

(1984) 07 MAD CK 0020

In the Madras High Court

Case No : W.Ps. No's. 1945, 2069 and 6147 of 1979 and 564, 903, 5862, 6584 and 6841 of 1980 and 1456 of 1981

A.K. Thangadurai and Others

APPELLANT

Vs

District Forest Officer, Madurai and Others

RESPONDENT

Date of Decision : 17-07-1984

Acts Referred:

Cardamom Act, 1965 — Section 20, 9
Constitution of India, 1950 — Article 14, 48
Evidence Act, 1872 — Section 115
Forest Act, 1927 — Section 3
Tamil Nadu Forest Act, 1882 — Section 18

Citation : AIR 1985 Mad 104

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : P. Subramaniam and D. Shanthakumari, for the Appellant;

Judgement

Ramanujam, J.—In these three categories of writ petitions, one batch of petitioners have questioned the validity of certain orders passed by

the respondents refusing to renew the forest leases earlier granted in their favour in pursuance of G.O. Ms. No.84 Forests and Fisheries

Department D/-9-2-1979 under which the government has directed that no cardamom lease should be renewed hereafter on the expiry of the

period of the existing leases in view of the general policy-decision of the Government and G.O.Ms. No. 1220 Forest and Fisheries D/- 7-11-1979

in which the Government had decided to grant forest leases of two hectares or less for cardamom cultivation only to small farmers or landless

persons or Tribals depending for their living on cardamom cultivation alone. This batch of writ petitions consists of the following cases :

W.Ps. Nos. 1945, 2069, 4790, 5088 and 6147 of 1979, 564. 897 to 903, 1292,

1304, 1542 to 1545, 1570, 1604, 1711 to 1713, 1740, 1746,
4814, 5927, 6002, 6181, 6584, 6655, 6680, 6774, 6859 and 6944 of 1980.

The main and substantial grounds of attack in this batch of writ petitions are (1) That the respondents having called upon the petitioners to pay the renewal fee and the petitioners having paid the same even before the issue of the said Government order, they are bound by the principle of promissory estoppel to grant renewal of the forest lease. (2) The respondents having granted renewal of lease in some cases cannot refuse to renew the same in the case of the petitioner alone and the refusal to renew the leases in the case of the petitioners alone is violative of Art. 14 of the Constitution. (3) In any event, the respondents cannot back out of their promise to renew on the basis of which the renewal fee was paid by the petitioners without giving any notice. (4) The action of the respondents in refusing to renew the lease is in violation of Art. 300-A of the Constitution. (5) The policy decision of the State Government not to renew the cardamom leases hereafter is outside the ambit of its power and as such it contravenes the provisions of the Cardamom Act (Central Act 42 of 1965) and the Forest Act.

2. In the second batch of writ petitions namely, W.Ps. Nos., 5751 of 1979, 1441 to 1449, 1456, 1604 to 1610, 1681 to 1687, 2257, 2258, 2375, 5874, 5875, 6181 to 6187, 6841 of 1980, 1456 of 1981, the petitioner who have not paid the renewal fee as well as the premium in full and to whom the promissory estoppel will not apply have raised some additional points in addition to the points raised in the first batch of writ petitions. According to the petitioners in this batch of writ petitions, they are entitled to renewal even under G.O. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979. The viability should be the sole test for the grant of lease or for renewal of the forest land for raising cardamom. The policy to give lease to small farmers or landless persons without reference to viability will completely defeat the very object of encouraging cardamom plantation and of increasing the export of cardamom for earning foreign exchange. The policy of granting lease to a small farmer or a landless person for cardamom cultivation is also contrary to the provisions of the Cardamom Act (Central Act 42 of 1965) and the Forest Act (Central Act 16 of 1927).

3. The third batch consists of W.Ps. Nos. 1927, 4009, 5591, 5805. 5810, 5857. 5862 and 6236 of 1980, 212 to 215. 311, 313, 346, 802,

1353 and 1354 of 1981. In these writ petitions, the petitioners question the validity of the enhancement of the rent during the currency of licence.

According to them, any enhancement of rent during the currency of the lease should be reasonable and cannot be arbitrary.

4. The circumstances under which these writ petitions came to be filed may briefly be stated; The forest lands were being leased out for cardamom

cultivation to private individuals by the State Government for the past several years under the terms and conditions set out in G.O.Ms. No. 3999

Food and Agriculture D/- 31-12-1957. The Government have laid down about 34 conditions in the order of grant for the temporary occupation of

the various lands for cardamom cultivation. In or about 1975, the Government made an overall review of the policy of cardamom leases followed

till then with a view to ensure maximum realisation by the Government from the leases and also to ensure the lessees longer period of occupation in

view of the heavy investments made by them and the new policy is set down in G.O.Ms.43 Forests and Fisheries D/- 24-1-1976. The review of

the earlier policy was in respect of six matters. (1) Period of lease: As per condition No. 29 of the order of grant, the lease period of a developed

area given in auction shall be for a period of 25 years. This was reduced to a period of 20 years. (2) Extent of lease holding: According to

condition No. 30 of the order of grant, no person shall be granted land exceeding 50 acres for cardamom cultivation. This was altered to 25 acres

on the ground that 25 acres will be a viable unit for cardamom cultivation and the reduction in extent will also avoid the concentration of lands in

the hands of a few. (3) Second renewal : According to condition No. 26, of the order of grant, the lessees in respect of undeveloped areas also

were entitled to renewal for a period of twenty years and according to condition No. 25. no lease shall be renewed more than once. In view of the

concentrated efforts required for the maintenance and upkeep of the cardamom plantation in hilly tracts and in view of the fact that the lessees have

spent considerable amount in the development of the lands, the Government decided to grant one renewal for 20 years and this will also cover

cases where the lease period had expired, but the lessees continued in possession. (4) Premium for renewal : Under condition No. 27 of the grant

order, three years rent was collected as renewal fee. Under G.O.Ms. No. 43. Forests and Fisheries D/- 24-1-1976, the Government decided to

collect a sum of Rs. 3,000/- per hectare as premium at the time of the renewal in addition to the renewal fee payable under the existing conditions.

