

(2001) 09 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 1797 of 1997

Kerala State Cashew Development Corporation	APPELLANT
Vs	
Shahal Hassan Musaliar	RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(1)(g), 23
Kerala Cashew Factories (Requisitioning) (Amendment) Act, 1985 — Section 2
Kerala Cashew Factories (Requisitioning) Act, 1979 — Section 11, 3, 3(1), 3(3), 4

Citation : (2001) 09 KL CK 0010

Hon'ble Judges : B.N. Srikrishna, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : V.K. Beeran, A.A.G., T.P. Kelu Nambiar and P.G. Rajagopalan, for the Appellant; Harun-Al-Rasheed and V.N. Achuta Kurup, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, C.J.—The legal issues which arise in all these Writ Appeals and the Original Petition is common, the facts, though marginally different, are also sufficiently similar so that it is convenient to render a common judgment in this group of matters.

2. For the sake of identifying the factual matrix in which the legal issues arise, we shall refer to the facts in W.A. No. 1835 of 1997, which is directed against the judgment of the learned Single Judge dated 4th September, 1997 in O.P. No. 16424 of 1994.

3. The first respondent (original petitioner) is the owner of a factory situated in an extent of 2.29 acres of land in Kottarakkara Taluk of Kollam District. The factory comprises several buildings like godown, office, shelling and peeling sheds, grading shed etc. with necessary machineries and equipments installed therein for facilitating the work of the factory. This factory was being run by the first respondent, upto the year 1969. Sometimes in the year 1969, first respondent who was managing the factory himself, desired to go abroad. So, he

leased out his factory to the second respondent - Kerala State Cashew Development Corporation, a statutory Corporation set up in the State of Kerala, for development of the cashew industry. Ext. P1 is the copy of the lease deed dated 17th July, 1970 by which the cashew factory of the first respondent was leased out to the second respondent on a monthly lease rent of Rs. 1,500/-. The lease was initially for a period of three years and, on the expiry of the said term, a fresh lease deed was executed, which too expired on 16th July, 1976. It is the case of the first respondent that, while he was running the factory, he used to provide employment to the workers for about 300 days in a year.

4. After the expiry of the lease deed on 16th July, 1976, the first respondent, being unwilling to further lease out the factory, called upon the second respondent Corporation to release and hand over the factory and its assets to him. The Corporation, however, did not release the factory and, in the meanwhile, the State of Kerala passed the Kerala Cashew Factories (Requisitioning) Act, 1979 (hereinafter referred to as "the Act"). This Act was passed for the following purpose, as indicated in the preamble which reads as follows:

"Whereas certain cashew factories had been leased out by the owners thereof to the Kerala State Cashew Development Corporation Limited, which is a company owned by the Government of Kerala:

And whereas such cashew factories were at the time of the lease either closed down or run by person other than the owners thereof;

And whereas the term of lease in respect of some of such cashew factories has expired and the owners of some of such factories are not willing to extend the term of the lease;

And whereas suits have been filed in the courts by the owners of some of such cashew factories for delivery of possession thereof;

And whereas in the interests of the workers of the cashew factories, it is considered necessary to enable the said Corporation to continue in possession and management of such of those cashew factories which if given back to the owners thereof could not be run properly and in accordance with law and would either be sold or leased out to private individuals."

5. The object of the Act appears to be that, there were large number of such cashew factories which has been leased out to the second respondent Corporation under leases which had expired and it was intended to legalise the continuing possession of the lessee Corporation. The preamble to the Act suggests that the Act was intended to protect the interest of the workers, for which purpose it was necessary to enable the second respondent Corporation to continue in possession and management of those cashew factories and further that, if the factories were given back to the owners they would not be run properly and in accordance with law, and would either be sold or related out to

private individuals. Section 3 of the Act gives power to the Government to requisition a cashew factory in the possession of Corporation under a lease, even if the lease is current or time expired. Section 3 of the 1979 Act, which is the focus of attention, reads as under:

"3. Power to requisition cashew factories:

(1) When the Government are satisfied that if the owner of a cashew factory which is in the possession of the Corporation under a lease, whether current or time-expired, is put in possession thereof, such owner could not run that factory properly and in accordance with law and would either sell it or lease it out to any private individual and there would be large scale unemployment of the workers of that factory or their conditions of service would be adversely affected, the Government may, notwithstanding any judgment, decree or order of any court, by order published in the Gazette, requisition that cashew factory for such period not exceeding five years as may be specified in the order and may make such further orders as appear to them to be necessary or expedient in connection with the requisition;

Provided that before making an order under this sub-section in respect of a cashew factory, the Government shall give the owner of that factory and every person interested in that factory a notice of their intention to take action under this sub-section and the grounds therefore and consider the objection that may be preferred in pursuance of such notice.

