

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE THIRTY FIRST DAY OF JULY, TWO THOUSAND AND TWO

PRESENT

THE HON'BLE MR. JUSTICE V. S. RAO

W.P. M.P. No. 17306 of 2002

Between:

M/s. Biological E. Limited, Azamabad Industrial Area,
Hyderabad, rep. by the Authorised Representative &
Finance Director. Sri G.V. Rao

Petitioner
(Petitioner in W.P. No. 13879 of 2002
on the file of the High Court)

AND

1. The Government of Andhra Pradesh, rep. by the Secretary, Industries &
Commerce Department, Secretariat, Hyderabad
2. The Commissioner of Industries and the Competent Authority, Azamabad
Industrial Area, Chirag Ali Lane, Hyderabad

Respondents
(Respondents in -do-)

COUNSEL FOR THE PETITIONER: MR. P. KAMALAKAR
COUNSEL FOR THE RESPONDENTS: MR. RAJANNA, G.P. FOR INDUSTRIES

Petition under Section 151 of CPC praying the High Court to stay all further proceedings pursuant to the Demand Notice No.38/2/2/0058/0058 ID, dated 3-6-2002 issued by the Commissioner of Industries and Competent Authority, Azamabad Industrial area, Hyderabad served on the petitioner on 27-6-2002 pending W.P. No. 13879 of 2002 on the file of the High Court.

The Court while directing issue of notice to the Respondents herein to show cause why this application should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

" Pendency of the writ petition does not preclude the Government to consider the representation of the petitioner company dated 15-7-2002 made to Hon'ble Minister for Major Industries, Government of A.P., and pass appropriate orders.

Post on 12-8-2002."

Sd/- K. VENKATARAMAIAH
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Secretary, Industries & Commerce Department, Government of Andhra Pradesh, Secretariat, Hyderabad
2. The Commissioner of Industries and the Competent Authority, Azamabad Industrial Area, Chirag Ali Lane, Hyderabad
(ADDRESSEES 1 & 2 BY RPAD)
3. Two CCs to the G.P. for Industries, High Court of A.P., Hyderabad (OUT)
4. One spare copy.
5. One CC to Mr. P. Kamalakar, Advocate (OPUC)

MSR

HIGH COURT

DATE: 31-7-2002

ORDER

W.P.M.P.No. 17306 of 2002
IN
W.P.No. 13879 of 2002.

DIRECTION

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

WRIT PETN.NO.

OF 2002

Between:--

M/s. Biological E. Ltd., Azamabad Industrial
Area, Hyderabad.

Petitioners

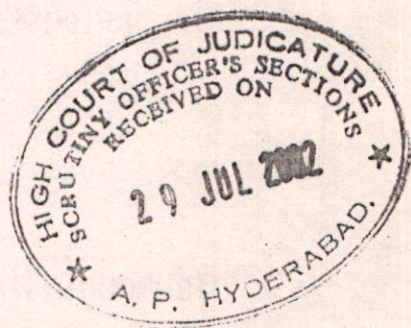
And

Government of A.P. & another.

Respondents

ANNEXURE - I

1. 24/06/1955 Plot No.18/3 was allotted on permanent lease for 99 years to One Sri B.S.Shetty for constructing a factory for manufacture of Pharmaceuticals Page 1
2. 10/01/1957 Government granted permission to transfer the lease hold rights in the said plot in favour of M/s. Biological Products Pvt. Ltd. Page 2
3. 15/04/1957 By registered sale deed, the lease hold rights in respect of Plot No.18/3 was transferred to M/s. biological Products Pvt. Ltd. Page 2
4. 06/05/1960 Government accorded permission to the liquidator to transfer the lease hold rights in Plot Nos. 18/1 and 19/3 to M/s. Biological Products Pvt. Ltd.. Page 2
5. 23/06/1960 Under registered sale deed, the said two plots along with the structures and equipments were purchased by M/s. Biological Products Pvt. Ltd. Page 2
6. 03/10/1979 M/s. Biological Products Pvt. Ltd., has become M/s. Biological E. Ltd., the petitioner Page 3
7. 19/12/1984 Government Memo. proposing revision in quit rent and premium Page 3
8. 15/10/1985 Clarification issued by the Government regarding date and mode of application of the said Memo. dated 19/12/1984. Page 3
9. The Azamabad Industries Association, challenged the said orders in WP.No.18106/88 Page 4
10. 01/03/1988 High Court dismissed the writ petitions on the ground of maintainability. Page 4
11. 24/06/1997 Appeals filed against the said judgment was disposed of the Hon'ble High Court Page 4
12. Government enacted the Azamabad Industrial Area (Termination & Regulation of Leases) Act, 1992, which came into force w.e.f. 11/7/1992. Page 5