(5) Lease rent: According to the terms and conditions of the grant order, a lessee has to pay lease rent at the rate of Rs. 50 per hectare per annum.

In view of the fact that renewals will enable the lessees to derive a sizable income over a long period, the Chief Conservator of Forests has

suggested that the lease rent may be increased to Rs. 100/- per hectare per annum and the Government accepted the recommendation. The

Government decided to increase the rent from Rs. 50/- to Rs. 100/- per hectare per annum to all further renewals granted after the date of the said

order and the rate of Rs. 100/- is also made subject to review biennially by the Chief Conservator of Forests with reference to the prevailing

conditions. (6) Transfer of leasehold rights : According to conditions Nos. 9 and 9(a) of the grant order, the grantee can transfer the whole or any

part of his interest in the leased land after obtaining the previous sanction of the assigning authority. The Government decided to impose an

additional condition that transfer of the lease cannot extend beyond the date of the expiry of original lease granted to the transferor. The

Government passed a further order in G. O. Ms. No. 1014 Forests and Fisheries D/- 17-10-1977 under which there was a further revision of the

general policy in the grant of lease of forest land for cardamom cultivation. The further review of the policy was based on the representations made

by the Cardamom Board and the cardamom lessees and planters association and on the clarification sought for by some of the Collectors. Further

revision in the policy was in respect of the following matters : The Government decided that the reduction in the extent to a ceiling of 25 acres be

applied to existing leases at the time of renewal and to new leases at the time of lease and the ceiling will apply to the total of the extent of forest

lands held by an individual on lease in all places in the State. (2) The Government decided that one-third of the premium should be collected

immediately on renewal of the lease and the balance in two equated annual instalments along with 9% interest and the renewal fee will, however, be

collected in one lump sum. The Government also decided upon certain changes in the original terms and conditions regarding the terms of the

leasehold rights. But, at this stage we are not concerned with the said changes. Thereafter, there was a still further review of the general policy by

the Government in the matter of grant or renewal of lease of forest lands for cardamom cultivation and this policy is laid down in G.O. Ms. No. 84

Forests and Fisheries D/- 9-2-1979. In this Government order, the Government decided that there should be no further renewal of the existing

cardamom leases after the expiry of the lease period and directed that all cardamom leases expiring during the current year and future years will

automatically stand extinguished and there will be no renewal in respect of these leases and the concerned areas will be taken over by the Forests

Department and the cardamom plantations will be managed by them and that there will be no fresh leases or auctions of cardamom leases

thereafter.

5. Again, there was a revision of the policy in G.O.S. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979. From that order, it is seen that the

Government has been receiving several representations from the members of the Forest Lease and Patta Agriculturists Association, the members

of the Cardamom Lease Agriculturists Association and the ryots of Kodaikanal area requesting reconsideration of the decision taken by the

Government in G.O. Ms. No. 84 Forests and Fisheries D/- 9-2-1979, terminating the cardamom lease on the expiry of the lease period and

directing no fresh lease or auction of the cardamom lease thereafter. On the basis of the said representations, the Government made an overall

review of the policy and they took the view that the Forest Department will not be in a position to manage the scattered cardamom areas and that

collection of the produce from such scattered areas will pose very many problems. The government directed a revival of lease of cardamom areas

in supersession of all previous orders on the subject. It is also seen that the Government adopted this fresh policy in regard to the term of the

cardamom leases to benefit only a small farmer or the landless, depending on the cardamom areas for their livelihood. As per the revised policy,

the lease period hereafter will be for a period of fifteen years with a provision for one renewal for five years. However, the renewal for five years

will be at the discretion of the Government and cannot be claimed as a matter of right. In cases, where the lease is already in force according to

earlier orders in excess of fifteen years, the lease will be treated as a fresh lease subject to the present conditions for a period of fifteen years only

and subject to the eligibility of the persons concerned for renewal for a period of five years. According to the revised policy. The extent of the

cardamom lease will not exceed two hectares per individual and, therefore, any lease thereafter will have to be confined only to two hectares of

land and not more. In cases where the lease already granted covers an area in excess of two hectares, it will be subject to the new conditions in

regard to the period, lease amount, renewal, rent etc., and the time expired leases which had not been renewed by the Forest Department shall be

considered as terminated and fresh leases should be granted as new cases with reference to the new conditions now formulated. So far as the

premium for renewal and renewal fees are concerned the then existing of renewal premium of Rs. 3,000/- wits increased to Rs. 5,000/- payable in

three equal instalments, one-third at the time of renewal and two-thirds in two equated annual instalments with 9 per cent interest. In addition,

renewal fee amounting to three years lease rent shall also be paid. The annual lease rent in future will be in a graded scale as follows: -

Up to one hectare Rs. 100/- per hectare.

