

**(2013) 01 KL CK 0025**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 16951 of 2012**

ITI Limited

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

**Date of Decision : 01-01-2013**

**Acts Referred:**

Companies Act, 1956 — Section 3, 617  
Constitution of India, 1950 — Article 14, 226  
Contract Act, 1872 — Section 20, 21, 23, 72  
Land Acquisition Act, 1894 — Section 17(4), 23, 3, 3(cc), 3(e)  
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

**Citation :** (2013) 1 ILR (Ker) 300 : (2013) 1 KHC 315 : (2013) 1 KLJ 551 :  
(2013) 1 KLT 464

**Hon'ble Judges :** T.R. Ramachandran Nair, J

**Bench :** Single Bench

**Advocate :** N.N. Sugunapalan and Sri S. Sujin, for the Appellant; K.P. Dandapani, Advocate General and Sri T.T. Muhamood, Special Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

T.R. Ramachandran Nair, J.—This Writ Petition raises three important questions: (i) Whether in the light of the amendment to Part VII of the Land Acquisition Act, 1894 (for short "the Act"), acquisition for a Government Company is covered by the provisions of the said Part and an agreement executed between such a Government Company and the Government will be void; (ii) whether the agreement is violative of Section 20 of the Contract Act and if so, it is void; and (iii) whether the agreement could be saved in the light of Section 21 of the Contract Act. The necessary facts for the disposal of the Writ Petition are the following: The petitioner is the ITI Limited, Bangalore, a Government of India Company. For expanding the Palakkad Unit, the Company requested the Government of Kerala to acquire the property having 100 acres in extent in 1987. The request was considered under Part VII of the Act. Exts. P-2 to P-6 are the copies of awards passed in the land acquisition proceedings. The Company

paid an amount of Rs. 2.5 crores to satisfy the awards. On completion of the proceedings of acquisition Ext. P-7 agreement was executed between the Company and the Government on 17-7-1987 imposing certain conditions. One of the important conditions therein is the clause regarding resumption in case of any failure on the part of the petitioner to carry on their obligation.

2. The main challenge is against Ext. P-13 order by which an order of resumption has been passed resuming 77.80 acres of land unutilised by the Company. Ext. P-14 is the covering letter served along with the same and forwarding a Demand Draft for an amount of Rs. 1,70,47,790. Ext. P-15 is the proceedings of the State Government conveying the decision to make available the land for starting a Medical College for the benefit of students from among Scheduled Castes and Scheduled Tribes and Ext. P-16 is the communication issued by the Principal Secretary to the Government, Revenue Department requesting the District Collector to resume the said land from the Company. Pursuant to these orders, the above land has been taken possession.

3. In fact, even during earlier periods also there were communications proposing to resume the unutilised land. Ext. P-8 is the notice issued by the District Collector dated 17-12-1997 conveying the decision of the Government to resume the same extent. This was replied by the Company as per Ext. P-9 requesting that the order may be revoked, as the Company is proposing to fulfil certain development activities as per an action plan. Ext. P-10 is produced to show that a draft rehabilitation scheme was sanctioned by the Government of India which has been submitted before the BIER. The BIER is yet to take a final decision in the matter. Ext. P-11 is the representation submitted by the Company dated 27-10-2011 pointing out that the land will be required for implementing the various projects/expansion plans which will facilitate the revival of the Company.

4. Ext. P-13 and its contents are therefore relevant to address the questions raised herein. It refers to the fact that out of the 100 acres of land in Yakkara Village acquired as per sanction order dated 3-3-1987 issued by the Government, 72.77 acres of land remains unutilised. After citing the earlier proceedings in the matter it is mentioned that sanction has been accorded for setting up of a Medical College in Palakkad District by the Government of Kerala. In the light of the agreement dated 17-7-1987 the Government has the right to resume the land if the petitioner Company does not use the land for the purpose for which it was acquired within a period of two years or such further extended period. It refers to the willingness expressed by the company to spare 50 acres of land for the establishment of a National Institute, viz. Indian Institute of Information Technology and Tele Communications to boost the educational and socio economic development in the district, provided appropriate compensation is paid to the company. Finally after mentioning about the purpose to start a Medical College, direction has been issued to resume the land.

5. The: legal contentions raised by the petitioner are the following: The agreement executed as per Ext.P-7 has no force of law. The Government

Company will come within the definition of Section 3(cc) of the Act. Part VII of the Act is concerned only with the private companies other than Government Companies. Therefore, the petitioner company is not governed by the provisions of Section 44B of the said Part and hence no conditions can be imposed for the manner of Utilisation of the land acquired for the Company. Therefore, the agreement executed is against the provisions of the Act and unenforceable. The land is required for the purpose of the Company also. Further, in the light of the provisions of the Sick Industrial Companies (Special Provisions) Act 1985, the land cannot be diverted.

6. Heard learned Senior Counsel for the petitioner Shri N. N. Sugunapalan and learned Advocate General Shri K. P. Dandapani and learned Special Government Pleader Shri T. T. Muhamood for the respondents.

