
(2009) 08 KL CK 0070

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 3258 of 2008 (S)

State Human Rights Protection Centre and Joy Kaitharath

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Assignment of Government Lands in Development Areas for Industrial Purposes Rules, 1961 — Rule 15, 16, 2, 23, 8
Kerala Government Land Assignment Act, 1960 — Section 2(1)
Kerala Government Land Assignment Rules, 1964 — Rule 8(1)
Kerala Land Reforms Act, 1963 — Section 81(1), 81(3), 85, 87
Land Acquisition Act, 1894 — Section 13, 16, 2(43), 3(1), 8
State Financial Corporations Act, 1951 — Section 32

Citation : (2009) 3 ILR (Ker) 695 : (2009) 3 KLJ 110

Hon'ble Judges : S.R. Bannurmath, C.J;Kurian Joseph, J

Bench : Division Bench

Advocate : Sivan Madathil, for the Appellant; P. Parameswaran Nair, Asst. Solicitor, for the Respondent

Judgement

Kurian Joseph, J.—Acquisition, assignment and reforms are the three major aspects on land. That there are three important legislations in all these areas would show the need and relevance for proper order in this field. In the case before us, it is interesting to note that the events are to be analysed with reference to all these three legislations, namely, Land Acquisition Act, Land Assignment Act and Land Reforms Act. It is significant to note that the events chronologically are well balanced; acquired, assigned and reformed, as in the case of legislation also, 1894, 1960 and 1963 respectively.

2. Res clamat domino - land cries for its master is a well known principle. Therefore, it is necessary to refer to the facts from the roots. In 1963 Government of India decided to establish in Kerala a machine tools factory in the central sector as part of the Third Five Year Plan. It was decided to entrust the project to Hindustan Machine Tools Limited, Bangalore (hereinafter referred to as the HMT), a Central public sector undertaking. Government of India requested

the Government of Kerala to acquire/make available about 900 acres of land required for the project, free of cost. The land was identified at Kalamassery. This genesis is traceable from the first government order in this regard - G.O(MS)No.327/63/Ind. dated 9-4-1963. The Accountant General, it appears had expressed an apprehension regarding the safeguards to be taken "..... to ensure that the land is not encumbered or alienated by the company without prior approval of the Government". Therefore, by G.O (MS) No. 505/64/Ind. dated 31-7-1964 it was ordered as follows:

Government have carefully considered the matter and are pleased to order that the area sanctioned to be acquired for the Machine Tools Factory at Kalamassery will, after the acquisition is completed, be treated as a "Development Area" as contemplated in Rule 2(d) of the "Rules for the Assignment of Government Lands in Development Areas for Industrial Purposes" It was also ordered that "The assignment will be under Rule 23 of the said rules, dispensing with Rules 8 & 9. In the event of the resumption of the land by Government as contemplated in Rule 15, the provisions of Rule 16 will apply, excepting the provision for payment of land value since the land is being assigned free of cost. The land assigned to the company shall be heritable but it shall not be alienated or encumbered in any manner without the prior permission in writing of the Government". However, the Government subsequently seems to have taken a drastically different stand and thus it was ordered in G.O (MS) No. 309/72/ID dated 20-10-1972 that "... the title of the lands in question shall be transferred either by executing a gift deed or by assignment on registry absolutely as heritable and alienable waiving the usual terms and conditions". The said order was issued pursuant to a request of the company that the title shall be by way of a gift deed instead of assignment order so that they will be in a position to deal with the property absolutely. Accordingly Government order dated 20-11-1972 [Ext.R1(a)] was issued. It reads as follows:

Government having considered all the aspects of the matter are pleased to order that the title of the above lands in question shall be transferred to Hindustan Machine Tools Ltd., Bangalore (which shall include H.M.T. (Kalamassery) Ltd. which is under incorporation or any associate company that may be incorporated in future) by assignment on registry absolutely heritable and alienable.

Accordingly patta No. 10015 was issued on 30-10-1973 by the Tahsildar, Kanayannur, in respect of 731.19.183 acres subject to the following conditions:

1. The land assigned shall be heritable and alienable.
2. That the assignee shall be liable for payment of the full assessment charged on the land with effect from the year in which the patta is issued.

Thus, acquisition and assignment was completed. It appears, nobody has seriously noted that patta is only for 731.19.183 acres and the consequent impact on the remaining land. Be that as it may, the next aspect to be considered is "land reforms".