Up to 2 hectares Rs. 200/- -do-

Above 2 and up to 4 hectares Rs. 300/- 3/4 -do-

Above 4 and up to 6 hectares. Rs. 350/- -do-

Above 6 and up to 8 hectares Rs. 400/- -do-

Above 8 and up to 10 hectares Rs. 450/- -do-

Above ten hectares Rs. 500/- -do-

In this Government Order, the Government have evinced a desire that cardamom lessee should basically be a small farmer, a local resident or a

tribal or a landless person who lives in the forest area and depends entirely on the cardamom leases for a living and economic welfare, and not the

person who may take a cardamom lease for mere profit in addition to any other pursuit he may be following and living far away from the

cardamom areas. Such absentee lessees should be eliminated as leases expired.

6. Thereafter, there were representations from the Cardamom Grower Associations that the rates of rent fixed in G-0. Ms. No. 1220 D/- 7-11-

1979 were excessive and that the rate may be reduced to Rs. 100/- per hectare. The Government, after considering those representations, issued

G.O. Ms. No. 1357 Forests and Fisheries D/- 11-10-1982 whereunder on a tentative basis two different rates of rent had been fixed; Rs. 250/-

per hectare for Tirunelveli and Cumbam areas and Rs. 125/- for other areas with effect from 7-11-1979 when G.O. Ms. No. 1220 D/- 7-11-1979

was passed.

7. Some of the petitioners under the first category who had paid the renewal premium as also the renewal fee as and when demanded by the

concerned officials but had been refused renewal on the basis of G.O. Ms. No. 1220 D/7-11- 1979 have filed the writ petitions seeking a

mandamus from this Court directing the renewal of the lease mainly on the ground that they having paid the renewal fee and the renewal premium

and having been allowed to hold over and to be in possession of the leasehold lands and having spent large amounts for the improvement of the

lands on the faith that the renewal will be granted, the respondents are bound by the doctrine of promissory estoppel to grant the leases. They have

also raised the plea of discrimination for the reason that lessees similarly placed with the petitioners have been granted renewal, while the

petitioners alone have been denied the renewal.

8. The petitioners in the third category, whose leases had not expired but who are made liable to pay a slab rate of rent depending upon the extent

of the land held by the lessee as per G.O. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979 have filed the writ petitions questioning the power

of the Government to increase the rent. Their case is that even if the Government has got the power to levy a higher rent during the currency of the

lease, the levy made is not uniform but arbitrary and. therefore, the enhancement of rent is violative of Art. 14 of the Constitution. Usually, the rent

is fixed on the basis of the yield or on the basis of the extent held by the lessee. The variable rent fixed on the basis of the area in which the lands

are situate cannot be taken to be based on an intelligible differentia. Having treated all the areas alike for all the 25 years. the respondents have no

materials to justify a classification based on the area or locality for imposing an enhanced liability and that neither in the Government order nor in

the counter affidavit any data is furnished in justification of the levy of enhanced

rate of rent based on the area in which the lands are situate. In any event, the variable rate of rent depending on the leasehold extent is clearly arbitrary and unsustainable. Further, the tentative rate fixed by the subsequent G.O.Ms. No. 1357 D/- 11-10-1982 has also been questioned as arbitrary and as offending Art. 14 of the Constitution. These petitioners also raised the plea of promissory estoppel so as to prevent the Government from enhancing the rent substantially during the currency of the lease.

9. The respondents have filed their counter-affidavits wherein they seek to sustain the power to revise the policy in the matter of grant of lease or renewal for cardamom cultivation, contending that the Court cannot interfere with the policy decision of the State Government, that under Art. 39B of the Constitution, Which is one of the directive principles, the State Government has to ensure the distribution of forest land to the landless or small farmer and to avoid concentration of the forest lands in the hands of a few, that once the policy is held to be within the exclusive jurisdiction of the State Government, the conditions imposed for the grant of lease or for renewal of the lease cannot be claimed to be onerous and the Court's jurisdiction under Art. 226 of the Constitution will be ousted. So far as the enhancement of the rent is concerned, the respondents contend that condition No. 6 of the grant order enables the enhancement of rent by the State Government even during the currency of the lease and, therefore, the petitioners are not entitled to complain about the enhancement of the rent. If the petitioners wanted to continue in possession of the lands and to have the advantage of the leases, they have to pay the rent as enhanced and it is not for them to complain that the rent is either unreasonable or prohibitive.

10. It is in the light of the rival conditions, the validity of the action taken by the respondents in refusing to grant renewal in cases where the original leases had expired, but the renewal fee had been accepted by the respondents long before the latest policy of the Government was announced and in increasing the rent during the currency of the lease period has to be considered.

11. From the facts stated above, it will be clear that three main and substantial questions arise for consideration before us; (1) Whether the latest

policy of the Government, as revised in G.O. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979 to grant lease of forest land for cardamom

cultivation only to a small farmer, a local resident or a tribal or a landless person who lives in the forest area and depends entirely on the cardamom

lease for a living on cardamom cultivation for a period of fifteen years only with an option on the part of the Government to give a renewal for a

period of five years and to grant cardamom leases in future of an extent not exceeding two hectares for an individual, is not in the interest of the

public as alleged by the petitioners? (2) Even granting that the Government has got the power to select the persons for whom the cardamom leases

have to be granted and alter the period of the lease, some of the petitioners who have already paid the renewal fee after the expiry of their leases

on the promise of their leases being renewed, could be denied the grant of renewal on the basis of the policy laid down by the Government later in

G.O. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979 as has been done by the respondents in the case of many of the petitioners? (3)

Whether, during the currency of the lease already granted, the Government can enhance the rent on a graded scale which some of the petitioners

question as being arbitrary and unreasonable?

