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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. ⁸⁸⁵⁴~~20681~~ OF 1994

M/s. Mohd. Mahmood
and others Rep: by
G.P. Holder Sri A.P. Agarwal,
s/o. Late Jagdish Pershad

..Appellants

- Versus -

The Government of Andhra Pradesh
and others.

..Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS 1 TO 3

I, V.Sundar Rao, S/o. Late V.V.Narayana Rao, aged about 54 years, resident of Hyderabad do hereby solemnly affirm sincerely state as follows :

I. I am working as Assistant Secretary to Government in the Department of Industries and Commerce, Government of Andhra Pradesh and I am the concerned Assistant Secretary dealing with these matters and I am authorised to swear to this affidavit on behalf of the Respondents.

II. I state that I have read the petition of the petitioners herein and understood the contents therein. That these respondents deny all the allegations and averments made in the petition except those are specifically admitted to be true hereunder.

III. I state that no question of law muchless a substantial question of law is involved in the matter and the petitioners have no cause for interference by this Hon'ble Court under Article 136 of the Constitution

11

application for fresh lease, grant of fresh lease, service of notices etc. The Government then issued G.O. Ms.No.299 of Industries & Commerce Department, dt. 1-9-1993 prescribing the rate of premium and quit rent and the period of lease under the Act. The premium is fixed at Rs.500/- per sq. yard and quit rent at 0.10 ps. per sq. yard per month subject to revision at the end of 10 years and the period of lease is 25 years.

(c) That the petitioners herein have filed Writ Petitions before the High Court of Andhra Pradesh challenging the validity of the above Act merely on the ground that it is violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India. That these Respondents have filed a detailed common Counter Affidavit before the High Court of Andhra Pradesh explaining the position and denied all the averments and allegations of the Petitioners therein. That these respondents crave leave of this Hon'ble Court to treat the common affidavit filed before the High Court of Andhra Pradesh as part and parcel of this affidavit which was already on record before this Hon'ble Court.

(d) That the Division Bench of the High Court of Andhra Pradesh after considering all the contentions by its common Judgment dt. 18.8.1994 in Writ Petition Nos. 12180 of 1992 and batch rejecting the contentions of the Petitioners saying that the leases 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 and fur-

through a Firman issued on 6th Jamadi-ul-Sani 1350 Hijri.

(b) The City Improvement Board (presently A.P.Housing Board) developed the area with all infrastructure facilities - such as - roads, drains, water and electricity supply in addition to payment of compensation for the acquisition of lands out of the funds of coprovided by the Industrial Trust Fund and divided the area into plots of different sizes for leasing out to various persons for establishing industries.

(c) The area acquired was 136 acres 4 guntas consisting of Government lands, Sarfi-khas lands, Paigah lands and lands of other parties. The area was acquired in the name of the then Director, Commerce & Industries with the funds of the Industrial Trust Fund, Hyderabad. Later the ownership of the area was transferred to Industrial Trust Fund in the year 1952. The Industrial Development Authority under Industrial Trust Fund used to receive the applications and lease out the plots to deserving applicants.

(d) Right from the inception of the Azamabad Industrial Area, parties desirous of setting up of industries had to make application which were considered on merits and thereafter specified plots were leased out to deserving applicants. Further, if there was any change in the industrial activity including construction / alteration / addition of structures, the same should be covered by permission and approval.

(e) The area was divided initially into 25 plots

(h) Different lease formats were adopted from time to time. In the lease deed originally adopted, assignment is prohibited without permission and it was silent on sub-letting. There was also no provision for revision of quit rent and premium. The lease deed adopted after 1965 provided for obtaining prior permission of the Government for sub-letting and assignment and a clause for revision of quit rent and premium was incorporated. The lease deed adopted after 1974 totally prohibited assignment and sub-letting on the part of the lessee with penalty clause in case of default.