The said Act was challenged by the Association as well as several lessees.

- 13 01/09/1993 Government issued orders in G.O. 299 fixing the premium and quit rent and period of lease etc. Page 6
- However, the G.O. was not implemented and fresh leases were not executed as contemplated by the 1992 Act
14. 18/08/1994 This Hon'ble Court upheld the validity of the 1992 Act, against which Civil Appeals were filed in the Hon'ble Supreme Court. The petitioner filed W.P.No.73/95 in the Hon'ble Supreme Court. Page 7
15. During the pendency of the Civil Appeal, the Hon'ble supreme Court passed various interim orders and in pursuance of the interim order, the Government filed the Status Report, wherein the petitioner was shown at Sl.No13 of Category I. Page 7
16. 16/04/1996 In view of the undertaking given by the State Government, the Civil Appeals were disposed of without going into merits. Page 7
- 17 The Government issued the Azamabad Industrial Area (Termination & Regulation of Leases) (Amendment) Act, which was published in the AP Gazette on 17/2/2000 Page 8
18. 20/02/2002 Government issued G.O.87, amending certain Rules issued in GO 115. Page 8
- 19 03/06/2002 Impugned Demand Notice of the Commissioner of Industries & Competent Authority, which was served on the petitioner on 27/06/2002 Page 9
- 20 15/07/2002 Petitioner's representation to the Government against the impugned Demand Notice Page 10

ANNEXURE - II

Articles 14, 19(1)(g) and 300A of the Constitution of India

Hyderabad,
Dated: 29/07/2002

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Counsel for the Petitioner

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

W.P.NO.

OF 2002

Between:-

M/s. Biological E. Limited,
18/1&3, Azamabad Industrial Area,
Hyderabad, represented by the
Authorised Representative & Finance Director
Sri G.V.Rao.

PETITIONER

And

1. The Government of Andhra Pradesh,
represented by the Secretary,
Industries & Commerce Department,
Secretariat, Hyderabad.
2. The Commissioner of Industries and the
Competent Authority, Azamabad Industrial Area,
Chirag Ali Lane, Hyderabad.

RESPONDENTS

AFFIDAVIT OF THE PETITIONER

I, G.V.Rao, Son of Sri G. Rama Rao, aged about 62 years, resident of
Hyderabad, do hereby solemnly affirm and sincerely state as follows:--

1. I am the Authorised Representative and Finance Director of the
petitioner company and I am well acquainted with the facts of the case.
2. I state that by indenture made on 24/06/1955 between the Secretary,
Industrial Trust Fund, Hyderabad State, represented by Raj Pramukh,
Hyderabad State, land admeasuring about 1.163 acres bearing Plot
No.18/3, Industrial Area of Azamabad, Hyderabad, was granted on
permanent lease for a period of 99 years to Sri B.S. Shetty for constructing
factory for the manufacture of Pharmaceuticals and Biological and similar

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products. The lease was granted for a consideration of O.S. Rs. 2,907-8-0 paid by the Lessee to the Lessor on 26/01/1355 Fasli as premium. The yearly quit rent payable was fixed at OS Rs. 116. 4 annas. After obtaining necessary permission from the Government of Andhra Pradesh, lease hold interest in the said plot was transferred in favour of the Biological Products Pvt. Ltd., with its head office at Bombay (which is subsequently changed to Hyderabad, State of Andhra Pradesh) and Branch Office at Sanathnagar, Hyderabad, vide letter dated 10/01/1957 of the Industrial Trust Fund. By a registered sale deed dated 15/04/1957, the lease hold rights and the industrial building were purchased by M/s. Biological Products Pvt. Ltd.