12. So far as the first contention is concerned, regarding the power of the State to lay down the policy or the criteria for the grant of the forest

leases for cardamom cultivation and to prescribe the terms and conditions for such grant it is contended by Mr. Rangarajan, learned counsel

appearing for some of the petitioners, that any policy or criteria laid down by the State Government should be consistent and in conformity with the

provisions of the Cardamom Act (Central Act 42 of 1965) and the Forest Act of 1927 and that the policy of the State Government to grant

cardamom leases only to small farmers, local residents or tribals or landless persons who live in the forest area and depend entirely on the

cardamom leases for a living cannot be construed as being consistent with the State and Central statutes. Therefore, G.O. Ms. No. 1220 Forests

and Fisheries D/- 7-11-1979 should be struck down as being outside the power of the State. The power of the State to grant lease of forest lands

is traceable to S. 18 of the Tamil Nadu Forest Act of 1882 read with para. 130 of the Tamil Nadu Forest Department Code and it is not traceable

to any of the provisions of the Cardamom Act (Central Act 42 of 1965) or of the Forest Act (Central Act 16 of 1927). As per para. 130 of the

Code, the State Government in whom the proprietary rights in the reserve forest lands had vested, can lease out portions of the same for cultivation

of any crop, including cardamom by virtue of its ownership. In leasing out the various forest lands for cardamom cultivation, the State Government

is not exercising any powers either under the Cardamom Act (Central Act 42 of 1965) or under the Forest Act, 1927. The Cardamom Act

(Central Act 42 of 1905) deals with the establishment and constitution of a Cardamom Board and the registration of owners of cardamom estates

with the said Board. That Act enables the Central Government to control the price and the distribution of cardamom and also to prohibit and

control the imports and exports of cardamom. The provisions of that Act do not deal with the lease of forest lands. The fact that the State

Government has decided to grant leases only to small farmers, a local resident or a tribal or a landless person who lives in the forest areas and

depends entirely on the cardamom leases for a living, it cannot be said that the State Government has in any way interfered with the power of the

Cardamom Board to issue directions to the owners of the Cardamom estate or the power of the central Government to fix and regulate the price

of cardamom and the imports and exports of cardamom. Likewise, the leasing of the forestlands by the State Government for cardamom

cultivation will not fall within any of the provisions of the Forest Act, 1927. That Act mainly deals with the settlement of forest lands and disposal of

claims of third parties for forest lands by the Forest Settlement Officers and for control of timber and other forest produce and the imposition of

duty thereon. The leasing of reserve forest for the purpose of cardamom cultivation by the Government cannot fall within any of the provisions of

the Forest Act. Nor can it be said to run counter to the policy behind the legislation in the Forest Act, 1927.

13. The learned counsel appearing for the petitioners would say that the Cardamom Board is given the power to fix the price for the cardamom

produced in the cardamom estates and as such small farmers or landless laborers etc., who are granted leases for forest land for cardamom

cultivation of an extent of two hectares cannot at all compete with the other owners of the cardamom estates in the matter of price, and virtually the

new policy of the State Government will seriously affect the cardamom production which earns substantial foreign exchange. This contention, if accepted, will show that the latest policy of the Government with regard to leasing of forest land for cardamom cultivation only to small farmers, landless poor etc., at two hectares per individual, is not a good or commendable policy, but that will not affect the power of the Government to lay down its policy with regard to lease of forest land for cardamom cultivation. So long as the Government has power as owner of the forest lands to lay down a policy for the grant of lease of forest lands for cardamom cultivation, it is not open to the Court to question that policy as not desirable.

14. It is contended on behalf of most of the petitioners before us that a viable extent for the purpose of cardamom cultivation is 25 acres as indicated in the earlier Government orders and that any lease of forest land less than the said limit may not be economical having regard to the high cost involved in establishing and maintaining the cardamom plantation.

15. It is said that viable unit for the purpose of cardamom cultivation has been found to be 25 acres even by the State Government and such fragmentation and holding for cardamom cultivation such as two hectares will be detrimental to the interest of the State. It will also be against the provisions of the Cardamom Act (Central Act 42 of 1965) and also the Forest Act, (Forest Act, 1927). Further, a small farmer or landless poor who are alone to be considered for grant of lease for cardamom cultivation may not be in a position to invest sufficient funds for cardamom cultivation and. therefore, under the new policy the cultivation and production of cardamom will suffer a serious setback. However, all these matters are for the Government to consider. If the Government has revised its earlier policy with a view to grant leases of only small holdings to small farmer and landless poor, that cannot be said to affect their power to lay down the policy. Merely on the ground that a different policy would have quite suited the situation, it is not possible for the Court to invalidate that policy and direct the Government to lay down a different policy which according to the petitioners will best suit the existing conditions. In Col. A.S. Sangwan Vs. Union of India (UOI) and Others, , the Supreme Court has clearly laid down that the validity of the policy of the Government cannot be challenged in a Court of law. For the above reasons, we

cannot strike down G.O. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979 as containing a policy which is not desirable or which is not in the interest of the cardamom industry.

16. An incidental submission has been made by the learned Counsel for the petitioners. He Submitted that the safeguarding of forest and wild life is an obligation cast on the State as it is one of the directive principles of the State policy coming under part IV of the Constitution and, therefore, the Court is entitled to consider the reasonableness of the policy set down by the Government in the said Government Order in the light of Art. 48A.

But the said contention overlooks the fact that ""safeguarding of the forest"" contemplated in Art. 48A does not mean that the State Government cannot lease out the forest lands for the purpose of cultivation and for realising the revenue therefrom. Therefore, nothing in Art. 48A of the Constitution stands in the way of the State laying down its own policy and criteria for a the lease of the forest lands for the purpose of cardamom cultivation or any other cultivation. Thus, the first attack of the petitioners in G. O. Ms. 1220 Forests and Fisheries dt. 7-11-1979 based on the lack of power cannot be sustained.