(i) The lease deeds in respect of 60 plots with a quit rent of OS Rs.25/- (IG Rs.21-75) per acre per annum were prior to the period 1960. The lease deeds in respect of 17 plots with a quit rent of 3 paise per sq.yd. per month cover different periods between 1935 and 1955 and 1976. In respect of 7 plots with OS Rs.100/- (IG Rs.87/-) per acre per annum, the lease deeds related to the period between 1947 and 1957. It is submitted that occupants had filed W.P.Nos.18106/86, No.18101/86 and No.16762/86 in the Hon'ble High Court of Andhra Pradesh challenging the enhancement of quit rent to a mere .25 paise per sq.yd. per month and premium Rs.10,000/- per acre. Upon dismissal of their writs on 1-3-1988, they filed Writ Appeals No.759/88, No.760/88 and No.761/88 against the aforesaid judgment of Hon'ble High Court and obtained orders dt: 3-5-1988 suspending the Government order enhancing the rents. Subsequently one occupant withdrew W.A.No.761/88 from the Hon'ble High Court.

(j) From the above, it is clear that the leases were

arrangements due to lacunae in the executed lease deeds
as also adoption of different formats of lease deeds
over a period of time under varying terms and condi-
tions. Thus, the very objective under which the Azamabad
Industrial Area was established and leased out to
various persons at low rents for longer periods had been
defeated and an unlawful real estate activity has set
in. Such highly valuable and costly land is also yield-
ing as at present a mere pittance of revenue to Govern-
ment. The original objective of encouraging industrial
growth has been frustrated. It is submitted that the
present Act No.15 of 1992 was enacted in order to give
effect to Article 39(b) and (c) of the Constitution of
India. Consequently, the protection guaranteed under
Article 31(c) of the Constitution is being invoked. The
preamble of the Act clearly shows the predominant object
of the legislation - viz., to pre-determine the lease or
leases and make available the land for an orderly indus-
trial growth and to subserve common good. In this con-
nection, a reference may be made to judgment under
appeal "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 play-thing of unscrupulous lessees sub-
letting 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

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it, viz., (1) the lessee 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 thereto, (2) the lessee shall not assign the demised premises without the consent in writing of the Lessor first obtained to such assignment, and (3) if whenever there shall be a breach of any of the covenants by Lessee, the Lessor may re-enter upon the said premises or any part thereof and immediately thereupon this demise and all rights of the said Lessee shall absolutely determine. Therefore, it is submitted that the contention of the petitioners that they are the owners of suit premises in the Azamabad Industrial Area and was sold to them is baseless and mischievous. In the lease deed executed between the petitioners and the then Hyderabad Government on 1-9-1965, it was clearly mentioned therein that the Government of Hyderabad was the sole owner of the piece of land bearing Plot Nos.14/1 and 24/2 of Industrial Area at Hyderabad and the lease was granted for 99 years for the purpose of dyeing and printing industry stipulating certain terms and conditions and on failure to comply these terms, the Government could re-enter the premises. It is an admitted fact as disclosed from the evidence that Government is the owner of the land 2.366 acres in plot No.14/1 and 24/2 in the Industrial Area, Azamabad, Hyderabad. What is discernable from the terms of lease is an obligation of erecting a factory on the demised premises for dyeing and printing and other buildings required in connection with the said factory for the

1-9-65 by the petitioners, M/s.Navaneeth Oil Industry continued to run its industry in the leased plot and the lessee did not start the dyeing and printing industry. In November 1968, it was found that the petitioners accommodated M/s.National Engineering Service in a portion of the plot under partnership agreement. Subsequently, two more industries, viz., M/s.Sujatha Industries and M/s.Modern Aluminium Industries were accommodated by the petitioners in the leased premises on partnership basis on 1-9-1979.