3. I state that Plot Nos. 18/1 and 19/3 of Azamabad Industrial Area, Hyderabad, admeasuring 2.335 acres were granted on permanent lease for a period of 99 years vide lease deeds dated 09/02/1356 Fasli and 5/06/1354 Fasli respectively by the Government of Hyderabad in favour of Vijaya Card Board Company Limited after collecting the Premium and on yearly quit rent. The said Company went into creditors voluntary liquidation. By G.O.Ms.No.727, dated 06/05/1960 read with Memo. No.22567/B/60/1, dated 24/05/1960, the Government of Andhra Pradesh have accorded sanction to the liquidator to transfer the lease hold rights of the said plot Nos. 18/1 and 19/3 to M/s. Biological Products Pvt. Ltd., and that the yearly quit rent was fixed at Rs.25.28 paise for each plot. These two plots along with the structures and equipments were purchased for a sum of Rs.70,000/- on 23/06/1960 under registered sale deed.

4. I state that M/s. Biological Products Pvt. Ltd., became M/s. Biological Evans Private Limited on 24/07/1964 and subsequently changed to M/s. Biological E. Limited w.e.f. 03/10/1979.

5. I state that the said two lease deeds did not provide for the revision of either the premium or the quit rent. The premium that was fixed and collected represented the market value of the land and it was for industrialisation of Hyderabad and hence it was only one time payment.

6. I state that the Government of Andhra Pradesh, Industries, Commerce and Power (IF.Cell) Department, Issued Memo. No. 1022/IF.Cell/84-1, dated 19/12/1984 stating that the Government has decided to enhance the premium and monthly rental in the cases of all plots hereafter. By letter dated 14/07/1985 the Commissioner of Industries sought for clarification from the Government regarding the date and mode of application of the aforesaid rates. Revised orders were issued by the Government in Memo.No.1046/IF.Cell/79-21, Industries, Commerce & Power (IF.Cell) Department, dated 15/10/1985 as under:-

- a. The effective date of collection of enhanced premium and enhanced quit rent shall be from 1st January 1985.
- b. The above enhanced rates shall be applicable in all fresh cases. All fresh cases of lease shall also contain a specific clause in the lease deeds enabling the Government to enhance the rates of premium and quit rent during the currency of the lease and to collect the premium and quit rent at the rates as enhanced from time to time in exercise of this enabling provision.
- c. In case of persons whose occupation has been accepted by the Commissioner of Industries/Government, but in whose cases formal lease deeds have not yet been executed, the premium and quit rent shall be at the rates prescribed in Government Memo. 1st cited with effect from 1st January 1985. In the lease deeds to be executed with such lessees, a specific clause will be incorporated enabling the

enhancement of premium and quit rent during the currency of the lease and collection at such enhanced rates.

- d. In the case of lessees in possession of plots in Industrial Area, Azamabad, Hyderabad, who have already executed lease deeds containing a provision for enhancement of premium and quit rent during the currency of the lease, the difference between the enhanced premium prescribed in Government Memo. 1st cited and the premium already paid shall be also collected and also the enhanced quit rent as prescribed in Government Memo. 1st cited shall be levied with effect from 1st January 1985 and the differential quit rent collected with effect from 1st January 1985.
- e. As regards the cases of lessees who are in possession of plots of land in Industrial Area, Azamabad, Hyderabad, on the basis of lease deeds already entered into which do not contain a provision enabling enhancement of premium and quit rent during the currency of lease, the Commissioner of Industries is advised to await further instructions from the Government."