17. This leads us to the second contention set out above which is applicable only to such of those petitioners who have paid the renewal fee as well as the premium on the demand made by the respondents long before the passing of the said Government Order and who have been allowed to be in possession of the leasehold lands and to spend amounts to raise cardamom plantation by making necessary improvements. Some of the petitioners herein who had paid both the renewal fees as well as the renewal premium, as demanded by the departmental authority, are allowed to continue in possession of leasehold land pending the formal grant of renewal. Some of the petitioners have paid only the renewal fee, but not the premium. Some of the petitioners have paid the renewal fee in part and not the full amount due by them. However, after the passing of the said Government Order, the renewal was refused in the case of all the petitioners, whether they have paid the renewal fee and the premium in full or not. In the case of persons who have not paid the full amount of renewal fee as well as the premium, the principle of equitable estoppel cannot be invoked, for it is only when the full amount of renewal fee and the premium are

paid, they can readily and reasonably expect the renewal being granted and continue in possession of the leasehold lands on that basis. Therefore, only in cases where the petitioners have paid the full amount of the renewal fee and premium demanded from them long before the impugned Government Order was passed and who have spent substantial amounts for the improvement of the land or for raising cardamom plantation. the question will arise whether the principle of equitable estoppel will apply. In the affidavits filed before this Court, they have clearly stated that they have undertaken lot of expenditure for cultivating cardamom even before G. O. Ms. 84 Forests and Fisheries dt. 9-2-1972 was passed. The principle of promissory estoppel consists in the promisor being prevented from acting contrary to his promise if the promisee has, on the faith of the promise, suffered a detriment. In this case, admittedly, the authorities have demanded the renewal fee and the premium for granting the renewal of the lease from some of the petitioners and they have complied with the said demand and paid the renewal fee as well as the premium in full. After such payment, they had continued to be in possession of the leasehold lands and had also expended various sums for improving the land for making it fit for cardamom cultivation or for raising cardamom crop on the faith that they will be granted the renewal of the leases. This was long before the passing of even the earlier G. O. Ms. 84 Forests and Fisheries dated 9-2-1979 which preceded G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979. If the formal renewal had been granted then and there immediately after the payment of the renewal fee and the premium or within a reasonable time thereafter, the concerned petitioners would not come within the mischief of either G. O. Ms. No. 84 Forests and Fisheries dt. 9-2-1979 or G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979. The Departmental Officers who had delayed the issue of the formal grant of renewal cannot now take advantage of G. O. Ms. No. 84 Forests and Fisheries dt. 9-2-1979 or G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979 which came into existence long subsequently and say that the concerned petitioners have no right of renewal under the said two Government Orders. The delay in the disposal of their application for renewal of lease by the respondents cannot prejudice the applicants in any way.

18. On the facts and in the circumstances of the case, we are of the view that the petitioners who have paid the renewal fee and the premium in full

long before the issuance of G. O. Ms. No. 84 Forests and Fisheries dt. 9-2-1979 and G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979

are entitled to invoke the principle of promissory estoppel against the respondents and seek a direction by way of mandamus to grant the renewal

of the leases notwithstanding the existence of G. O. Ms. No. 84 Forests and Fisheries dt. 9-2-1979 and G. O. Ms. 1220 Forests and Fisheries dt.

7-11-1979. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . The Supreme Court has expressed that the true

principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise

which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the

other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it

and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken

place between the parties and that the said principle has been evolved by the Courts for doing justice and there is no reason why it should be given

limited application by way of defence. The Supreme Court also pointed out that the Government is no exception to the application of the said

principle as the Government stands on the same footing as a private individual so far as the application of the law is concerned and, therefore. the

Government cannot claim immunity from the obligation of promissory estoppel and repudiate a promise made by it on the ground that such a

promise may fetter its future executive action. The same principle has been again enunciated in Gujarat State Financial Corporation v. Lotus Hotels

Pvt. Ltd. AIR 1483 SC 848. In that case, the Gujarat State Financial Corporation promised to advance a loan of Rs. 30,00,000/- to a company

by name Lotus Hotels Private Limited. Acting on that promise, the respondent proceeded to undertake and execute the project and set up a 4-

Star Hotel Later, the Corporation withheld the loan. When that was challenged. the Supreme Court held that the Corporation having entered into a

solemn agreement for the performance of a statutory duty, cannot arbitrarily back out of the obligation arising out of the solemn promise made by it

and withhold the loan arbitrarily, that in such a situation the Court is not powerless from holding the appellant to its promise and that it can be enforced by a writ of mandamus directing him to keep up his promise. The respondents in this case except stating that the principle of promissory estoppel will not apply to the present cases and that any action on the part of the respondents contrary to the promise will only be a breach of the contract which cannot be agitated in writ proceedings, no substantial defence has been taken. It is true that a breach of promise will also amount to a breach of contract and one of the remedies of the affected party is by way of damages. We do not, however, see any reason as to why the Court cannot hold the State and its Officers to their promise on the basis of the principle of promissory estoppel. The Supreme Court in Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd. AIR 1983 SC W issued a writ of mandamus directing the promisor to carry out its promise by invoking the principle of promissory estoppel. We are, therefore, of the view that such of those petitioners before us who have paid the renewal fee as well as the premium in full long before the issuance of G. O. Ms. No.84 Forest and Fisheries dt. 9-2-1979 and G. O. Ms. No. 1220 Forest and Fisheries dt. 7-11-1979 are entitled to the grant of renewal and the respondents cannot withhold it based on the said Government orders.