7. Learned Senior Counsel for the petitioner Shri Sugunapalan submitted that in the light of Section 3(cc) of the Act, the Government Company will be coming under the definition of "Corporation owned or controlled by the State". The definition of "Company" in Section 3(e) of the Act does not include a Government Company. It is submitted that Part VII of the Act especially Section 44B will show that the provision applies only to private companies other than Government Companies. It is therefore submitted that the provisions of the Act after the amendment by Amendment Act 68 of 1984 have taken "Government Company" out of the purview of Part VII. The Company herein is governed by the Memorandum of Articles of Association produced as Ext. P-1. It will show that it is purely a Government of India Company. The agreement therefore is a nullity and it is clearly void also. It is therefore submitted that once the property has been acquired and handed over to the company after payment of the amount by the Company, no further right is inhered on the Government to provide any such agreement containing clauses for resumption. It is also submitted that the agreement executed herein is on a mistake of fact and therefore purely void in the light of Section 20 of the Contract Act. It is therefore submitted that as the agreement is one forbidden by law also, Ext. P-7 can only be considered as void. Thus, for invoking the power of resumption there is no authority for the Government and no further communications were issued after the submission of Exts. P-10 and P-11. It is therefore clear, according to the learned Senior Counsel for the petitioner, that the act of resumption cannot be supported in law. Learned Senior Counsel relied upon various decisions of the Apex Court in this context. With regard to the scope of Part VII of the Act, the following decisions were relied upon: Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others, , Ramji Veerji Patel and Others Vs. Revenue Divisional Officer and Others, , Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, , R.L. Arora Vs. State of Uttar Pradesh and Others, and Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, and regarding the void nature of the contract, the learned Senior Counsel relied upon the decisions of the Apex Court in Firm of Pratapchand Nopaji Vs. Firm of Kotrike Venkata Setty and Sons and

Others, , Real Value Appliances Ltd. v. Vardhaman Spinning & Gen. Mills Ltd. (1998) 5 S.C.C. 554 and M/S Patheja Bros. Forgings and Stamping and Another Vs. I.C.I.C.I. Ltd. and Others, .

8. Learned Advocate General submitted that the Government companies are not excluded from the provisions of Part VII and the contentions raised by the petitioner cannot be accepted. It is pointed out that the agreement herein has been executed with full consensus by both sides and therefore the petitioner cannot now wriggle out of the obligations under the agreement which was in operation from 1987 onwards. A challenge against the agreement and a declaration on its validity cannot be sought for in a writ petition filed under Article 226 of the Constitution of India. It is submitted that Section 44B specifically mentions about the Government company and the restriction therein with regard to acquisition for a private company does not mean that Government companies are taken out of the purview of Part VII. It is submitted that the land remained unutilised except about 25 acres. It is submitted therefore that the order of resumption is well within the power of the Government. The land is proposed to be used for a laudable object of establishing a Medical College, mainly to cater to the needs of the students from among Scheduled Caste and Scheduled Tribe communities, which is unique in the entire country. It is submitted that the petitioner cannot wriggle out of the situation in the light of the fact that even going by their own communications long back, they had agreed to surrender 50 acres. It is submitted that the same will go against the contentions of the petitioner.

9. It is also submitted that the company has not been functioning to its full satisfaction and there is no expansion Programme for the same. Therefore, there is no illegality in the proceedings, it is submitted. It is also submitted that the contract is not Voidable even if there is a mistake as to any law in force and therefore the agreement is binding on the petitioner. Learned Advocate General relied upon the following decisions in this context: Sri Shiba Prasad Singh, deceased now represented by Kali Prasad Singha v. Maharaja Brish Chandra Nandi and another(9), Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of Civil Supplies and Another, , Nanappan Konthi and Others Vs. District Collector, Kottayam and Others, , Fomento Resorts and Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, and H.B. Basavaraj (Dead) by LR. and Another Vs. Canara Bank and Others, .

10. An analysis of the provisions of the Act and the relevant rules are required for evaluating the contentions of the respective parties. There are important amendments which have come into effect by the Amendment Act 68 of 1984. Part VII is under the heading "Acquisition of Land for Companies". Before the amendment, Section 38 of the Act provided for a provision by which the Government can authorise any officer of any Company to acquire land for its purpose invoking the powers conferred u/s 4 of the Act. Thus, Section 4 was not applicable before its amendment by Amendment Act, 1984 to acquisition for the

purpose of a Company but was made applicable by Section 38 and now by the amendment, Section 38 has been omitted. Now Section 4 itself will apply to acquisition for a Company. Section 3(cc) of the Act defines "Corporation owned or controlled by the State" as any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in Section 617 of the Companies Act, 1956 and other entities like societies registered under the Societies Registration Act, 1860 and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, etc. Section 3(e) defines "Company" as the following:

(i) a company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);

(ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc); and

(iii) a co-operative society within the meaning any law relating to co-operative societies for the time being in force in a State, other than a society referred to in Clause (cc).