Challenging the said Memos., the Azamabad Industries Association, represented by its Secretary, filed W.P.No. 18106/1988 and 30 industrial concerns, including the petitioner herein, who are the lessees of the plots in Azamabad Industrial Area, have filed W.P.No.18101/1988 in this Hon'ble Court. By judgment and order dated 01/03/1988 this Hon'ble Court dismissed the said writ petitions as not maintainable on the ground that the lease transactions are contractual in nature and governed by common law remedy. Against the said judgment, W.A.Nos. 760 and 759 of 1983 were filed and by judgment dated 24/06/1997 the said writ appeals were disposed of by a common judgment. The operative portion of the judgment is as under:-

"In so far as the writ appellants against whom there is a clause operating in the lease deeds for escalation of premium and ground rent, they may have to approach the Civil Court, if they so wish and for enabling them to do so, the respondents are directed to maintain status-quo for a period of 3 months from today, so that a notice can be issued under Section 80CPC for the purpose of institution of the suit seeking necessary reliefs. Such of those writ appellants against whom there is no clause operative for escalation either of premium or ground rent, they are at liberty to invoke the civil Court's jurisdiction as and when the Government takes decision in accordance with

Clause 3(e) of Memo.No.1046/IF-Cell/79-21, dated 15/10/1985. We make it clear that as against such of those appellants against whom there is no clause operative of escalation, status quo shall be maintained by the respondents for a period of 3 months from the date of such decision as may be taken by the Government for escalation of either premium and ground rent.

With the above direction the Writ Appeals are disposed of. No costs."

7. I state that in so far as the leases in favour of the petitioner are concerned, there is no clause providing for escalation of either the premium or the quit rent.

8. I state that the Government did not pass any order pursuant to para 3(e) of the said Memo. dated 15/10/1985. The petitioner has been paying the quit rent every year without default.

9. I state that the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 (Act No. 15/1992) was enacted to provide for the termination and regulation of leases in respect of all plots in Azamabad Industrial Area, Hyderabad. The Act was brought into force with effect from 11/07/1992. Section 3 of the said Act terminated all the leases. Section 4 empowered the person in occupation of the plot to apply for a fresh lease in the manner prescribed and on receipt of the application, the Competent Authority, if satisfied that the applicant was not guilty of violation of any of the conditions of the lease, was conferred with the power to grant fresh lease in accordance with such terms and conditions as may be prescribed or refuse to grant fresh lease for reasons to be recorded in writing and that the application for the fresh lease by the lessee in occupation of and actually using the demised plot for industrial purpose and was not otherwise guilty of violation of any of the conditions of the lease,

shall not be rejected and he shall be granted a fresh lease on such terms and conditions as may be prescribed. In exercise of the powers conferred under Section 21 of the said Act, the Azamabad Industrial Area (Termination and Regulation of Leases) Rules 1992 were framed in G.O.Ms.No.155, Industries & Commerce (IF.Cell) Department, dated 06/04/1992. Rule 4 (2) relating to grant of lease is as under --

"(2) Grant of Lease : -- Subject to the provisions of sub-section (2) of Section 4 of the Act, the Competent Authority shall grant fresh lease to the person in occupation in Form B and in accordance with the terms and conditions of lease deed in Form G appended to these rules."

Neither the Rules nor Form G prescribed the quantum of premium and the lease amount payable.

10. I submit that the said Act 1992 was challenged in W.P.Nos. 12180/1992 and batch by the Association as well as the lessees.

11. I submit that during the pendency of the writ petitions, in order to implement the provisions of the Act, proposals were sent by the Commissioner of Industries, who was appointed as the Competent Authority under the said Act and the Government in G.O.Ms.No.299, Industries and Commerce (IF Cell) Department, dated 1st September, 1993 passed an order fixing the premium and quit rent and period of lease etc., for the leases to be granted afresh as per the Act. Relevant clauses thereof are --

- "a) A premium of Rs.500/- (Rupees five hundreds) per square yard in all the cases.
- b) Quit Rent at 10 (ten) paise per square yard per month, subject to revision of such amount at the end of ten years.

- c) The period of lease shall be 25 (twenty five) years and if the Lessee makes an application for renewal of lease, the Competent Authority shall renew the lease in accordance with the terms and conditions prescribed under the Rules; and
- d) The lease shall be further subject to the condition that the Lessee will use the land for the purpose for which it was leased out and shall abide by all other terms and conditions including timely payment of premium and quit rent."