19. The petitioners have also invoked Art. 14 of the Constitution and contended that the non-grant of the renewal in their cases is discriminatory and the respondents have shown a hostile discrimination so far as they are concerned. According to the petitioners, renewals have been granted in exactly similar circumstances, and there is no reason why the same treatment should not be meted out to the petitioners who are similarly placed. They have pointed out that leases Nos. 37 and 73 have been renewed on 26-6-1978 and 23-11-1974 respectively. The learned counsel for the respondents has admitted the grant of renewal in the above cases and it has also been admitted in the counter-affidavit. No tenable reason has been given in the counter-affidavit by the respondents as to why the renewals of the leases had been granted in the above cases and why the petitioners similarly placed have been denied the renewal. If the State could grant renewal in respect of some of those who have paid the renewal fee and the premium before the issuance of the said Government Orders, there is

no reason as to why the same treatment should not be meted out

in the case of similar others. The refusal to renew in the case of the petitioners who have paid the renewal fee as well as the premium in full is

clearly discriminatory and, therefore, the action of the respondents in denying the renewal of the lease relying on the orders of the State

Government, cannot legally be sustained. This is also an additional ground as to why the petitioners who had paid the renewal fee and the premium

are entitled to the grant of renewal. Hence, a writ of mandamus will issue to the respondents to grant renewal of the lease to such of those

petitioners who have paid the renewal fee as well as the premium in full long before the issuance of G. O. Ms. No. 84 Forests and Fisheries dt. 9-

2-1979 and G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979.

20. Coming to the third question, it is the contention of the learned counsel for some of the petitioners that though Condition No. 6 in the order of

grant enables the Government to enhance the rate of rent, the enhancement must be reasonable and cannot be arbitrary and that in this case the

sum of Rs. 100/- per hectare has been unreasonably raised to Rs. 500/- without any materials to justify the same in G. O. Ms. No. 1220. The later

tentative fixation of Rs. 250/- per hectare for lands in Tirunelveli and Cumbum areas and Rs. 125/for other areas in G. O. Ms. No. 1357 dt. 11-

10-1982 with retrospective effect from 7-11-1979 is also challenged as violative of Art. 14.

21. Condition No. 6 of the grant order as it originally stood, is extracted below.

The grantee shall pay every year a rent at the rate of one hundred rupees per hectare, or at such enhanced rate as may be fixed by the

Government from time to time. For the purpose of this clause, the area will be rounded off to the nearest 10 acres"".

Having regard to the language of the said condition No. 6, the learned counsel for the petitioners concedes that the Government has got the power

to enhance the rent even during the currency of the lease from time to time. But, what the learned counsel contends is that any enhancement should

be reasonable and that in fact no data or material is referred to in the counter-affidavit for justifying the enhancement. It is also contended that in

any event the fixation of rent of Rs. 250/- per hectare retrospectively is not warranted by condition No. 6 of the grant order and that any variation

in the rate of rent can only be prospective unless agreed to by the affected parties. It is the contention of the concerned petitioners that the executive power of the State to carry on any trade or business and to enter into contract and make contracts for any purpose under Art. 298 of the Constitution cannot be arbitrary and unreasonable and that in the present cases since the enhancement of rent over and above the amount agreed to between the parties at the time of entering into the lease is so unconscionable that it will not pass the test of reasonableness. According to the petitioners, even in the enforcement of its contractual rights, the State cannot be arbitrary and unreasonable. It is also submitted that if a party to the contract has been given the power to alter unilaterally the substantial terms therein, such as the consideration without reference to the other, then such a contract should either be treated as no contract at all or construed in such a reasonable manner so as to make it valid. Reliance is placed in support of the said submission on the following decisions: *Ramasami v. Rajagopala* ILR (1887) Mad 200, *Bengal Agency & Store Syndicate v. T.N. Khanna* AIR 1949 Cal 231. In the first case, a Division Bench of this Court had held that an agreement in a patta to pay whatever rent the landlord may impose for any land not assessed which the tenant may take up was bad for uncertainty, that the patta tendered containing such a clause was bad and that the fact the tenant had accepted for some years the patta containing a similar condition would not preclude him from objecting that the said clause rendered the tendered patta illegal. The reasoning of the teamed Judges is that as the clause stood, it was uncertain what rent the landlord might fix, and the tenant if bound, might be liable for an unreasonable rent beyond the value of the land. In *Bengal Agency and Stores Syndicate v. T. N. Khanna*, AIR 1949 Cal 231, there was a sale contract fixing the price for the goods to be supplied, but at the same time reserving the seller's right to vary the price at will. While construing such a contract, the Court held that it is no contract at all and the price variation clause is more appropriate to a document of tender and not to a contract of sale. The relevant clause in that contract which came up for consideration in that case was as follows :-

All goods are offered subject to stocks, Delivery times mentioned are subject to delays due to war, strikes and/or other considerations beyond

defendant's control. Prices subject to change without notice"".

Ameer Ali has expressed his view thus:

I am of opinion that a contract in which after a price has been mentioned, the seller has it in his own power to vary that price at will with

apparently the consequence that the buyer may either accept his price or not, is no contract at all. I have not looked up the authorities, but the

relevant passage will be found in Leake on Contracts at the beginning of chap. V. (see Contract of Service) *Loftus v. Roberts* (1902) 18 TLR

532. I am of opinion that while it is possible to make a contract with an implied term that the prices shall be reasonable, while it is possible to make

a contract where the price has to be fixed by a third party, it is not possible to make a contract where the price is variable at the opinion of the

seller. So much for the legal effect. On the facts, I am of opinion that the contract was at a fixed price, and that was the agreement between the

parties"".

