sri Gajanand Oil Mills, represented by
Proprietor Kanahayalal Jhavar, Plot No.
19/4, Industrial Area, Azamabad, Hyderabad.
[Petitioner in Writ Petition No. 5111/1994]
2. The Hyderabad Construction Co., Limited,
represented by Mr. Ramesh Malani,
Azamabad Industrial Area, Hyderabad.
[Petitioner in Writ Petition No. 558/1993]

3. M/s. Ram Chemicals,

Plot No. 15/4, Industrial Area, Azamabad,

Hyderabad, represented by its Partner

Mr. Kaluram Gupta.

[Petitioner in Writ Petition No.11387/1994]

4. M/s. Muzhar & Co., Azamabad,

Hyderabad, represented by its partner

Sri Azizulla, Hyderabad.

[Petitioner in Writ Petition No.12181/1992]

5. M/s. J.P. & Co., represented by its

Proprietor Mr. Prakash Joshi,

Plot No. 17/1, Industrial Area, Azamabad,

Hyderabad.

[Petitioner in Writ Petition No.6882/1994]

6. 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 in Writ Petition No.7074/1994]

.....PETITION

V E R S U S

1. The State of Andhra Pradesh,

represented by its Chief Secretary to

the Government, General Administration

Department, Secretariat, Hyderabad.

The chronology of facts in so far as they are relevant and material for the purposes of the case are set out as under:

3. The Nizam Government acquired about 136 a cres and 4 guntas of land consisting of Government lands, Sarfi-khas lands, Paigah lands and lands of other parties. The area was acquired with the funds of the Industrial Trust Fund, Hyderabad and the ownership of the area was transferred to Industrial Trust Fund as avered by the respondents.

4. In the year 1935-36, the then Nizam's Government through its Department of Commerce and Industry with the sole aim of the 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 uninhabited land on the outskirts of Hyderabad between Hyderabad and Secunderabad which is now known as Azamabad Industrial Area, Musheerabad, Hyderabad. An extent of Acre 130.00 divided into several plots of Acre 5.00 and Acre 1.20 were offered to the intending industrialists. The development of this area was being energetically pursued by Nizam's Government promising every infrastructural facilities for those interested in starting industries in the state. A copy of one such advertisement is filed hereto and marked as Annexure-A.

5. In pursuance of the above offer for sale of the plots admeasuring Acre 1.20 to Acre 5.00 at varying price between Rs. 1,500/- to Rs. 3,000/- per acre depending upon the location of the plots whether in the interior or abutting

yd. for Rs. 10,000/- to Dr. D.S. Reddi, a former Vice-Chancellor of Osmania University in the year 1960. Later Smt. Venkatalakshamma, W/o Dr. Reddy sold 27,000 sq. yds. out of the above extent of land for Rs. 50,000/- in the year 1968. The same land was plotted out and sold in the year 1978 at the rate of Rs. 16/- per sq. yd. The present market value even according to governmental valuation for the said area is more than Rs. 1,000/- per Sq. Yd.. compared to the Azamabad Area, the Himayatnagar and Malakpet Areas are more centrally situated and the transaction in the Malakpet Area plots were offered for sale. Another transaction recently undertaken very close to the Azamabad Industrial Estate and that too on the Musheerabad Main Road is that about 2000 Sq. Yd. of land was allotted to the former Chief Minister of Andhra Pradesh in the year 1981. Incidentally Sri Rama Rao who was the holder of the relevant portfolio piloted the Bill which became the impugned Act. Originally, the land was offered at the rate of Rs. 45/- per Sq. Yd. and the same was reduced in year 1983 to Rs. 15/- per Sq. Yd.. The present market rate as per the Government valuation is over Rs. 2000/- per Sq. Yd.. At present, the area is converted into a commercial area and shops / Mulgis have come up in the said area opening into the main road.