The said G.O., however, was not implemented and fresh leases were not executed as contemplated by the said Act. I submit that the said G.O. has no legal validity, as the Government was not empowered to issue such an administrative order, which is not a Rule.

12. By judgment dated 18/08/1994 the validity of the Act was upheld and the writ petitions were dismissed. Against which, Civil Appeal Nos. 8852/94 etc., were filed in the Hon'ble Supreme Court. The petitioner herein had filed W.P.No. 73/1995 before the Hon'ble Supreme Court questioning the validity of the said Act of 1992, which was tagged to the Civil Appeal. Various interim orders were passed by the Supreme Court from time to time. As directed by the Hon'ble Supreme Court, the Government filed the Status Report categorising the occupants, extents of the holdings etc. Such of the original allottees and the sub lessees who are engaged in the Industrial activity and have been complying with the terms and conditions of the leases were shown in Category I. The petitioner herein is at Sl.No.13 in Category I. During the pendency of the Civil Appeals also, the petitioner herein has been paying to the Government the quit rents as stipulated in the lease deeds. On the undertaking given by the Government, without deciding on merits, the Civil Appeals were disposed of on 16/04/1996 as under:-

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"Learned Counsel for the State of Andhra Pradesh has fairly stated that the impugned judgment of the High Court dated August 18, 1994 in W.P.No. 12235/94 and the connected matter shall not be implemented. It is further stated that no action against the industries operating in the industrial area concerned shall be taken under the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 (The Act). We are further told that the State Government is proposing an amendment to the Act. It is stated that the proposal has already been placed before the Cabinet. Learned Counsel states that no action regarding cancellation of leases etc. against the industries concerned shall be taken under the Act. In this view of the matter, appeals have become infructuous and are disposed of as such."

13. After the disposal of the Civil Appeals by the Supreme Court amendment Act No.1/2000 called The Azamabad Industrial Area (Termination and Regulation of Leases) (Amendment) Act, 2000 was passed and was published in the A.P. Gazette dated 17/02/2000. Sections 3 and 4 of the Principal Act were substituted. Section 5(1) was amended. Sections 11 and 19 were omitted. Clause (e) of sub-section 2 of Section 21 was substituted. Consequently some of the Rules were amended by G.O.Ms.No.87, Industries & Commerce (FI.Cell) Department, dated 20/02/2002. Rules 4 and 11 as well as formats A to G were substituted. Leases of those who had violated the terms and conditions of the lease deed or misused or sublet the land were terminated under Section 3(1)(a) of the Amended Act. Under Section 3(2) others, like the petitioner, are entitled for the grant of fresh leases with effect from the appointed date on such terms and conditions as may be prescribed by the Government and under Section 3(3) they can also opt for free hold rights in lieu of renewal in respect of the demised plots of land by paying a price equivalent to 75% of the market value. I submit that the Government is yet to frame the Rules fixing the terms and conditions. It is only thereafter that the petitioner can exercise its rights under Section 3(3) or continue as the lessee by executing a fresh lease deed.

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14. While so, the petitioner was served on 27/06/2002 with a demand notice bearing No.38/2/2/0058/0058/ID, dated 03/06/2002 from the Commissioner of Industries and Competent Authority, which reads as under:-

“DEMAND NOTICE

No.38/2/2/0058/0058/ID, dated 03/06/2002

Sir(s)

Sub:- The Azamabad Industrial Area (Termination & Regulation of Leases) Amendment Act 2000 (Act No. 1 of 2000)—Demand Notice for payment of Arrears of quit rent and premium—Issued—Reg.

Ref: 1. G.O.Ms.No. 155, Industries & Commerce (IF Cell) Dept., dt. 6/4/1992
2. G.O.Ms.No.87, Industries & Commerce (IF.Cell) Dept., dt. 20/02/2002.
3. Govt.Memo.No.1046/IF.Cell/79-21, Dated: 15/10/1985.
4. G.O.Ms.No.299, Inds. & Comm (IF Cell) Dept., dt. 1/9/1993.

As per the record of this office, you are in occupation of 17030 Sq. Yards of land which was leased to be leased to your for running your industrial unit.