22. In *The State of Rajasthan Vs. The Mewar Sugar Mills Ltd., Bhopalsagar*, the Supreme Court has pointed out that a statutory provision or

statutory rule has to be so read as to make it valid; it has to be construed *ut res magis valeat quam pareat*. The reason is that no intention can be

imputed to the legislative authority that it would exceed its own jurisdiction. On the same analogy, it is well known that the principle of the said

statutory construction will apply to interpretation of deeds as well.

23. In the present cases, the lease granted by the State in favour of the concerned petitioners refers to a particular rate of rent. Nos. doubt, it

contains a clause that the rent can be increased from time to time at the discretion of the Government. As pointed out in *Bengal Agency v. T. N.*

Khanna, AIR 1949 Cal 231, referred to above, if a literal interpretation is to be given to the relevant clause of the contract, the Government, which

is one of the contracting parties, will have the power to enhance the agreed rent unilaterally without reference to the lessee and such a contract, if

strictly construed, is no contract at all. However, having regard to the statutory construction that a contract has to be construed so as to make it

valid, the terms of the lease have to be understood in a reasonable manner so as to make the lease arrangement valid. To construe the terms of the

lease reasonably to make it legal and binding, Cl. 6 enabling the Government to

enhance the rent from time to time should be understood in a reasonable manner. According to the learned counsel for the petitioners, the unilateral enhancement of rent in a graded scale from Rs. 100/- to Rs. 500/- per hectare depending upon the size of the holding taken on lease is clearly arbitrary, unreasonable and unconscionable and the Government has not taken into account the relevant criteria for enhancing the rent to Rs. 500/- per hectare and that in any event, fixing of Rs. 250/- per hectare retrospectively is not warranted by condition No. 6 of the grant order. We have already referred to Condition No. 6 of the grant order. That condition nowhere confers the power on the lessor government to enhance the rent with retrospective effect. No doubt, it gives the power to the government to enhance the rent from time to time. But any such enhancement of rent will be operative in future and enhancement of rent cannot be ordered with retrospective effect, as has been done in G. O. 1357 dt. 11-10-1982. Further, G. O. Ms. 1220 Forests and Fisheries dt. 7-11-1979 has increased the rate of rent from Rs. 100/- to Rs. 500/- per hectare in a graded scale depending upon the extent of the lease holding. According to the learned counsel for the petitioners, the liability to pay rent at such a graded scale has resulted in an arbitrary, unreasonable and unjustified demand being made on them. As per the graded scale provided in G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979 if a lease is granted in respect of a holding measuring one hectare, the rent payable is Rs. 100/-. But if the extent leased out is ten hectares, the rent payable becomes Rs. 5,000/-. According to the petitioners, any increase in the rental should be a uniform rate per hectare and the rate of rent cannot vary depending upon the extent of the holding. It is said that the relevant criteria for fixing the rent will depend upon the probable yield from the leasehold lands. Merely because the extent of the lands leased out vary, there cannot be an abnormal variation in the rate of rent. The rent is fixed at Rs. 100/- per hectare. In respect of holdings of 10 hectares the rent payable will be Rs. 1,000/- Merely because a particular holding is of a larger extent, it does not automatically mean that the yield also will be in a graded scale. From the impugned order G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979, we do not find any material to indicate that the yield from the lands is in geometrical proportion with the extent. The only reason given in the

counter-affidavit is that the Government is in need of large revenue. There is no material to indicate that the rent has been fixed in a graded scale

with reference to the yield. We are, therefore, of the view that even though the power has been reserved by the Government under the grant order

to enhance the rent from time to time, that power has to be construed in a reasonable manner and that if so construed, the increase in the rate of

rent can only be based on the probable higher yield from the lands and rent cannot be enhanced merely because the Government wants to collect

higher revenue. Therefore, G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11 - 1979 in so far as it fixes the rent in a graded scale without taking

into consideration the probable yield from the lands appears to be bad. However, it is unnecessary to express our opinion finally, as the

Government has not enforced the slab rate of rent found in G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1979 but had fixed as tentative

rate of rent at Rs. 250/- for some areas and Rs. 125/- for other areas.

24. The learned counsel for the concerned petitioners also contends that the levy at higher rate of rent of Rs. 250/- in Tirunelveli and Cumbum

areas is bad as those areas have been treated in a hostile manner while the rent charged in other areas is comparatively less. The higher rent of Rs.

250/- charged for Tirunelveli and Cumbum areas is quite arbitrary and unreasonable. The counter affidavit filed by the respondents, does not

indicate or refer to any scientific data with reference to the yield or otherwise to make an intelligible difference between the other areas and the

areas in Tirunelveli and Cumbum. Having treated all areas alike for all the twenty five years in the matter of collection of rents, the respondents

have chosen, to make a discrimination without furnishing materials to justify the classification between Tirunelveli and Cumbum areas and other

areas, where cardamom is cultivated. It is no doubt true that the counter affidavit does not refer to any material as to why Tirunelveli and Cumbum

areas have been classified and a higher rate of rent has to be charged for leases in those areas, However the file relating to G. O. Ms. No. 1357

Forests and Fisheries dt. 11- 10- 1982 contains a letter dated 18-12-1980 from the Conservator of Forests, Madurai Circle Madurai, to the