(c) As matters stood thus, on 6-7-1984, the petitioners entered into another partnership deed with Sri A.P.Agarwal and four others of M/s.A.P.Agro Industries to carry on the business in the name and style of M/s.A.P.Agro Industries and to venture upon a diversified industrial activity in Plot Nos.14/1 and 24/2. The partnership envisages purposes and businesses by including nominally the dyeing and printing. Under the partnership deed, the petitioners quantified the lease hold rights including the value of the entire lease hold property on the land at Rs.4.0 lakhs and transferred the same to the new firm A.P.Agro Industries as capital contribution. Under the terms of the partnership, M/s.A.P.Agro Industries became the sole owner of the property and further the proprietorial rights were converted into a trading asset of the above firm. Thus, the petitioners had divested themselves of the control and possession over the demised premises with no chance of return or reversionary interest, thereby affecting

nected with the setting up of dyeing and printing until and subject to the approval of the Government. It may be mentioned that after termination of the lease, the Government took possession of the premises.

(f)? In this connection, it is relevant to mention here that while dismissing the IA 627/87 in OS No.481/86 and OS No.1291/84 filed by the petitioners against M/s.National Engineering Service and M/s.Vaneskaran Industries, the Hon'ble Courts held that the partnership deeds with the SSI Units were agreements of lease and they were brought into existence by the petitioners to get over the stipulations imposed in the lease deed.

(g) In regard to the mention of decree passed by the learned II Additional Judge, CCC, Hyderabad, in OS No.209/85, it is submitted that the order of termination of the lease made by the Government was quashed in the said decree. The termination order was issued for not using the leased premises for industrial purpose and for earning huge profits by way of monthly rents under partnership deeds, thereby violating the terms and conditions of the lease deed. The Government was restrained by means of an injunction from dispossessing or disturbing the enjoyment of the property by the petitioners. The petitioners were also restrained from using the said premises for any other purpose other than business of dyeing and printing and other matters connected with the setting up of dyeing and printing until and subject to the approval of the Government. Even after the judgment made in OS No.209/85 dt: 15-4-1986,

ence of decree in OS No.209/85 on the file of IInd Addl.Judge, CCC, Hyderabad, and W.P.No.16294/92 to declare the Memo No.581/IF-Cell/84, dt: 3-12-1992 as illegal and arbitrary. The Hon'ble High Court dismissed both the cases on 15-4-1993. The Hon'ble High Court while dismissing the Contempt Case No.537/92 held that since the lease is one for carrying on dyeing and printing and since the lease deed further shows that the Government is entitled to enter the premises in the event of contravention of the conditions of the lease and since the same was also embodied in the judgment in OS No.209/85 on the file of the IInd Addl.Judge, CCC, Hyderabad. The Hon'ble Court also dismissed the W.P.No.16294/92 as premature. Thereafter, the petitioners have filed W.A.No.514 of 1993 in the High Court of Andhra Pradesh against the orders of dismissal passed in W.P.No.16294/92. The Hon'ble High Court had dismissed the writ appeal directing the petitioners to submit explanation to the show-cause notice and also not to create third party interests on the demised plots. In pursuance of the directions of the Hon'ble High Court the Government gave hearing to the petitioners on 25-5-1993 and after considering the entire matter Government passed orders in GO Ms No.223, dt: 11-6-1993 terminating the lease hold rights of the petitioners for the violations and breach of covenants of the lease deed executed by the petitioners on 1-9-1965. Questioning the order the petitioners filed W.P.No.7696 of 1993 and M/s.A.P.Agro Industries filed W.P.No.9795 of 1993. Both those writ petitions were dismissed. Challenging these orders the petitioners have filed Writ Appeal No.741 of

cation for grant of fresh lease under section 4 of the Act and the Competent Authority was directed to consider the same on merits and in accordance with the provisions of the Act and the Rules made thereunder and pass appropriate orders. Accordingly the petitioners have filed application with the Competent Authority for grant of fresh lease for plot Nos.14/1 and 24/2 and the matter is under process.

VII. (a) It is submitted that in the above circumstances, it was considered expedient, in public interest, to make a law for curbing misuse or unauthorised use of Government land and to stop unauthorised constructions and regulate the leases afresh on uniform terms and conditions. To mitigate any hardship caused due to premature termination, payment of solatium has also been provided to the lessees.