2. Please note that the Azamabad Industrial Area (Termination & Regulation of Leases) Act, 1992 has been amended and the “The Azamabad Industrial Area (Termination & Regulation of Lease) (Amendment) Act, 2000” (Act No. 1 of 2000) came into force with effect from 17/02/2000. In exercise of the powers conferred by Section 21 of Act, 1992 Government have amended the Rules vide G.O. 2nd cited above and a notification was published in the Andhra Pradesh Gazette dt. 07/03/2002.

3. As per the provisions contained in Section 21(e) of Act, 1992 read with Rule 8(i) of G.O. 1st cited, you are hereby called upon to pay the following arrears of premium and quit rent for the plot of land leased within 30 days from the date of receipt of this notice. As per the Act 15 of 1992 and Act No. 1 of 2000 all the leases or arrangements made or entered into thereon, stood terminated.

	Extent of Land leased	From	Period To	Amount Rupees
Quit Rent arrears	17030 Sq.yards Plot Nos. 18/1, 18/3 & 19/3	9.3.45	31/3/2002	7,03,600
Premium				85,15,000
		Total		92,18,600

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4. In order to enforce the provisions of the Acts, action is being initiated to call for fresh lease/freehold rights under Section 4(1) of the amended Act. Before any such action is taken up, all the dues to the Government towards premium, quit rent, etc., should be paid by the lessee as per the instructions contained in reference 3rd and 4th cited.

5. You are therefore requested to pay the outstanding amount of Rs. 92,18,600/- (Rupees ninety two lakh, eighteen thousand, six hundred only) towards Quit Rent arrears and Premium by way of challans to the head of account :8229-Development Welfare Fund,. 106—Industrial Development Fund, 01—Industrial Research and Development Fund: within thirty days from the date of receipt of this notice, failing which action will be initiated to recover the arrears as per Rule 8(ii) and (iii) of Act 15 of 1992."

The said notice is in a printed proforma and was sent to all the lessees without making any distinction. In as much as the said demand notice is wholly illegal, arbitrary, not authorised by the provisions of Act and the Rules and was issued mechanically without application of mind by the Competent Authority and the petitioner is not due and liable to pay any amounts, a representation dated 15/07/2002 was submitted by the petitioner to the Hon'ble Minister for Major Industries, Government of Andhra Pradesh with copy to the Commissioner of Industries and Competent Authority requesting for the stay and withdrawal of the demand. However, till today the petitioner has not received any reply to the said representation. Hence this writ petition

15. The petitioner submits that the impugned demand notice is wholly illegal, arbitrary, unjustified, ultravires and violative of the principles of natural justice and hence liable to be set aside for the following among other—

GROUND

A) First para of the Demand Notice that the petitioner is in occupation of 17030 sq.yards is not correct. The petitioner is not in occupation of 10730

sq.yards. The Municipal Corporation of Hyderabad, with the previous permission of the Government and the Competent Authority, have taken over 252 sq. yards in plot No.18/3 and 547 sq. yards in plot Nos. 18/1 and 19/3, in all 799 sq. yards, for road widening during the year 2001 without paying any compensation. The petitioner is in actual possession and occupation of 16321 sq. yards only.

B) In para 3 of the impugned notice, it is stated that Section 21(2)(e) empowers the Government to make Rules providing for the collection of rents, premium and quit rent and any other amount due from the person in respect of the demised plot. Rule 8(1) of the Rules issued in G.O.ms.No.155 is as follows:--

"8. Manner of Collection of Rent or Expenses or Damages or Mesne Profits:- (1) Without prejudice to the provisions of Section 4 of the Act, where any person is in arrears of rent payable in respect of any demised plot of land or portion thereof, the competent authority may, by issuing a notice to him, require that person to pay the same within thirty days time."