In Section 3(f) which gives an inclusive definition of the expression "public purpose" sub clause (iv) provides the following: "the provision of land for a corporation owned or controlled by the State". Another important amendment is in Section 4 of the Act. Sub-section 4(1) is worded like this: "Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company". Therefore, the words "or for a company" are now included in sub-section (1) of Section 4. Another important amendment is in Section 6. The second proviso stipulates that "no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenue or some fund controlled or managed by a local authority". Explanation 2 therein reads as follows:

Explanation 2.-Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenue.

Therefore, as far as payment by a corporation owned or controlled by a State is concerned, it will be deemed to be compensation paid out of public revenue. Going by the above scheme, it can be seen that a Government company is now included in the definition u/s 3(cc) and a company other than it, is separately defined u/s 3(e). The meaning of "public purpose" in Section 3(f) will show that when the acquisition is for the entities u/s 3(cc) it will be for a public purpose. The amendment in Section 4 as well as the amendments in Section 6, Explanation 2 are also significant. Therefore, the scheme for acquisition for a Government company and other companies coming u/s 3(e) of the Act is separate.

11. Going by the scheme under Part VII, the same provides for the procedure for acquisition for companies. Section 39 provides that previous consent of appropriate Government and execution of agreement is necessary. Section 40 provides for "previous enquiry", which reads as follows:

40. Previous enquiry.- (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5A, sub-section (2) or by an enquiry held as hereinafter provided-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith; or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint;

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of Civil Court.

Section 41 provides for the execution of agreement with the Government in respect of the various matters provided in sub-sections (1) to (5) and Section 42 provides for the publication of the agreement in the Official Gazette. Section 44A provides for restriction on transfer of the acquired land by the company and it cannot sell, mortgage, gift, lease or otherwise transfer except with the previous sanction of the appropriate Government. Section 44B on which much argument is raised, reads as follows:

44B. Land not to be acquired under this Part except for certain purpose for private companies other than Government companies.-Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of Section 40, for a private company which is not a Government company.

Explanation.-"Private company" and "Government company" shall have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956).

Going by the above provision, the purpose of acquisition for a private company is governed by Section 40(1)(a) of the Act.

12. The power to make rules is provided u/s 55 of the Act. Learned Advocate General relied upon the Land Acquisition (Companies Rules), 1963 which was

framed u/s 55 of the Act by the Central Government. Rule 1(2) states that the rules shall apply to acquisition of land for all companies under Part VII of the Act. The matters to be provided in the agreement u/s 41 of the Act are given under rule 5. Sub-rules 5(iv) and 5(v) have been specifically relied upon, during the arguments. The same reads as follows:

(iv) that if the company commits a breach of any of the conditions provided for in the agreement, the appropriate Government may make an order declaring the transfer of the land to the company as null and void whereupon the land shall revert back to the appropriate Government and directing that an amount not exceeding one-fourth of the amount paid by the company to the appropriate Government as the cost of the acquisition under clause (1) of Section 41 of the Act shall be forfeited to the appropriate Government as damages and the balance shall be refunded to the company, and the order so made shall be final and binding;

(v) that if the company utilises only a portion of the land for the purpose for which it was required and the appropriate Government is satisfied that the company can continue to utilise the portion of land used by it even if the unutilised part thereof is resumed, the appropriate Government may make an order declaring the transfer of the land with respect to the unutilised portion thereof as null and void whereupon such unutilised portion shall revert back to the appropriate Government and directing that an amount not exceeding one-fourth of such portion of the amount paid by the company as cost of acquisition under clause (1) of Section 41 of the Act as is relatable to the unutilised portion shall be forfeited to the appropriate Government as damages and that balance of that portion shall be refunded to the company and the order so made shall subject to the provisions of Clause (vi), be final and binding.

13. The scheme of Part VII had come up for consideration in various decisions of the Apex Court. In *R.L. Arora Vs. State of Uttar Pradesh and Others*, a Constitution Bench considered various questions under Sections 40(1) and 41 of the Act as well as Section 44B. In para 17 the intention behind the restriction provided as far as private companies are concerned and the difference when an acquisition is made in favour of a Government company, have been explained thus:

Reference was also made to S. 44B, introduced by the Amendment Act, which lays down that "notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in cl. (a) of sub-sec. (1) of S. 40, for a private company which is not a Government Company". It is said that there is discrimination between a public company and a Government company for which land can be acquired under cl. (aa) on the one hand and a private company or an individual on the other. It is true that acquisition for the purpose of cl. (aa) can only be made for a Government company or a public company and cannot be made for a private company or an individual; but there is in our opinion a clear classification between a public company and a

Government company on the one hand and a private company and an individual on the other, which has reasonable nexus with the objects to be achieved under the law. The intention of the legislature clearly is that private individuals and private companies which really consist of a few private individuals banded together should not have the advantage of acquiring land even though they may be intending to engage in some industry or work which may be for a public purpose inasmuch the enrichment consequent on such work goes to private individuals or to a group of them who have formed themselves into a private company. Public companies on the other hand are broad based and Government companies are really in a sense no different from Government, though for convenience of administration a Government company may be formed, which thus becomes a separate legal entity. Thus in one case the acquisition results in private enrichment while in the other it is the public which gains in every way. Therefore a distinction in the matter of acquisition of land between public companies and Government companies on the one hand and private individuals and private companies on the other is in our opinion justified, considering the object behind cl. (aa) as introduced into the Act. The contention under this head must therefore also fail.