8. Most of the plots were handed over by 1952 and a few of the plots were handed over from time to time upto 1952 to various entrepreneurs. Actual lease deeds were however executed from the year 1941 to 1965. Though in some cases, lease deeds were executed, nearly 25 years after delivery of possession of the documents mentioned, the date of delivery of possession and as the period commenced from the date of

14. While so, Bill No. 23/89 was introduced in the A.P. Legislative Assembly on 11-9-1989. The bill sought to provide for termination and regulation of leases in respect of plots in Azamabad Industrial Area, Hyderabad and for connected and incidental matters. The bill which was introduced in the Assembly on 11-9-1989 was reserved by the Government of Andhra Pradesh on 6-11-1989 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-IVB Extraordinary on 3-6-1992. Act 15 of 1992 being the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992.

15. 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-moto revision by the Government. Section 11 provides for the solatium payable to the lessees

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 Articles 14, 19(1)(g), 21 and 300A and dismissed the writ petitions.

18. Being aggrieved by the judgement and order dated 18-8-1994 in Writ Petition Nos. 5111/94, 558/93, 11387/94, 12181/92, 6882/94 and 7074/94. passed by the High Court of Judicature at Hyderabad, the Petitioners crave leave to file the present Special Leave Petition on the following among other grounds taken without prejudice to one another:-

GROUND S

A) Section 3 of the Act begins with a non-obstante provisions immunising reference to the Indian Contract Act 1872 and the Transfer of Property Act, 1882 or any other law for the time being in force and the terms and conditions of any lease entered into or any other arrangement made with any person in respect of any demised plot either by erstwhile Nizam Government or the Government of Hyderabad or by the Government of A.P. prior to the

profession subject only to reasonable restrictions in the interests of general public. The deprivation of the right to judicial process for determination of the alleged violations even without the intervention of the minimum requirement of alternative and speedy special judicial processes violates Articles 14, 19, 21 and 300-A of the Constitution of India. The impugned Act is therefore arbitrary and suffers the vice of capricious classification. It also suffers from the vice of procedural, structural and substantive irrationality.

(B) The enacting part of the status is 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, irrespective of the fact whether the Lessees are guilty of violating the terms and the conditions of the lease by restoring 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 Art. 14 etc. of the constitution, on the 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 this is a case relating to the determination of leases by operation of law and therefore none of the provisions of the impugned act can be characterised as interfering with the right of any person to eke out his livelihood.

G) The impugned legislation seeks to bring about deprivation of property without the procedural, structural and substantive safe guards warranted within the parameters of the objects of the law.

H) The lease-hold property is an integrated and integral component of the right of the petitioner available to them under Article.19(1) (g) read with Article.300-A. Deprivation of such property would have to answer the Constitutional obligations of Article.14, 19 and 300-A, which the impugned legislation does not answer.

I) The direct and proximate effect of the legislation is ex post facto provision of limitations of contractual freedom available under the laws by the State in prescription of artificial definition, vide explanation to section.4 of the Impugned Act.

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 perform the functions 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

Azamabad Industrial Area leases, the objects of the impugned act in so far as they relate to avoidance of fixed premia and quit rents are irrational, arbitrary and stricken with the vice of ignoring of the historical foundation of rationality of the terms of the cases.

L) The proviso to section.4. of the impugned act provides that a person in occupation, the lease of which stood terminated under the act, if he was using the demised plot actually for industrial purpose and was not otherwise guilty of violation of the conditions of the lease, would be entitled to have his application not rejected and be granted a fresh lease on terms and conditions to be prescribed. The explanation to section 4 provides that entering into a partnership or other cognate arrangement, for carrying on any activity whatsoever on the demised plot shall be deemed to be violation of the conditions of the lease, notwithstanding anything contained in the Indian Partnership Act, 1932.

As can be seen from the foregoing, by a retrospective deeming provision founded on an artificial definition supported by a non-obstante clause, the impugned act renders illegal retrospectively, activity that was legitimate and legal at the time of entering into the partnership or other cognate transactions. The result of such retrospective imposition of invalidity is the deprivation of the rights to property and of carrying on of trade, calling or business by an arbitrary law. The impugned Act is unconstitutional both on account of its retrospective reach as well as on account of prescription of artificial

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) Section.8 of the impugned Act further provides that persons failing to deliver possession of the demised plot within the time specified under section.6 shall be liable for payment of damages or meshe profits in addition to any penalty under 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 a legislation which a classic piece of class legislation. The impugned act is in the nature of a Bill of Attainder.