The petitioner is not in arrears of the premium or quit rent. For all these 3 plots premium were paid by the original lessee. It was only after consent was given by the Government for transferring the lease hold rights in favour of the petitioner that the petitioner has purchased the same and has been in possession and enjoyment of the lease properties with effect from 1957 and 1960. The petitioner has been paying the quit rents/lease amounts regularly without any default for all the three plots. Hence the said Rule has no application to the petitioner. The statement that by virtue of Acts 15/1992 and 1/2000, all leases or arrangements made or entered into stood terminated is not correct. It is a fact that as per Section 3(1) of 1992 Act all the leases stood terminated on the appointed date. However, the said

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provision was not given effect to and it was amended by Act No.1/2000. Sections 3 and 4 of the 1992 Act were substituted by Act 1/2000. By virtue of this amendment it is only the lease which after due enquiry attracts one or more of the grounds for cancellation of lease as specified in the lease deed shall stand terminated on the appointed date. The grounds specified under Clause 3(1)(b) for cancellation are –

“(i) misusing of land for a purpose other than the purpose for which land was allotted including non-user; or

(ii) sub letting or transferring the plots or portions of plots by entering into disguised partnerships and other unauthorised transfer of interest in the plot; or

(iii) violation of any terms, conditions or covenant specified in the Lease Deed.”

Section 3(1) has no application to the petitioner, as the petitioner has not misused the land or sub let or transferred the plots or violated any terms and conditions of the covenant specified in the lease deed. As already submitted, pursuant to the direction issued by the Hon'ble Supreme Court, the Government filed the status report and the petitioner was shown in Category I i.e. industries which are engaged in the industrial activity as per the terms and conditions of the lease.

C) Notice shows that the petitioner is in arrears of the quit rent for the period from 09/03/1945 to 31/03/2002, which is baseless and totally incorrect. Pursuant to the permission granted by the Government, the petitioner purchased Plot No. 18/3 on 15/04/1957 and plot Nos. 18/1 and 19/3 on 23/06/1960. Eversince then the yearly quit rents/lease amounts are being paid by the petitioner to the Government without any default as per

the terms and conditions of the lease. This is also evident from the said status report filed by the Government before the Hon'ble Supreme Court.

D) Para 4 of the Notice has no application to the petitioner. Amended Section 4(1) does not apply to the petitioner. It applies only to such of those persons whose leases stood terminated under Section 3(1)(a). Section 3(1)(a) is not applicable to the petitioner. Section 4 as amended reads as follows:--

"4. (1) On termination of lease or other arrangements made under clause (a) of sub-section (1) of Section 3, a person in occupation and running an industry on the appointed date may apply for a fresh lease in the manner prescribed."

E) With regard to the Memo. dated 15/10/1985, it is submitted that the Memo. did not fix any rent for the lessees whose lease deeds do not contain a provision for enhancement. The petitioner falls within the ambit of para 3(e) of the said Memo. and the Government has not passed any orders fixing the premium and quit rent. After the said 1992 Act was enacted, G.O.Ms.No.299, dated 1/9/1993 was issued by the Government under the provisions of the 1992 Act and it was intended to be applied for the leases that were to be granted afresh after the leases stood terminated under Sec.3(1) of the 1992 Act. Neither the said Section 3(1) nor the G.O.Ms.No.299 was implemented by the Government, which is also evident from the order dated 16/04/1996 of the Hon'ble Supreme Court. In view of the orders of the Hon'ble Supreme Court, the said Memo. and the G.O. have no effect and are unenforceable. Further G.O. 299 is ultravires the Act and the Rules. The Act and the Rules did not empower the Government to issue such an executive order. Under the amended Section 3(2), the petitioner is entitled to the grant of fresh lease with effect from the appointed date and

renewal thereof from time to time on such terms and conditions as may be prescribed by the Government. The Government has not so far framed the Rules for the said purpose as contemplated by the amended Section 21(2)(e).

F. After the coming into force of 1992 Act, as amended by the Amendment Act 1/2000, the said Government Memo. and the G.O. are not enforceable, as all the leases are governed and controlled by the 1992 Act and Amendment Act 1/2000 and the Rules framed thereunder in G.O.155 as amended by GO 87 dt. 20/2/2002. Until action is taken as provided by the Act and the Rules, the petitioner is liable to pay only the yearly quit rent as per the lease deeds and no other amount and the petitioner has been paying without default the yearly quit rents for all the three plots.