Of course, it is emphasised therein that in the case of private companies the acquisition results in private enrichment but in the other, when the acquisition is for the Government company it is the public which gains in every way. The provisions were again considered in *Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others*, . In paragraphs 7 and 8 therein, Section 44B and its interpretation were considered. The Apex Court held as follows:

The object of Ss. 44A, and 44B appears to be that they intend to safeguard public interest. The company acquiring the land for a public purpose in Chapter VII may, after the acquisition has become final, divert the land for private profit motive, defeating the purported public purpose for which the acquisition was made. The Government company obviously does not alienate such property for private gain since the profit merges into public fund. While the private company could get acquisition but thereafter becomes free to dispose of the property. Therefore, the acquisition for a private company gets limited only for purposes envisaged under S. 40(1)(a) and thereby the public purposes envisaged therein get safeguarded and protected. The dominant purpose of public utility pervades the provisions in Chapter VII of the Act.

It was held that even when Part VH was invoked, the requirements of Sections 40 and 41 are mandatory and shall be strictly complied with. The notification leading to the acquisition therein was issued prior to the Amendment Act 68 of 1984, and the provisions as they stood then were considered.

14. Shri Sugunapalan, learned Senior Counsel for the petitioner relied upon the decision of a learned Single Judge of this Court in *Pankajahshy v. State of Kerala* (1990) 1 KLT 776 holding the view that the power u/s 17(4) of the Act cannot be

invoked in respect of acquisition for a company. In Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, , the difference in the procedure when acquisition is under Part II or Part VII was considered. It was held, on the facts of the said case, that the entire amount of compensation was paid by a State Agency and hence the procedure to be followed was under Part II and not under Part VII.

15. The decision of the Apex Court in Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others, relied upon by the learned Senior Counsel for the petitioner is a case where the acquisition was for planned development of Delhi. The same was under challenge in various writ petitions. The challenge was on the ground that after the notification there an agreement was executed with a co-operative society for allotment of certain extent of land and the provisions of Part VII has not been complied with. On the facts of the case the Apex Court in para 12 held that "the society is to be allotted some land and even if appellants' land is allotted to this Society, after acquisition it will not mean that the acquisition was for this Society. Therefore, the provisions of Part VII of the Act need not have been complied with".

16. Herein, the facts are different. Learned Senior Counsel further relied upon the decision of the Apex Court in Ramji Veerji Patel and Others Vs. Revenue Divisional Officer and Others, to contend that Part VII will not apply to a Government company. Therein in para 26, after considering the definition under Sections 3(cc) and 3(e) of the Act, it has been held thus:

26. That the Corporation and TNSCTC fall within the definition of Section 3(cc) is not in dispute. Both may not have been divested of their character as a Government company but sub-clause (i) of Section 3(e) excludes a Government company from the definition of company. Part VII (Sections 38 to 44B) of the Act provides for acquisition of land for companies. In view of the definition of "company" in Section 3(e) which excludes Government company, the Corporation or for that matter its successor TNSCTC does not fall within the definition of "company" and, therefore, is not covered by Part VII of the Act at all

In para 27, Their Lordships stated the law thus:

As noticed above, the definition of "company" has undergone complete change and Government company has been expressly excluded from the expression "company" for the purposes of the Act.

Therein, the argument was that the Tamil Nadu State Transport Corporation (TNSCTC) is a Government company and therefore compliance of the provisions of Part VII of the Act had to be made for acquiring land for their purpose. In para 24, the Apex Court specifically adverted to the amendment by Act 68 of 1984 and stated thus:

With regard to the above contention of Mr. Pallav Shishodia, it is enough to say that it overlooks Section 3(cc) and Section 3(e) of the Act substituted by Act 68

of 1984.

This is quite important in the context of this case.