Q) Section 9 provides for an appeal against any order of the competent authority to the State Government. Such an appeal from a caesar to caesar both of whom are administrative agencies, that too an appeal to the very party to the contract is ex-facie arbitrary and violates Article.14 of the Constitution of India. The entirety of the opportunity provided under sec.9 and the procedure therefore under section.10 is an illusory remedy and a mere public relations exercise devoid of substantive content of a fair

Article 14. In the circumstances, no property can be acquired without payment of a just compensation. All of the leasehold properties 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 components 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 rationally related to the deprivation brought about. This is the hostile result of the cumulative application of Article 300A read with Articles 14 and 19 of the Constitution of India.

S) 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 validly entered into are stricken with the vice of arbitrariness.

T) Section 16 of the impugned Act which debars a jurisdiction of any Civil Court in respect of any decision or order passed or proceedings taken by any officer or competent authority of the Government under this Act clearly discloses the intent of the legislation in excluding judicial review and substituting the pre-existing right of the parties to independent adjudicatory processes by an administrative party to the contract.

thereafter Section 4 of the impugned Act come into operation resulting in dispossession of the lessees alongwith all the industry thereon and would cause incalculable hardship and injury. Overnight the industries would vanish without a substrata on which to 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.

Z) The High Court failed to appreciate that if the lands were required for a public purpose, there was already a machinery available for acquisition under the Land Acquisition Act and that if the leases are to be terminated or the lands resumed for alleged violation of the conditions of the lease, it has to be by a quasi-judicial adjudication with due compliance with principles of natural justice as it will depend upon the facts and circumstances of each case and that resort can not be had to legislation for such purpose.

ZA) The High Court failed to appreciate that resort to legislation for alleged violation of the conditions of the lease would be in the nature of a 'Bill of Attainder' clearly violative of Article 14 of the Constitution.

ZB) 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 holding the High

said alleged violation of conditions of lease is per se arbitrary, unreasonable and discriminatory.

ZF) The High Court should have held that the Act is a colourable legislation to avoid the need to resort to ordinary courts of law in which the violation of the terms of the lease has to be clearly established by following the procedure laid down by law.

ZG) The High Court failed to appreciate that acquisition would be rendered arbitrary if it is not for public purpose and that to take over of the lands to grant fresh leases for the same purpose cannot be held to be an acquisition for public purpose and the present Act is clearly a case of colourable exercise of power, that the right of the Petitioners to carry on their business by use of the property taken on lease for the purpose of such business is part of a right under Article 19(1)(g) of the Constitution of India and that any restriction of that fundamental right for any alleged lapse of the lessees should be one which is reasonable and if such a situation could be made by 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.

ZH) 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 Transfer of Property Act that a lease of immoveable property has to be determined by forfeiture for a breach of an express

impugned legislation. In several instances, various proceedings had been initiated and which were pending at different stages of adjudication. The adjudication of a lis could only be on the basis of the facts and circumstances of individual cases. The Act by one stroke had rendered all these indicted proceedings nugatory by seeking recourse to legislation.

ZK) The High Court failed to appreciate that section 20 provides for the Act to have effect notwithstanding any decree or order of a Court, Tribunal or other Authority. It is respectfully submitted that the High Court failed to advert to the well settled principles relating to the interpretation of validation statutes. It was mandatory for the Legislature to legislate removing the basis of the decision or judgement, 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 render the judicial process nugatory.

ZL) 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.

the legislature to embark on an enquiry as to the nature of the encumbrances and determination of third party rights. In some cases, encumbrances were either permitted or acquiesced by the lessor Government.

ZQ) The High Court erred in finding that the cancellation of the valid leases does not amount to acquisition of 'property' and further erred in concluding that not to provide for payment of compensation will not render the Act invalid. The High Court ought to have applied the ruling of this Hon'ble Court reported in A.I.R. 1989 SC 1629 in this regard.