(2) Where a cashew factory is requisitioned under Sub-section (1), such cashew factory together with all machinery, to her accessroires and the removable properties as were immediately before the date of publication of the order under Sub-section (1) in the possession of the Corporation and all books of account, registers and other documents relating thereto shall vest in the Government with effect from the said date.

(3) The Government may, by order in writing direct that a cashew factory vested in them under Sub-section (2) shall, instead of continuing to vest in them, vest in the Corporation with effect from such date, not being a date earlier than the date of publication of the order under Sub-section (1), as may be specified in the order.

(4) Where an order vesting a cashew factory in the Corporation is made under Sub-section (3), all rights, liabilities and obligations of the Government in relation to such factory shall, on and from the date of such vesting, be deemed to have become the rights and liabilities and obligations respectively of the Corporation".

One salient factor of Section 3 which immediately strikes the eye is that the power of the State Government to requisition the factory was for such period "not exceeding five years". In other words, there was a maximum period of five years upto which the cashew factory could be requisitioned in pursuit of the

objective with which the legislation was enacted. Section 4 of the Act provides that the Government may at any time release from requisition any cashew factory requisitioned u/s 3 and upon this happening the Government shall restore the factory in as good a condition as it was when possession thereof was taken by virtue of the lease executed by it with the owner of the cashew factory, subject to the provision contained in such lease and to changes caused by reasonable wear and tear and irresistible force. Section 4 also requires the Government to restore the cashew factory and its assets on the factory being released from requisition. Section 5 empowers the Government to determine the rent for requisitioning the factory, in accordance with the principle laid down therein. Section 11 of the Act bars the jurisdiction of the Civil Court in regard to any dispute in respect of any matter which the Government or the second respondent - Corporation is empowered to determine under the Act and protest action taken in good faith in pursuance of any power conferred by or under the Act.

6. Though, initially, the lease rent was fixed as Rs. 1,500/-, upon the renewal of the lease, the rent was increased to Rs. 2,500/- per month. In exercise of the powers conferred by Section 3(1) of the Act, the Government issued an order dated 23rd February, 1980, (Ext. P2), published in Government Gazette dated 25th February, 1980 requisitioning the factory of the first respondent with registration No. KU-55 situated at Neduvathoor Village in kottarakkara Taluk in Quilon District with all the properties attached to it as specified in the schedule for a period of five year. Thus, the possession of the factory was legalised by the Government by issuing the above order. The monthly rent continued to be fixed at Rs. 2,500/-. Even the period of this lease expired in the year 1985, after which the second respondent desired to further extend the lease to which the first respondent was not agreeable. The 1st respondent declined to extend the lease and refused to renew the lease in favour of the second respondent. The first respondent requested the appellant and second respondent to return the concerned cashew factory with all its assets. The appellant and the second respondent, however, did not comply with this request. The case of the second respondent is that all along from January, 1988 the rent due to the first respondent has been allegedly set off against Sales Tax arrears of which the first respondent is not aware. It is the case of the first respondent that, for about ten years or more, no amount of rent was received by him.

7. Having failed in his attempt to persuade the appellant and second respondent to return its factory and its assets, the first respondent filed Original Petition No. 16424 of 1994 for a direction to the appellant and the second respondent to hand back the possession of the concerned cashew factory with all its assets. During the pendency of this Original Petition, Ext. P7 notice was served on the first respondent u/s 3(1) of the Act, notifying the intention of the second respondent to requisition the concerned cashew factory under the Act, for further period of five years on the ground that, if the owner is put in possession of the cashew factory, he may not run the factory properly, in accordance with law, and

either sell it or lease it out to private individuals, resulting large scale unemployment of workers and adversely affecting their part of service. The first respondent opposed this notice by a statement of objection filed by him, (vide Ext. P8). The first respondent by his statement of objection challenged the right of the Government to extend the lease for an indefinite period. He also objected the ground that there existed no facts which could have enabled the State Government to arrive at a decision that upon return of the factory, the owner would not run it, or close it down or lease it out to private individuals resulting in large scale unemployment of worker or adversely affecting the condition of the workers. By another notice dated 14.6.1995, Ext. P9, the Government extended the period of requisition for a further period of five years from 17.7.1991. Even this notice was objected by the first respondent vide Exts. P10 and P11.