17. In the light of the above binding decision of the Apex Court, it can be seen that a Government company is not covered by the provisions of Part VII of the Act after the amendment of 1984. Learned Advocate General tried to explain that the situations therein and the one arising herein are quite different. My attention was invited to a decision of a learned Single Judge of this Court which arose after the amendment of the Act, viz. *Nanappan Konthi and Others Vs. District Collector, Kottayam and Others*, . Reliance is placed on para 7 of the judgment which reads as follows:

Part VII of the Act deals with the acquisition of land for companies. The Government should be satisfied regarding the existence of certain conditions mentioned in various sub-clauses of S. 40(3) of the Act for acquiring land under the Act. If the Government are satisfied that the purpose of the acquisition is to obtain land for erection of dwelling houses for the workmen employed by a company or for provision of amenities directly connected with it, such acquisition is permitted by invoking the provisions of the Act. Similarly, if after enquiry, the Government are satisfied that the acquisition is needed for constitution of some building or work for a company which is engaged in any industry or work which is for a public purpose then also the provisions of the Act can be pressed into service for acquiring land. Lastly, if the Government are satisfied that the acquisition is needed for the constitution of some work which is likely to prove useful to the public, then also, the provisions of the Act can be invoked. In the case of a private company, a further restriction on the acquisition of the land is made in S. 448 of the Act. That is, a private company can get the land acquired under this Act only for the purpose of erection of dwelling houses for its workmen or for provision of amenities directly connected with it. According to the petitioners., this limitation is applicable to all companies other than Government companies." In other words, acquisition for other purposes mentioned earlier for a company can be resorted to only if the company happens to be a Government Company. This interpretation will be violating the provisions of S. 40(1) of the Act.

It was held therein that a private company can get the land acquired under the Act only for the purpose of erection of dwelling houses for the workmen employed by them or for provision of amenities directly connected with it. It was contended that the said limitation will apply to all companies other than Government companies. After considering the definition of "private company" and "Government company" under the Companies Act, it was held that the additional fourth respondent company therein is neither a private company nor a Government company, but it is a public company. It was held that for such companies acquisition under the Act can be resorted to for any of the purposes mentioned in Section 40(1)(a)(a) of the Act.

18. In fact, the question as directly posed herein was not the one raised therein and hence the said decision is clearly distinguishable on facts. While expanding the argument, the learned Advocate General relied upon the observations of para 51 of the decision of the Apex Court in Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, to contend that the agreement is enforceable. Therein, it has been held as follows:

Once it is held that there existed public access to the beach through Survey No. 803 (new No. 246/2) before its acquisition by the State Government in 1980, the appellants are duty-bound to act in accordance with Clause 4(ix) of the agreement, which has the force of law by virtue of Section 42 of the 1894 Act. That clause casts a duty on Appellant 1 to maintain access to the beach without obstruction of any kind whatsoever.

But the question that arises for consideration herein regarding the applicability of Part VII of the Act has not come up therein. The date of the agreement therein was 26-10-1983, also.

19. A reference to the statement of objections and reasons of the Amendment Bill, viz. Bill No. 63 of 1984 which culminated in the Amendment Act 68 of 1984 will definitely throw some light on the crucial amendment. The main purpose;; of the amendment have been cataloged in the Bill wherein item (ii) is relevant herein which reads as follows:

(ii) Acquisition of land for non-Government companies under the Act will henceforth be made in pursuance of Part VII of the Act in all cases.

Learned Advocate General further submitted that Section 44B even retains the words "Government companies" which has not been amended after the introduction of Act 68 of 1984 and therefore the contentions of the petitioner cannot be accepted.

20. On an analysis of the scheme it can be seen that the amendments introduced by giving a definition in Section 3(cc) and the meaning given for the purpose of Sections 3 and 4, if read together, will show that as far as Government companies are concerned, they are treated separately. Section 4 is also therefore important apart from Explanation (2) in Section 6. Now Section 38 has been omitted and the issuance of notification is governed by Section 4. In the light of the binding judgment of the Apex Court in Ramji Veerji Patel and Others Vs. Revenue Divisional Officer and Others, , Government company has been expressly excluded from the definition of "company", and it follows that Part VII cannot apply to such companies.

21. Now the effect of the said finding on the agreement herein is the next important question to be considered. Both sides are relying upon the relevant provisions of the Contract Act, 1872. Section 20 of the Indian Contract Act reads as follows:

20. Agreement void where both parties are under mistake as to matter of fact.-

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

Explanation.- An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

The agreement will be void if both parties are under a mistake as to a matter of fact. Learned Advocate General submitted that Section 21 alone will apply here, which reads as follows:

21. Effect of mistakes as to law.- A contract is not voidable because it was caused by a mistake as to any law in force in India but a mistake as to a law not in force in India has the same effect as a mistake of fact.

It will show that the contract will not be voidable on the basis of a mistake as to any law in force.

22. The next section relied upon by the learned Senior Counsel is Section 23 to show that a contract forbidden by law will render the agreement void and unlawful. Learned Senior Counsel relied upon the following decisions in support of his contentions regarding the void nature of the agreement. They are: Firm of Pratapchand Nopaji Vs. Firm of Kotrike Venkata Setty and Sons and Others, and Sri Tarsem Singh Vs. Sri Sukhminder Singh, . In Firm of Firm of Pratapchand Nopaji Vs. Firm of Kotrike Venkata Setty and Sons and Others, the effect of Section 23 of the Indian Contract Act was considered. The consideration was in the light of the statutes prohibiting forward contracts. Para 7 which was relied upon by the learned Senior Counsel reads as follows:

7. If an agreement is merely collateral to another or constitutes an aid facilitating the carrying out of the object of the other agreement which, though void, is not in itself prohibited, within the meaning of Section 23 of the Contract Act, it may be enforced as a collateral agreement. If on the other hand, it is part of a mechanism meant to defeat what the law has actually prohibited, the Courts will not countenance a claim based upon the agreement because it will be tainted with an illegality of the object sought to be achieved which is hit by Section 23 of the Contract Act, It is well-established that the object of an agreement cannot be said to be forbidden or unlawful merely because the agreement results in what is known as a "void contract". A void agreement, when coupled with other facts, may become part of a transaction which creates legal rights but this is not so if the object is prohibited or "mala in se" Therefore., the real question before us is: Is the agreement between the parties in each case, which was to be carried out in Bombay so connected with the execution of an object prohibited by either a law applicable in Bombay or a law more widely applicable so as to be hit by Section 23 of the Contract Act?

Shri Sugunapalan, learned Senior Counsel emphasised the fact that the effect of Section 23 will make the contract void. But a close reading of the said paragraph

will show that to come under the purview of Section 23, the object should be one prohibited under any law. Their Lordships have held as follows therein further that "It is well-established that the object of an agreement cannot be said to be forbidden or unlawful merely because the agreement results in what is known as a "void contract" ". Therefore, attempt should be to find out whether there is any prohibition under any law, to contend that an agreement will be hit by Section 23 of the Contract Act.

23. In Pollock & Mulla Indian Contract and Specific Relief Acts, 13th Edn. Reprint 2010 the concept of Section 23 of the Contract Act has been explained at page 644 under the heading "Forbidden by Law", as follows:

An act or undertaking may be forbidden by law if it violates a prohibitory enactment of the legislature or a principle of unwritten law. In India, where criminal law is codified, act forbidden by law seem practically to consist of acts punishable under the Indian Penal Code 1860 (IPC), and of acts prohibited by special legislation, or by regulations or orders made under the authority derived from the legislature. The term "law" in this expression would include any enactment or rule of law for the time being in force in India, i.e., under three heads:

- (i) The provisions of any legislative enactment; or
- (ii) The rules of Hindu or Mahomedan law; or
- (iii) Other rules for the time being in force in India.

An agreement is also unlawful, if forbidden by an order of a competent authority, which has the force of law.

(emphasis supplied)

The difference between the expression "forbidden by law" and "Void" has also been explained in page 646 thus:

A statute may provide that an agreement shall be only void, or may provide that it shall also be unlawful or illegal. It is not necessary that whatever is declared void is forbidden by law. A contract, which is merely void and unenforceable, is not "forbidden by law" within S. 23. What is void cannot be equated with what is "forbidden by law". In the latter case, the legislature prohibits it or penalises it, in the former, it merely refuses to give effect to it. If a void contract has been carried out and consideration has passed, the promise may not be allowed to go back upon it without restoring the benefit, by the promise would get no help from the court if he comes to court.

The decision of the Apex Court in Gherulal Parakh Vs. Mahadeodas Maiya and Others, has been referred to, in this context. At the same page, viz. page 646 under the heading "The Nature and Effect of Statutory Prohibition", again the principles have been explained as follows:

There are four main ways in which the enforceability of a contract may be affected by a statutory provision which renders particular conduct unlawful.

- (i) The contract may be to do something which the statute forbids;
- (ii) The contract may be one which the statute expressly or impliedly prohibits;
- (iii) The contract although lawful on its face, may be made in order to effect a purpose which the statute renders unlawful; and
- (iv) The contract, although lawful according to its own terms, may be performed in a manner which the statute prohibits.

The nature and effect of statutory prohibition may vary. A statute may expressly prohibit an agreement, when it would not be enforced. What is done in contravention of the provisions of an Act of Parliament cannot be made the subject-matter of an action.

Therefore, it cannot be said that even if the contract becomes void for other reasons, it can be automatically be termed as forbidden by law. The principle under Sections 20 and 23 are therefore quite different. In the light of the exposition of law as above, merely because a Government company is not covered by Part VII of the Land Acquisition Act, 1894, it cannot be said that an agreement, of the nature herein, is forbidden by law.

24. As far as the decision of the Apex Court in *Sri Tarsem Singh Vs. Sri Sukhminder Singh*, is concerned., the decision was on the question of an important mistake as to the fact essential to the agreement which is clear from Headnote (B), paragraphs 20, 21 and 23 and the discussion on the subject reads as follows:

An agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this section. The other requirement is that the mistake, apart from being mutual, should be in respect of a matter which is essential to the agreement. Where the parties to an agreement to sell land were not *ad idem* with respect to the unit of measuring land in-as much as while the seller intended to sell the land in terms of "kanals", the plaintiff intended to purchase it in terms of "bighas", the "mistake" with which the parties were suffering, cannot be said to be not related to a matter essential to the agreement. In such a case the dispute is not with regard to the unit of measurement only. Since these units relate to the area of the land, it is really a dispute with regard to the area of the land which was the subject-matter of agreement for sale, or, to put it differently, how much area of the land was agreed to be sold, is in dispute between the parties and it is with regard to the area of the land that the parties were suffering from a mutual mistake. The area of the land is as much essential to the agreement as the price which, incidentally, was to be calculated on the basis of

the area.