3. When proceedings under the Kerala Land Reforms Act, 1963 were initiated against the company, Government issued Ext.R1(b) statutory notification u/s 81(3) of the Kerala Land Reforms Act on 29-7-1991 on being satisfied that "... on account of the lands specified in the schedule below held by Hindustan Machine Tools Limited, Kalamassery, being bona fide required for an industrial purpose of the Company, it is necessary in the public interest to exempt those lands from the provisions of Chapter III of the Kerala Land Reforms Act, 1963". Therefore, ... "in exercise of the powers conferred by Sub-section (3) of Section 81 of the said Act, the Government hereby exempt the said lands from the provisions of Chapter III thereof subject to the following conditions, namely:

1. that the lands or any portion thereof shall not be alienated by the Company;
2. that the lands shall be used only for industrial purposes;
3. that the lands shall be utilised only for the purpose mentioned in condition No. (2) above within four years from the date of publication of this notification in the Gazette; and that if any of the above conditions are violated, the exemption shall cease to be in force and the excess lands will be resumed by Government.

The schedule contained an extent of 781.59.766 acres of land. The explanatory note to the statutory notification dated 29-7-1991 gazetted on 29-10-1991 shows that the same was issued based on "... the need to retain the lands held by the Company for meeting the expansion plans without which it would not be possible for the unit to survive in the long run". It appears the proceedings under the Kerala Land Reforms Act were not proceeded further apparently in view of Ext.R1(b) notification.

4. While so, it was noted that the HMT had not utilised the full extent of the land for the industrial purpose within the permitted period of four years. The Kerala State Industrial Infra Structure Development Corporation (KINFRA) hence mooted a joint venture company with the participation of HMT utilising 400 acres of land in the possession of the HMT. Hence by government order G.O(MS) 138/95/ID dated 28-8-1995 [Ext.R1(c)] it was decided to resume 400 acres of land from HMT on giving equity shares at the rate of Rs. 2,000/- per cent in the proposed joint venture company. In the meanwhile the HMT negotiated with the Government, apparently not willing to participate in the joint venture and offered to surrender 300 acres of land on condition of the Government granting permanent and unconditional exemption for the balance 100 acres of land. The Government considered the request and passed Ext.R1(d) G.O(MS) No. 156/97/ID dated 5-11-1997. Ext.R1(c) order was cancelled and it was ordered therein that "100 acres of land now in possession of Hindustan Machine Tools will be allotted to Hindustan Machine Tools if they have specific plans for massive investment". The HMT thereafter requested the Government to grant unconditional exemption of 100 acres of land. Therefore, by G.O (MS) No. 85/98/ID dated 4-6-1998 [Ext.R1(e)], it was ordered that "Government have considered the above proposal of HMT and since the company has evinced

interest in utilising the land which has been kept idle for a long period of time, Government hereby order that if Hindustan Machine Tools Ltd., hand over the 300 acres of land to Govt. within a period of two months from the date of this order the Company would be permitted to retain the 100 acres of land". HMT withdrew the writ petition, O.P. No. 19718 of 1995 filed by it challenging the steps for resumption, as part of the above deal. Thus 300 acres were surrendered by HMT and these facts are noted in Ext.R1(f) government order dated 5-6-1999. It is seen that the HMT was not satisfied with the order and hence made another request on 19-6-1999 (Ext.R1(g)) to the Government to grant exemption of the 100 acres u/s 81(1)(a) of the Kerala Land Reforms Act. Accordingly Government clarified as per G.O(MS)No.144/99/ID dated 6-10-1999 that "In the case of balance land to be retained with HMT, the assurance given in the government letter read above regarding permanent exemption u/s 81(1)(a) of the KLR Act 1963 will hold good". Thus Ext.R1(i) statutory notification u/s 81(1)(a) of the Kerala Land Reforms Act, 1963 was issued as per notification dated 4-7-2000 which was gazetted on 11-7-2000. It is stated in the notification that "... the Government of Kerala, being of opinion that it is necessary in the public interest to do so, hereby exempt the land specified in the Schedule below, owned and held by Hindustan Machine Tools Limited, Kalamassery, from the provisions of Chapter III of the said Act." 30 acres of land in Sy. No. 321/1 of Thrikkakara North Village and 70 acres in Sy. No. 717/5 of the said Village was thus notified u/s 81 (1)(a). According to the HMT the 70 acres now sold to the party respondent Blue Star Realtors Pvt. Ltd. forms part of the 100 acres which the HMT is absolutely free to deal with as they wish.