8. The Kerala Cashew Factories (Requisitioning) Act, 1979 was amended by Act 26 of 1985. Section 2 of Act 26 of 1985 amends Section 3 of Act 6 of 1979, the effect of which is to remove the outer limit of five years on requisition, imposed u/s 3 of Act 6 of 1979. As a result of amendment carried out by Act 26 of 1985, the Government may by order published in the Gazette:-

(a) requisition that cashew factory for such period not exceeding five years as may be specified in the order; (b) extend the period of requisition by five years at a time; (c) make such further orders as appear to them to be necessary or expedient in connection with requisition.

Section 3 of the Amending Act 26 of 1985 validated the continued possession of the cashew factories requisitioned u/s 3(1) of the Principal Act which had vested in the second respondent Corporation under Sub-section (3) of that Section notwithstanding the expiry of the lease period and notwithstanding anything contained in any law, or any decree or order of any court, and notwithstanding anything to the contrary in the terms of the contract or agreement. The result of Act 26 of 1985 was that it validated the action of the appellant and the second respondent even if contrary to the terms of the lease, even if time had expired, and even if there was a decree for eviction made by a competent court of law.

9. The first respondent, in his objections, apart from a substantive challenge the power of requisition, raised a challenge to the existence of the material facts requisite for subjective satisfaction of the Government about different factors noted in each of the above requisitioning orders. The first contention is that the amending act which enables the State Government to requisition the cashew factory for an indefinite period or time virtually enables the State Government to acquire the factory without following the provisions of any law, contrary to Articles 14, 19(1)(g) and 300A of the Constitution of India. We shall refer to this contention, in greater detail, subsequently.

10. On facts, the first respondent pointed out that while the private cashew factories were giving 250 days of work in the year, the Corporation on account of its hopeless financial situation was unable to give, on an average, more than 60

days of work in a year for the earlier 10 years. During the year 1993, while the first respondent's factory was run by the Corporation, it gave work to the workers for 12 days, and during 1994 only 13 days. The first respondent pointed out that the averment in the requisitioning order that there was likely to be large scale unemployment unless the lease was extended, was contrary to the facts and asserted that, if the factory was returned to him, he would be able to give 250 days work to the workers in a year. All these objections were raised by the first respondent in Ext. P8 dated 20.2.1995. Without any applications of mind, or holding any enquiry, to ascertain whether the objections had any merit, the second respondent passed the subsequent requisitioning orders, merely reproducing the conditions precedent in the amending Act of 1985. For these reasons, the first respondent contended that the action of the appellant and second respondent was illegal, unconstitutional and sought a writ of mandamus commanding them to hand back possession of the cashew factory along with all its assets. The learned Single Judge has accepted the contentions of the first respondent (original petitioner) and allowed the petition. Being aggrieved, the State has come up in appeal.

11. The first contention which weighed with the learned Single Judge was that any statute which empowers the State to continue to extend a requisition order for an indefinite period was nothing but an order for acquisition, it was a colourable exercise of power, which the state did not possess under the Act. The distinction between requisition and acquisition of property has been the subject matter of several decisions of the Supreme Court and the line of demarcation between the two is well defined in the celebrated judgment in *H.D. Vora Vs. State of Maharashtra and Others*, . In this case, the Supreme Court had occasion to consider the validity of repeated continued requisitions of private premises initially acquired under the emergency powers during war years. The Supreme Court pointed out that the two concepts, one of requisition and the other of acquisition, are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner, whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer, leaving nothing to the former. The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. In contrast, the concept of requisition involves merely taking of domain or control over property without acquiring rights of ownership and must by its very nature be of temporary duration. The Supreme Court summed up by pointing out that, the State cannot under the guise of requisition continue dominion over someone's property for an indefinite period of time, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property, but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises

are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and, in such a case, the order of requisition, if passed, would be a fraud upon the stature, for the Government would be requisitioning the premises, when really speaking they want the premises for acquisition, the object of taken the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises, but can be achieved only by acquiring the property, which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government may acquire the premises, but it certainly cannot requisition the premises and continue the requisitioning indefinitely.