Therefore, the agreement will become void u/s 20 of the Indian Contract Act if there is a mistake as to a matter of fact. Therein, the seller intended to sell land in terms of "Kanals" and the purchaser intended to purchase in terms of "Bigha" Therefore that was a mistake as regards an important matter of fact. Herein, there was no mistake as regards any factual aspect. The land was acquired for the company and the said acquired land was subjected to the agreement. No material mistake was committed on essential facts concerning existence of the subject-matter of the agreement. Thus, it is not a case of any application of Section 20. In Cheshire and Fifoot's Law of Contract, Ninth Edition at page 208, the relevant principle has been elucidated thus: "It is well-established that if, unknown to the parties, the specific subject-matter of the agreement is in fact non-existent, no contract whatever ensues." Going by the main contention of the petitioner, it is about the applicability of Part VII of the Act in relation to such an agreement. That can only be termed as a legal issue and not a factual issue. Therefore, Section 20 will not apply to the facts of this case.

25. The legal position as far as the mistake of law is concerned, has been explained in (1949) L.R. 76 I.A. 244 (Privy Council) , Kalyanpur Lime Workers Ltd. Vs. State of Bihar and Another, and Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of Civil Supplies and Another, . The above decisions have been relied upon by the learned Advocate General to drive home the argument that the agreement not voidable. It has been explained in those decisions that in such a case the contract would not be void. In the first of the decisions, viz. (1949) L.R. 76 I.A. 244 (Privy Council) the legal position was explained thus:

If a mistake of law has led to the formation of a contract, Section 21 enacts that that contract is not for that reason voidable. If money is paid under that contract, it cannot be said that that money was paid under mistake of law.

The above decision was relied upon in Dhanyalakshmi Rice Mills" case(10) in para 31 wherein it has been held thus:

A contract entered into under a mistake of law of both parties falls u/s 21 of the Contract Act and not Section 72. If a mistake of law had led to the formation of a contract, Section 21 enacts that that contract is not for that reason voidable. If money is paid under that contract, it cannot be said that the money was paid under mistake of law. It was paid because it was due under a valid contract. If it had not been paid, payment could have been enforced.

Therefore, as far as mistake of law is concerned, it can be seen that the contract is not for that reason voidable.

26. In Kalyanpur Lime Works" case(17), the Apex Court in para 16, took a similar view, as extracted below:

16. Furthermore, as have been stated already, neither party was in error as regards the essential facts upon which the contract proceeded. It was known to

both parties that there was an assignment of the lease by the Kuchwar Company in favour of S. G. Bose and both parties knew that under the terms of the lease an assignment by the lessee without the consent of the lessor would make his interest liable to forfeiture. The mistake, if any, was with regard to the effect of the law of registration the validity of the assignment deed. At the most, such mistake would be a mistake of law and u/s 21 of the Indian Contract Act, the contract would not be void on that ground.

Thus, if it is a case of mistake of law the contract will not become void.

27. Herein, we will have to refer to the agreement Ext. P-7 in this context. Para 3(f) of the agreement reads thus:

(f) That the Bounden shall allow the public to use the work on following terms:

(here enter the special clauses if any, to be provided in each case on its merit).

That in the event of the Bounden being wound up or in the event of failure on the part of the Bounden to carry out the terms of agreement, that is to say, the land shall be liable to be resumed and taken back by the Government on repayment to the Bounden of the amount of the award as finally settled less 30% awarded for compulsory acquisition or estimated market value of the land at the time of resumption whichever shall be less and if there are any buildings on the land the Government may at their option either purchase the building on payment of their estimated value at the time or direct the Bounden to remove the buildings at its own cost within such time as may be allowed by the Government, with consideration that the Bounden is a Government of India undertaking.

That in the event of the voluntary relinquishment of the land by the Bounden as not required for the purpose for which it was acquired the Government may resume the land, if it is required for a public purpose/or if they consider that it should be returned to the original owner. If the Government decide not to exercise this power and inform the Bounden accordingly-later may dispose of the land in any manner it likes, In the even of the resumption of the land under this condition, the compensation payable to the Bounden shall be the value of the land at the time of acquisition (less than 30 per cent awarded on compulsory acquisition) or its value at the time of resumption, whichever may be less, together with the value of the buildings and other improvements at the time of resumption. If there are buildings on the land which the Government do not require the institution shall remove them at its cost.