ZR) 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.

ZS) The High Court ought to have held that the provision contained in Explanation to section 4 is violative of Article 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.

ZX) The High Court failed to appreciate that the legislation unreasonably puts an end to all leases and provides for a fresh lease on fresh terms and conditions even in case of a lessee who establishes that he has not violated any of the terms and conditions of the original lease. In the present cases, the petitioners have strictly complied with 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.

ZY) The High Court failed to consider in its proper perspective the various decisions of this High 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 distinguishing the same. The petitioner craves leave to refer and rely on the cases cited before the High Court in support of the above submissions.

ZZ) 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 entrepreneurs, the provisions of the impugned Act are

ZZD) The High Court did not consider the salient features of the matter. It has been pleaded specifically 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 alternative proposal of lease with the rental proposition of 5%-6% of the capital cost was also made. In as much as the petitioners paid entire cost of the land, for all practical purposes the 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 by High Court.

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

ZZF) 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 stroke, irrespective of the fact whether the leasses have violated the terms of the leases. The High Court had readily accepted the plea of the State Government that the lessees have

Act was allotted few acres of land adjacent to Azambad Industrial Area for the purpose of establishing Cine Studio. The cost of the land decided by the then Government was Rs. 40/- per sq. yard. After he became the Chief Minister, he reduced the price to Rs. 12/- per sq. yard and became a owner of such a big land. 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 facts do throw light on the fact that the entire action was arbitrary and discriminatory and malafide.

ZZI) The High Court erred in treating the authority created under the Act who is none other 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 lessee 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 properly constituted civil court and the departmental employee cannot substitute civil court. This resulted in procedure arbitrariness.

ZZJ) 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, 1989 Supreme Court 1629, the High Court did not meet the contention at all.

ZZK) The observation of the High Court "when the leases themselves are terminated the right to possess

lessees to enter into partnership. As a matter of fact in certain cases the Government itself has permitted lessees to take partners and also in some other cases to sublease the permission by virtue of explanation to section 4, A lessee who did not violate any condition of the lease will not be entitled for grant of fresh lease if he has enter into partnership with another. One can understand the legislation prohibiting the enterance of partnership agreements with effect from a date and denying the benefit of fresh lease to the persons who violated such conditions. The explanation is nothing but imposition of disqualification with retrospective affect. This is not permissible under law. The answer of the High Court to this contention is that it is within the competence of legislature to enact deemed violations with retrospective affect and in view of the section 20 of the Act, other laws are inapplicable. Retrospective deeming of a violation is unknown to law.

ZZP) The fact that the Government had prescribed Rs.500/- per sq. yard as premium after this Act itself shows that the intention of the act was not to curb, misuse, or unauthorised use of the land, but to a appropriate fabulous sums to the Government by cornering the lessees first by cancelling their leases and thereafter by refusing to grant fresh leases with retrospective deemed violations.

ZZQ) The Government itself is coming forward with various scheme to reconstruct sick industries by investing huge amounts under BIFR declaring tax holidays and providing various incentives. Here is a case of breaking the backbone of industries which are running with their own funds and

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property and compulsory acquisition of property without payment of adequate and reasonable compensation requires consideration.

ZZU) The impugned act ought to have been struck down by the High Court as the same was repugnant to law made by the parliament in view of Article 254(1) of the Constitution of India. Further the granting of assent under Article 254(2) of the Constitution of India is totally unjust and improper. The High Court failed to observe that the impugned act did not serve any purpose and should have been struck down by the High Court.

ZZV) The judgement and order of the High Court is otherwise bad and contrary to well established law, contrary to facts and liable to be quashed and set aside.

ZZW) The Petitioners reserves their rights to add/raise further grounds at the time of hearing.

19. The Petitioners have not filed any other Petition in this Hon'ble Court against the impugned judgment and order dated 18.8.1994 passed by the High Court.

P R A Y E R

(A) grant Special Leave to the Petitioner to Appeal Against the judgement and order of the High Court of Judicature at Hyderabad dated 18.8.1994 of Civil.