12. In *Grahak Sanstha Manch and others Vs. State of Maharashtra*, a Constitution Bench of the Supreme Court approved of the decision in *H.D. Vora* (supra) and held that he said decision did not require reconsideration. However, the Constitution Bench did not approve the reasoning in *H.D. Vora* (supra) that a requisition order cannot be made for a permanent purpose leaving the question open and holding that the order of requisition can continue for a reasonable period of time though in *H.D. Vora* (supra) it was considered to be unreasonable in the facts of the case. In *Rajendra Kumar Gupta and Another Vs. State of U.P. and Others*, the same principle has been reiterated by the Supreme Court.

13. In *Union of India v. Elphinstone Spinning and Weaving Co. Ltd.*, AIR 2001 SC 724, the Supreme Court was concerned with a challenge to the Textile Undertakings (Taking over of Management) Act, under which the Government was empowered to take over the management of certain textile mills whose financial condition had deteriorated "pending nationalisation". The question was whether this power was liable to be challenged on the ground that it amounted to acquisition in reality. Repelling the challenge, it was held by the Supreme Court (vide paragraph 12) that power was not even liable to challenge as abridging Section 31-A(1) of the Constitution introduced by the Constitution First Amendment Act of 1951, Clause (1)(b) of which provides that, notwithstanding anything contained in Article 13, no law providing for the taking over the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 and Article 19. The Supreme Court was of the view that Parliament had in enacting the Textile Industries (Taking over of Management) Act, 1983 clearly indicated that the taking over was for a temporary period "pending nationalisation of Textile Mills". Merely because nationalisation would take long time, it cannot be urged that the power was to be exercised for indefinitely long time since the exercise of the power was delimited by the happening of a contingency. Thus, the power of requisition is liable to be upheld, if it is to be exercised for a temporary duration, which is limited either in terms of time or by reason of a contingency.

14. In the instant case, we notice that the power of requisition granted to the Government under the original Section 3 of the parent Act was limited to a maximum period of five years. It is only by the Amending Act of 1985 that this limitation was removed and the Government was empowered to extend the lease indefinitely by instalments of five years at a time. The learned Single Judge has, therefore, rightly held that this power is bad for reasons enunciated in *H.D. Vora* (supra) as it virtually amounts to a power of acquisition.

15. The learned Additional Advocate General strenuously contended that the power granted to the State Government by the amended Section 3 of the Act to requisition the cashew factories for an indefinite period was not invalid, nor did it amount to fraud on the statute merely because it enabled the State unilaterally to extend the period of lease for an indefinite period of time by extension of five years at a time.

16. Placing strong reliance on the judgment of the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, and the judgment of the Supreme Court in *Km. Sonia Bhatia Vs. State of U.P. and Others*, , the learned Additional Advocate General contended that when a law was enacted to further the directive principles of State policy enumerated in Part IV of the Constitution, then, irrespective of other considerations, it must be upheld. The contention is too wide and it is not possible to accept the contention in its full width. It is true that when a law is intended to further the constitutional directives in Part IV, Courts are reluctant to strike it down for it is in ultimate public good. Reliance was placed on the observations of the Supreme Court in paragraphs 134, 139 of *Kesavananda Bharati* (supra) and the observations of Justice Mathew in paragraph 1714. Justice Mathew's judgment shows that the learned Judge was contemplating a situation of possible conflict between the moral rights embodied in Part IV of the Constitution, though to specifically enforceable as against the State, as against the guaranteed fundamental rights in Part III of the Constitution. The learned Judge was of the view that, by and large, the fundamental rights are the extensions, permutations and combinations of natural rights and it does not follow that there is any inherent limitation by virtue of their origin or character in their being taken away or abridged for a common good. The source from which these rights derive their moral sanction and transcendental character, namely, the natural law, itself recognises that natural rights are only prima facie values in society or for its common good. Against this background the learned Judge was of the view that Parliament is vested with an awesome responsibility while making an amendment to the Constitution which takes away or abridges a fundamental right and that Parliament must always be conscious that it is the guardian of the rights and liberties of the people in a greater degree than the courts, as the courts cannot go into the validity of the amendment on any substantive ground. We are afraid that much water has flown under the bridge after the *Kesavananda Bharati*'s case. Even the so called plenary power of Parliament to amend the Constitution is now held to be curtailed by the basic structure of Constitution, as enunciated

in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . In paragraph 26 of the same judgment, Chandrachud, J. speaking for the court drew a fundamental distinction between constitution law and ordinary law as in the criterion of validity. While in the case of constitutional law its validity is inherent, in the case of ordinary law its validity has to be tested on the touchstone of the Constitution. These discussions really do not carry the matter on hand further, as these were discussions arising from a debate as to the nature of the amending powers of Parliament in Article 368 of the Constitution. We are not concerned with a situation like that. Therefore, the decision is not of much help in resolving the issue before us.