The same gives the power to resume the land on payment of the award amount less by 30% or its estimated market value at the time of resumption, whichever is less. Ext. P-7 is dated 7-7-1987. When we consider the validity of the agreement, one thing to be noticed is that the said agreement is in a statutory form prescribed under Rule 9 (3) of the Land Acquisition (Kerala) Rules, 1990. In fact, the said rules have obviously come into force after the amendment of the Act in 1984. Rule 9 is under the heading "Publication of Declaration" and sub-rule

(3) is important which reads as follows:

9 (3) When the acquisition is for a public purpose other than for the purposes of the State Government or Central Government no declaration shall be published unless the requisitioning authority executes in favour of the District Collector, an agreement in Form No. 7.

A reading of the said rule will show that it covers acquisition for a public purpose other than for the purpose of the State Government or Central Government. An agreement by the requisitioning authority in Form 7 is required for publishing the declaration itself. Form 7 is the one thus prescribed under Rule 9(3) which concerns the "draft form of agreement under the Land Acquisition Act for the acquisition of land for public purpose other than for the purpose of State Government or Central Government". A comparison of Ext. P-7 agreement to that of the form prescribed will show that it is fully in conformity with the said form No. 7 and the terms are the same. In the counter-affidavit filed by the second respondent, in para 9 after relying upon Rule 9 (3) of the Rules which mandates the execution of an agreement in Form No. 7, it is stated that the agreement executed by the petitioner company with the Government is perfectly in order. It is true that in the earlier part of the counter-affidavit the stand taken is that the petitioner company is governed by Sections 39 to 43 of the Act. In para 4, it is averred that the agreement has been executed in Form No. 7 agreeing to abide by the terms and conditions contained in the agreement. In the light of the discussion already made, the provisions of Part VH will not apply to Government companies especially in the light of the law declared by the Apex Court in *Ramji Veerji Patel and Others Vs. Revenue Divisional Officer and Others*, . But the Government of Kerala has, after the coming into force of the Land Acquisition Amendment Act, 1984, framed the Kerala Rules 1990 as empowered u/s 55(1) of the Act. Therefore, as far as the requisitioning authority other than State or Central Government is concerned, such an agreement is mandatory even for bringing out the declaration which is significant, the same has therefore resulted in execution of Ext. P-7 agreement herein. The agreement therefore is having the statutory support under the relevant rules, viz. Rule 9(3). It is not one under Part VII of the Act. The conditions stipulated in the agreement therefore bind the parties concerned. The rules are not under challenge also.

28. Thus, the argument that Sections 20 and 23 of the Contract Act are attracted and therefore the contract is void, cannot survive. At any rate, Section 23 cannot apply since it is not an agreement forbidden by law but is one permitted by Rule 9 (3) of the Rules. There is no mistake of an essential fact to attract Section 20 of the Contract Act, as already discussed. Going by Section 21, even a mistake of law will not make the agreement voidable.

29. Another contention raised by the learned Senior Counsel for the petitioner is with regard to the proceedings before the BIFR. Reliance is placed on two judgments of the Apex Court, viz. *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, and *M/S Patheja Bros. Forgings and*

Stamping and Another Vs. I.C.I.C.I. Ltd. and Others, . In Grama Panchayat's case (supra), after referring to Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, in para 7 the position has been explained thus:

The nature of the proceedings which are automatically suspended are: (1) Winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of sick industrial company and (3) Proceedings for the appointment of Receiver.

In fact, none of the said contingencies are attracted herein to come within the mischief of Section 22 of the said Act. It is not a case of proceedings for execution, distress or the like against the properties of the company.

30. In M/S Patheja Bros. Forgings and Stamping and Another Vs. I.C.I.C.I. Ltd. and Others, also after referring to Section 22, the question was considered whether the bar u/s 22 will apply for enforcement of any guarantee in respect of a loan or advance granted to this industrial company. It was held that it may apply even to a suit filed against the guarantors. At the rate, the said proceedings cannot affect the order passed herein. Learned Government Pleader produced along with the affidavit of the second respondent as Ext. R-2 (g), the Government letter dated 5-8-1998 which will show that there was a discussion on 17-8-1998 with regard to the resumption of land owned by the company in 1998 itself. Ext. R-2 (h) will show that the company, in response to a requirement, has stated that they have taken up the matter with the Corporate to spare 50 acres of land to the Government. The area has also been shown in dotted blue lines, going by the said letter. Further, they wanted to get the clearance from the Ministry and approval of the bankers and the shareholders of the company. Herein, Ext. P-13 is the order passed in the light of the fact that the conditions in the agreement have not been fulfilled. Clearly, the relevant clause in the agreement provided for such a resumption. The said provision was invoked by the Government by the impugned order. Therefore, it cannot be said that the same is violative of the principles of natural justice or Article 14 of the Constitution of India or for want of any further notice in the matter. That the company has not utilised the land is not in dispute. Ext. R-2 (k) will show that the property has not been utilised. There are no buildings or other structures therein. There are miscellaneous trees alone apart from coconut trees, mango trees, etc. The purpose of resumption is also a laudable one, viz. for establishing a Medical College. All the grounds raised in the writ petition regarding the validity of the agreement cannot hold good.

For all these reasons, the writ petition fails and the same is dismissed. No costs.