(b) The object of the Act is to regulate the leases on uniform terms and conditions including reducing of the lease period and revised rates of premium and quit rent, thereby ensuring optimum utilisation and securing proper management of the valuable industrial land owned by the State Government. The Act ensures grant of a fresh lease to the lessees whose leases stand terminated if they were found not otherwise guilty of violation of lease. It is submitted that even if a lessee had complied with the terms and conditions, the original lease period being for a period of 99 years, there is nothing unfair or illegal in reducing the period in the interest of proper conservation and utilisation of diminishing asset of the Government, viz., prime land in the heart

uniform terms and conditions is envisaged.

9
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(e) It is submitted that under section 4 of the said Act a person who was actually using the demised land for genuine industrial purpose and was not otherwise guilty of violation of any conditions of the lease he shall be granted a fresh lease in accordance with the provisions of the Act. Under the impugned Act, the Government seek to ensure that genuine industrial activity is protected and allowed to continue and prosper. Therefore, genuine and bonafide industrial activity has no cause to be concerned or worried. Their interests are fully protected. There are effective and adequate provisions in the impugned Act to safeguard the interests of genuine users of Government land.

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(f) It is submitted that if the Competent Authority refuses to grant fresh lease in favour of the applicant, he shall record relevant reasons in writing to that effect. Any person aggrieved by an order passed by the Competent Authority may prefer an Appeal to the Government. The Appellate Authority has powers to call for the records and peruse them and appoint a time and place of hearing of the appeal by sending notices to all the concerned including the officer against whose order the appeal is preferred. In pursuance of the notice of hearing, the Appellant can represent himself or by an Advocate, Attorney or Pleader before the Appellate Authority and produce all the necessary documentary evidence either to modify or rescind the decision or order passed by the Competent Authority. In the case of revisions the same procedure will be followed. It is

ATTESTOR.

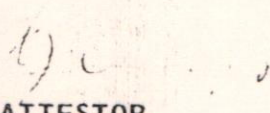
DEPONENT.

XI. In the premises mentioned above, the respondents respectfully and humbly prayed that this Hon'ble Court may be pleased to dismiss the Appeals.

DEPONENT.

ASST. SECRETARY TO GOVT.
Industries & Commerce Dept.
SECRETARIAT, HYDERABAD, A.P.

Solemnly affirmed and signed
before me on this the day
of 1995.


ATTESTOR.

STATUS REPORT

It is submitted that Azamabad Industrial Area situated in Hyderabad Metropolis, roughly covers an extent of Acs.136 and after excluding roads etc., the land now available under various plots industrial activity is about 104 acres. The said land, for the purpose of convenience and also to furnish the suggestions of the State Government, as ordered by the Hon'ble Supreme Court, is divided into 5 categories. They are --

Category I - The first category consists of persons who are either original allottees or who are sub-lessees, partnership concerns, permitted by the Government and who are engaged in industrial activity in accordance with the terms and conditions of original leases:-

(40 persons in Acs.58.14)

Category II - The second category consists of original lessees / authorised lessees who are not carrying on industrial activity and using the land for non-industrial purposes;

(13 Persons in Acs.14.27)

Category III- The third category consists of persons who are illogally in possession by having entered into fake partnerships, sub-leases etc. - not recognised by Government but carrying on industrial activity.

(18 Persons in Acs.3.67)

Vishwanjit Castings

(6) In so far as land and persons covered by Category-II and IV they will be evicted as per the provisions of Act 15 of 1992 and the Government will utilise the same to subserve common good.

(7) The proposals submitted above, in so far as land and persons covered by Categories - I and III, the conversion into free hold / conferment of ownership obviously will be outside the provisions of the Act.

(8) The present report submitted by the State Government is without prejudice to the interests of State Government in the above appeals.

(VINOD ^{kindly} K. AGARWAL)
JOINT SECRETARY TO GOVERNMENT
INDUSTRIES & COMMERCE DEPARTMENT
GOVERNMENT OF ANDHRA PRADESH,
HYDERABAD.

Encls: Details of land and
persons covered by
Category I to V.