17. The judgment in *Km. Sonia Bhatia Vs. State of U.P. and Others*, was cited. The Supreme Court upheld the validity of the U.P. Imposition of Ceiling on Land Holdings Act, 1961 on the ground that it was a valuable piece of social legislation with the avowed object of ensuring equitable distribution of land by taking away land from large tenure-holders and distributing the same among landless tenants or using the same for public utility schemes which was in the larger interest of the community. The Supreme Court was of the view that the Act seemed to implement one of the most important constitutional directives contained in Part IV of the Constitution of India and, if in that process, a few individuals suffer severe hardship, that could not be helped, for individual interests must yield to the larger interest of the community or the country as indeed every noble cause claims its martyr. We are afraid that even this discussion does not help the appellant in advancing its argument. If there were a challenge to the validity of the parent Act, it would have been possible to sustain its constitutional validity on the ground that the State Legislature had acted in pursuit of the directive principles in Part IV of the Constitution, particularly the ones in Articles 39 and 43.

18. Requisitioning of the cashew factories was professedly for protecting the workers and employees therein from large scale unemployment and to protect their conditions of service. The question now before us is not whether the initial taking over the management was justified. Perhaps, it was. The question that needs to be answered is, however, justified the initial requisitioning of the cashew factory was, since requisition by definition must be of temporary character, can it be turned into a permanent deprivation of proprietary rights so as to amount to acquisition by the back-door. This precisely what the Supreme Court called a fraud on the power in *H.D. Vora's* case. In our view, even if an initial requisition was liable to be sustained, it cannot be turned into an acquisition by continuing the requisition for an indefinite period of time. The judgments cited by the learned Additional Advocate General would be of no help in deciding this issue.

19. Mr. Rashid, learned counsel for the first respondent, highlighted the peculiar facts of the case and pointed out that the cashew factory which was leased out in 1970 remained in the possession of the government under the so-called

transitory requisition orders, which have been extended from time to time, until the passing of the 1979 and 1985 amendment Acts, which enabled the Government to regularise what was hitherto unlawful and empowered the Government to continue the requisition orders ad infinitum, as long as each order was for a period not in excess of a period of 5 years. This, the learned counsel contends is illegal and falls within the purview of the principle enunciated by the Supreme Court in H.D. Vora's case reiterated in Rajendra Kumar Gupta's case (supra) and Elphinstone Spinning and Weaving Company Ltd. (supra).

20. Next, it is urged that if a statute enables exercise of power arbitrary and without any reasonable restrictions thereupon, then that source power, namely the statute itself, is liable to be struck down as unconstitutional. Section 3 as amended by the 1985 Act vests power in the Government to turn a requisition into an acquisition by extension ad infinitum. The power is arbitrary in that it enables the Government to act in an unreasonable manner so as to abridge the fundamental rights of the first respondent. The contention is justified. For this reason also, the learned Judge was right in holding that Section 2 of Act 26 of 1985 is unconstitutional as it would enable the State to abridge the fundamental rights of the first respondent guaranteed under Articles 14, 19(1)(g) and 300-A of the Constitution.

21. Apart from the question as to whether this provision of law is unconstitutional, it is contended by Mr. Rashid, learned counsel for the first respondent, that the action taken under the said section is also arbitrary and liable to be interfered with. Even if it is presumed that the section is valid, it enables the Government to extend the requisition, only if "such owner could not run the factory properly and in accordance with law" and "would either sell it or lease out to the private individual" and "there would be large scale unemployment on workers of that factory or their conditions of service would be adversely affected". Learned counsel contends that, apart from mere repetition of the terms in the statute, there did not exist any material fact on which the Government could have arrived at its subjective satisfaction as to the conditions requisite for exercising the statutory power. Reliance is placed on *Indian Nuts Products v. Union of India* (1994 (2) KLT 598 at page 603). Incidentally, it was also a challenge to Section 3(1)(c) of the Kerala Cashew Factories (Acquisition) Act, 1974. Dealing with the challenge to the amendment under which the satisfaction of the Government had to be arrived at, the Supreme Court observed:

"It is well settled that if a statute requires an authority to exercise power, when such authority is satisfied that conditions exist exercise of that power, the satisfaction has to be based on the existence of grounds mentioned in the statute. The grounds must be made out on the basis of the relevant material. If the existence of the conditions required for the exercise of the power is challenged, the courts are entitled to examine whether those conditions existed when the order was made. A person aggrieved by such action can question the

satisfaction by showing that it was wholly based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of the circumstance in question is open to judicial review."

Thus the Supreme Court left the ground open to the aggrieved person to challenge the existence of the material facts on the basis of which the subjective satisfaction contemplated by the Section could have been arrived at.

22. The learned Single Judge has, on a proper analysis of the facts, demonstrated that none of the factors constituting the statutory conditions precedent existed. There was no material whatsoever placed on record to suggest that, if the cashew factory was returned, the owner would sell it off. The facts on record demonstrate that, while the private owners were giving employment to the workers in the range of 200-250 days per year, the factories under requisition could provide hardly 60-65 days of employment. There was no material on record to suggest that, if the factory was returned to the owner, he would close it and terminate the services of the workmen, resulting in large scale unemployment. The financial condition of the second respondent Corporation was hardly satisfactory and there was no material to show that it was in a better position to manage and run the factory than the owner himself. Hence, there was no material on the basis of which the satisfaction as to the statutory conditions precedent could have been arrived at by the Government.

23. Apart from these factors, the learned Judge has rightly highlighted that an order passed u/s 3 is not only made immune from scrutiny by the regular civil court, but is also not subject to any appellate or revisionary process. In other words, on the mere ipse dixit of the executive, a requisition can very well be turned into an acquisition by being extended ad infinitum. For this reason also, the learned Judge was right in holding that the section was unconstitutional.

24. The learned counsel for the first respondent cited *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, to contend that even in this judgment the difference between temporary and transitory nature of acquisition and the permanent nature of requisition was highlighted by the Supreme Court. It is pointed out that upon acquisition, the entire bundle of rights which were vested in the former original holder would pass on the acquire leaving nothing in the former, while requisition would merely keep possession in the person requisitioning while leaving the title of the owner in tact. A logical sequel of this would be that, if the possession of property by exercise of the dominion there upon is continued indefinitely, it would amount to a colourable exercise of or fraud on the power and nothing but a back-door expropriation of property.

25. *Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another, and Corporation of Calcutta Vs. Calcutta Tramways Co. Ltd.*, were rightly relied on by the first respondent to canvass the proposition that, though it is open to the State to impose reasonable restrictions upon fundamental right guaranteed under the Constitution, the nature of the restrictions should not be such that the

right guaranteed itself would be destroyed. If that happens, then the restrictions would cease to be reasonable. In *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, and the *State of Madras Vs. V.G. Row*, the principle was laid down that, though the Legislature is the best judge to decide what is good for the community at large, the ultimate responsibility to decide reasonableness of the restriction imposed on fundamental rights vests squarely on Court and the Court cannot shirk the solemn duty casts on it by the Constitution. In *Abdul Hakim Quraishi and Others Vs. The State of Bihar*, the Supreme Court held that the test of reasonableness should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency fo the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. Reiterating these, the Supreme Court pointed out in *Laxmi Khandsari and Others Vs. State of U.P. and Others*, that reasonableness of the restriction would depend on several facts and circumstances which would have to be critically examined in each case that comes up before Court, where abridgement of a fundamental right is complained of. The Supreme Court observed (vide paragraphs 16 and 17) thus:

"16. It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under Clauses 2 to 6 of Article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statue, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down only hard or fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. it is manifest that in adopting the social control one of the primary considerations which should weigh with the Court is that as the directive principles contained int he Constitution aim at the establishment of an egalitarian society so as to bring about a welfare State within the framework of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restriction are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable.

17. Further, restrictions may be partial, complete, permanent or temporary, but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential

to the life of the community and the said restriction has been imposed for a limited period in order to achieve the desired goal."