Chief Conservator of Forests, Madras-6, wherein reference has been made to the suggestion of the concerned Minister that for the better types of

areas located in favourable places giving higher yield, a much higher rate should be, legitimately levied and for the better type of cardamom leases

in Cumbum valley, Thandigudi and Tirunelveli areas the Minister felt that a higher rate shall be leviable considering the much higher financial return

from the favourable areas, It is seen from the said file that a comparison was made between cardamom lease in Cumbum valley, Thandigudi and

Tirunelveli areas with the other areas in the State. Though the classification has not been justified in the counter affidavit on the basis of the yield

there is material in the relevant files to indicate that the Government made a classification only with reference to the yield. It cannot be disputed that

the yield is a relevant consideration in the matter of fixing the rentals. Therefore, it is not possible to say that there are no materials for making the

classification between cardamom leases in Cumbum valley, Thanaigudi and Tirunelveli areas and cardamom leases in other areas. In this view, we

are inclined to uphold the classification made between cardamom leases in Cumbum valley, Thandigudi and Tirunelveli areas and cardamom leases

in other areas. We are (not) inclined to agree with the contention of the learned counsel for the concerned petitioners that merely because the

Government treated all areas alike for the last 25 years, they cannot make any classification, as has been done now. So long as the materials justify

a classification, any classification made by the Government cannot be struck down merely on the ground that such a classification was not made at

any earlier stage. In this view of the matter G. O. Ms. No. 1220 Forests and Fisheries dt. 7-11-1977, in so far as it fixes the rent for cardamom

leases in graded scale depending upon the acreage is quashed with a direction to the Government to fix a reasonable rent taking note of the present

yield from the leasehold lands, if they find that the rent fixed at Rs. 100/- per hectare is found to be low and require modification in exercise of the

powers under condition No. 9 of the grant order. G. O. Ms. No. 1357 Forests and Fisheries dt. 11-10-1982 fixing a tentative rent of Rs. 250/-

for cardamom lands in Tirunelveli and Cumbum areas and Rs. 125/- for other land is, however, upheld as the classification is based on the yield

from the lands. But the said Government Order being enhanced rent can only be prospective and not retrospective. Thus, the third batch of writ

petitions are partly allowed to the extent indicated above i.e., as regards the slab rates set out in G. O. Ms. 1220 Forests and Fisheries dt. 7-11-

1979. In other respects, they are dismissed without costs.

25. Mr. Sukuntharaj, learned counsel appearing for the second batch of writ petitioners, contends that even under the terms of G.O.Ms. No. 1220

Forests and Fisheries D/- 7-11-1979 the petitioners are entitled to get renewal of the leases, and this has been so held by a learned single Judge of

this Court in W. P. No. 2607 of 1977. According to the learned counsel, if the lessees had continued in possession of the leasehold property after

the lease had expired, they are entitled to be granted fresh leases for a period of fifteen years without any condition relating to payment of premium

or the renewal fee. The learned counsel relies on the following clause in the said G. O. Ms. 1220 Forests and Fisheries D/- 7-11-1979;

There may be cases where the lease is already in force according to earlier orders in excess of 15 years. In all such cases, the lease will expire

after the current period is over and, thereafter, it will be treated as a fresh lease subject to the present conditions, for a period of fifteen years only

subject to the eligibility of the persons concerned".

The above extract was construed by Ramaswami, J., in W.P. No. 2667 of 1977 as enabling the lessee whose lease was current on the date of

passing the said Government Order, but which expired thereafter, to be treated as a fresh lessee, subject to the period of 15 years with the present

conditions. It is no doubt true that the said extract from the Government Order indicates wherever the leases granted according to the earlier

orders had expired, the leases have to be treated as fresh leases for a period of fifteen years only subject to the eligibility of the persons concerned.

But this is subject to the other conditions and terms imposed in the said

Government Order. Para 4 (b) of G.O.Ms. 1220 Forests and Fisheries D/- 7-11-1979 says that in future the extent of the cardamom lease will

not exceed two hectares per individual. Therefore, any fresh lease can only be in respect of an extent not exceeding two hectares. Therefore, the

said para 4(a) in which the above condition occurs cannot be understood as enabling expiring leases being treated as fresh leases in respect of the

entire extent originally leased. It is not, therefore, possible for us to accept the contention of the learned counsel Mr. Sukuntharaj appearing for

some of the petitioners that even without payment of the renewal fee and the requisite premium, fresh leases should be granted as per para 4(a) of

G. O. Ms. No. 1220 Forests and Fisheries D/- 7-11-1979. The second batch of writ petitions has, therefore, to be dismissed and it is dismissed

accordingly. No costs.

26. Thus, having regard to the conclusions we have arrived at as indicated above, the petitioners in the following writ petitions who have paid both

the premium and renewal fee long before the issuance of G.O. Ms. No, 84 Forests and Fisheries D/- 9-2-11979 or G.O.Ms. No. 1220 Forests

and Fisheries D/- 7-11-1979 are entitled to be granted the renewal. Thus out of the first batch of cases referred to above W. P. Nos. 564, 897 to

903 of 1980; 1542, 1544, 1545, 6655, 6680 of 1980; 4814 of 1982, 1945 of 1979: 1740, 1746, 1292, 1304, 6002, 6584 and 6944 of 1980

are allowed and mandamus will issue to the respondents to grant renewal of the leases in their favour. The petitioners in W.P. Nos.

1543,1570,1604, 1711 to 1713 of 1980; 4790, 5088 of 1979; 5927, 6764, 6759 of 1980; 6147 of 1979, 6181 and 6764 of 1980 have not

paid the renewal fee and the premium in full. Hence, they are, not entitled to succeed and the said writ petitions are dismissed. There will be no

order as to costs in any of these cases.

27. Order accordingly.