G. The impugned demand is wholly arbitrary, violative of the rights guaranteed to the petitioner under the provisions of Articles 14, 19(1)(g) and 300A of the Constitution of India.

H) The impugned demand notice also offends and violates the principles of natural justice, as at no earlier point of time the petitioner was put on notice of any such non payment of quit rent and premium, nor the petitioner was given any opportunity to represent against it.

I) Action cannot be initiated under the provisions of the Revenue Recovery Act, as no sum is due and payable by the petitioner to the Government and the amount due has not been determined after due notice to the petitioner.

J) The demand is exfacie barred by limitation of 3 years and unenforceable.

16. As the 2nd respondent is seeking to recover the amount, the petitioner prays that it is just and necessary that pending disposal of the writ petition this Hon'ble Court may be pleased to stay all further proceedings pursuant to the demand notice. Otherwise the petitioner would suffer serious loss and irreparable injury.

17. As there is no efficacious alternative remedy to challenge the impugned demand notice, the petitioner is filing this writ petition under Article 226 of the Constitution of India.

18. Challenging the impugned demand notice, the petitioner has not filed an earlier writ petition.

For all the aforesaid reasons, the petitioner prays that this Hon'ble Court may be pleased to issue a Writ, in the nature of a Writ of Mandamus or any other appropriate Writ, direction or order declaring the Demand Notice No. 38/2/2/0058/0058 ID, dated 03/06/2002 issued by the Commissioner of Industries and Competent Authority, Azamabad Industrial area, Hyderabad, served on the petitioner on 27/06/2002, as illegal and void; and

Pending disposal of the writ petition stay all further proceedings pursuant to the Demand Notice No. 38/2/2/0058/0058 ID, dated 03/06/2002

issued by the Commissioner of Industries and Competent Authority, Azamabad Industrial area, Hyderabad, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Solemnly affirmed at Hyderabad, this the 28th day of July 2002 and signed in my presence.

DEPONENT

16th & last page:
Corrections:

Advocate—Hyderabad.

VERIFICATION:

I, G.V. Rao, Son of Sri G.Rama Rao, the Deponent herein and the person acquainted and concerned with the case, do hereby verify that the facts stated in paragraph (1) to (18) herein above are true to the best of my knowledge, belief, information and are based on legal advice. Hence verified this the 28th day of July, 2002 at Hyderabad.

Counsel for the Petitioner.

Petitioner

MEMORANDUM OF WRIT PETITION
(Under Article 226 of the Constitution of India)
Special Original Jurisdiction

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

W.P.NO.

OF 2002

Between:-

M/s. Biological E. Limited,
18/1&3, Azamabad Industrial Area,
Hyderabad, represented by the
Authorised Representative & Finance Director
Sri G.V.Rao.

PETITIONER

And

1. The Government of Andhra Pradesh,
represented by the Secretary,
Industries & Commerce Department,
Secretariat, Hyderabad.
2. The Commissioner of Industries and the
Competent Authority, Azamabad Industrial Area,
Chirag Ali Lane, Hyderabad.

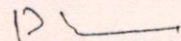
RESPONDENTS

The address for service of notices and processes on the petitioner above named is that of their Counsel MR. P. KAMALAKAR, Advocate at Advocates' Association, High Court Buildings, Hyderabad.

The address for service of notices and processes on the respondents above named is the same as given above.

For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a Writ, in the nature of a Writ of Mandamus or any other appropriate Writ, direction or order declaring the Demand Notice No. 38/2/2/0058/0058 ID, dated 03/06/2002 issued by the Commissioner of Industries and Competent Authority, Azamabad Industrial area, Hyderabad, served on the petitioner on 27/06/2002, as illegal and void; and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Hyderabad,
29/07/2002.


Counsel for the Petitioner

HYDERABAD

DISTRICT

HIGH COURT OF AP:: HYDERABAD

W.P.NO. 13879 OF 2002

MEMORANDUM OF WRIT PETITION

MR P. KAMALAKAR (2100)
COUNSEL FOR THE PETITIONER