26. The learned Judge has kept these principles in mind while evaluating the nature of restrictions on the rights of the first respondent, and has arrived at the conclusion that the provisions of Section 2 of Act 26 of 1985 impose unreasonable restrictions on the fundamental rights guaranteed to the first respondent under Articles 14, 19(1)(g) and 300-A of the Constitution. This conclusion is right and we agree with the opinion expressed by the learned Single Judge.

27. Certain subsidiary contentions raised with regard to the manner in which the gratuity and terminal benefits payable to the workers upon return of the factory had to be decided. The learned Single Judge has considered them in detail and given directions which are in favour of the appellant. Therefore, we find no reason to interfere with the judgment of the learned Single Judge under appeal.

W.A. No. 1835 of 1997 is hereby dismissed. The appellant shall pay a sum of Rs. 10000/- as costs.

W.A. No. 1793 & 1797 of 1997

We have already discussed in our judgment in W.A. No. 1865 of 1997 the legal principles involved.

In the present appeals, as the learned Single Judge has narrated the facts in detail, we do not think it necessary to reiterate the facts. Suffice it to state that the first respondent's cashew factory was requisitioned by the State of Kerala and handed over to the appellant Corporation on a lease. The requisitioned extension of lease continued for well over 25 years, being extended from time to time by mere re-petition of the statutory words. In the circumstances, the learned Single Judge has held that the action of the State was invalid and issued a mandamus to the State of Kerala and the appellant Corporation to hand back the cashew factories to the owners. The appellant Corporation is in appeal there against.

For the reasons which we have elaborately discussed in our judgment in W.A. No. 1835 of 1997, we are of the view that there is no substance in these appeals. Both appeals are liable to be dismissed and they are accordingly dismissed with costs of Rs. 10000/- each.

W.A. No. 1836 of 1997

The facts in this appeal are also identical to the facts in W.A. No. 1835 of 1997. There was requisition of the owner's cashew factory for an indefinite period which was enabled by Section 3 of the parent Act as amended by Act 16 of 1979 and again by Act 26 of 1985. For the reasons which we have elaborately discussed in our judgment in W.A. No. 1835 of 1997, we are of the view that the judgment of the learned Single Judge under appeal needs to be upheld.

Appeal is accordingly dismissed. There shall be no order as to costs.

O.P. No. 2631 of 1998

This is also a companion case of the batch of appeals which are decided by us in W.A. Nos. 1835 of 1997, etc. Here the factory was initially leased in 1972 for three years and upon expiry of the lease the owner of the factory demanded return of the factory. In the meanwhile, several owners of about 27 factories, who were not given repossession of the factories, had filed civil suits and obtained decrees. In order to get over that difficulty Act 16 of 1979 was passed to validate the action of the Government, which was otherwise illegal, and notifications were issued u/s 3, extending the lease for 5 years for 1980, vide Ext. P2. In the meanwhile, another amendment was introduced by Act 26 of 1985 which enabled the State to retain possession of the leased factory, all the way upto the year 1998, when the present Original Petition was filed challenging the action of the Government as illegal and unconstitutional. One fact to be noticed is that this Original Petition was filed after the judgment of the learned Single Judge was rendered in O.P. No. 16424 of 1994.

For the reasons elaborated in our judgment in the companion W.A. No. 1835 of 1997, we are of the view that the Original Petition needs to be allowed. Hence, we allow the Original Petition and quash the order of the Government of Kerala dated 13.11.1998, vide Ext. P6 and declare that the amendment made in Section 3(1) of the Kerala Cashew Factories (Requisitioning) Act, 1979 by Act 26 of 1985 is unconstitutional and violative of Articles 14, 19(1)(g), 300-A and 301 of the Constitution. Original Petition is accordingly allowed with costs at Rs. 10000/-.

Consequent upon the Original Petition being allowed, the respondents shall, within a period of four weeks from today, hand back the cashew factory of the petitioner to him along with all assets therein restoring it to the same condition which it was first leased out.

A grievance is made by the learned Additional Advocate General that there are certain improvements made by the State of Kerala. It is stated by the counsel for the petitioner that these are really not improvements and these are only repairs. This is an issue upon which we would not like to embark. The State of Kerala shall implement the order of the learned Single Judge by releasing the factory and the machinery, what was taken over, to the petitioner. If there are any other disputes with regard to the improvements made or damage caused to the factory, it is open to the parties to seek their remedy in an appropriate court of law.