5. Having traced the roots, it is necessary to refer to the legal position, with particular reference to the facts of the present case, in all the three legislations regarding Acquisition, Assignment and Reforms. Sri. Sivan Madathil, one of the learned Counsel appearing for the writ petitioners and who addressed the leading arguments, vehemently contends that the Government having acquired the land free of cost and having assigned the same to HMT for industrial purpose, HMT cannot transfer the same and appropriate the value. In other words, the crux of the arguments is that the impugned transfer for value is a fraud on the statute. Learned Advocate General Sri. C.P. Sudhakara Prasad, Sri. T.P. Kelu Nambiar, learned Senior Counsel appearing for the party respondent and Sri. Pathrose Mathai, learned Senior Counsel appearing for the HMT, would contend that the Government having assigned the land to HMT as absolutely heritable and alienable and the Government having exempted 100 acres from the operation of the ceiling provisions contained in the Kerala Land Reforms Act, HMT is absolutely free to deal with the property in whatever manner they deem fit. It is also the common case of the respondents that the acquisition, assignment and exemption are transparent transactions by the Government with the HMT having regard to all the required and relevant considerations under law and no irrelevant factor has crept in, in the process.

6. Under the Land Acquisition Act, it is the well settled position that once a land

is acquired by the Government for public purpose, it becomes Government land since the land vests absolutely with the Government on acquisition, free from all encumbrances, u/s 16 of the Land Acquisition Act, 1894. The Kerala Government Land Assignment Act, 1960 was introduced for regulating the assignment of Government lands and for removing doubts as to the validity of the limitations and restrictions imposed in assignment of land by the Government or under the authority of the Government. Under Sub-section (1) of Section 3 of the said Act, Government land may be assigned by the Government or by any prescribed authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed. Section 8 of the said Act deals with restrictions, conditions, etc. which reads as follows:

8. Assignment to take effect with restrictions, conditions, etc., according to their tenor.- All the provisions, restrictions, conditions and limitations contained in any Pattah or other documents evidencing the assignment of Government land or of any interest therein shall be valid and take effect according to their tenor, notwithstanding any law for the time being in force or any custom or contract to the contrary.

Explanation.- In this section, the expression "Government land" shall include land under the control or management of the Government at the time of the assignment.

Thus the restrictions, conditions, scope, etc. of assignment are to be governed by the tenor of assignment. Though we may have to refer to the factual position in the latter portion of the judgment, we feel it necessary to note again that the assignment of Government land to the HMT as per Ext.R1(a) order dated 20.11.1972 was by assignment on registry absolutely heritable and alienable. Thus, not only that there was no restriction, the absolute and unrestricted right of the assignee was made clear in the order and in the subsequent patta dated 30.10.1973 issued in respect of the assigned land wherein also it was specifically incorporated that the "land assigned shall be heritable and alienable". Under Sub-rule (1) of Rule 8 of the Kerala Land Assignment Rules, 1964 it is provided that land assigned shall be heritable and alienable. However, under Sub-rule (1A) of Rule 8 it is provided that in cases of unoccupied lands assigned on registry, the same shall not be alienable for a period of three years from the date of registry. In other words, the only restriction on land assigned as per the said Rules is that the assigned land shall not be alienable, if it is unoccupied with reference to the purpose of assignment, for a period of three years.

7. The Government had framed another set of Rules, namely Assignment of Government Land for Industrial Purposes Rules, 1961. However, those Rules may not apply to the present case since the same is meant for assignment of Government lands in Development Areas for industrial purposes. "Development area" is defined under Rule 2(d) of the said Rules as...of lands acquired by Government for the purpose of the industrial development of an area". In this case the land is not acquired for the industrial development of the area, but

acquired for the purpose of setting up a Machine Tools Factory by the HMT. Though initially the Government in the order dated 31.7.1964 had attempted to treat the acquired land as "development area" as provided under Rule 2(d) referred to above, and though the assignment was sought to be made under Rule 23 of the said Rules, it appears, after eight years, by 1972, the whole idea changed and thus by Ext.R1(a), it was assigned on registry free from all encumbrances and with absolute ownership to the assignee as heritable and alienable. That the assignment is not under the Assignment of Government Land for Industrial Purposes Rules, 1961 is clear also from the fact that there was no restriction in the assignment as mandated under Rule 11 which reads as follows:

11. Land assigned under these Rules shall be heritable but it shall not be alienated or encumbered any manner without the prior permission in writing of the Government.

Thus the land has vested absolutely with the HMT and the HMT has become absolute owner and title holder of the property in view of Ext.R1(a) assignment in 1972 and the consequent and subsequent patta (title). It is significant in this context to note that the Government had not realized any land value from HMT which is a mandatory requirement under Rule 8 of the Assignment of Government Land for Industrial Purposes Rules. For HMT the assignment was free of cost. Such an arrangement was done by the Government of Kerala on the request of the Government of India in view of its decision to establish the Machine Tools Factory in the Central Sector in Kerala. It is also pertinent in this context to note that the cost of acquisition was treated as a "new service" and debited to a new head of account "35 (a)VII-F- Machine Tool Factory-State Contribution-Land Acquisition charges".

8. The Kerala Land Reforms Act, 1963 is one of the revolutionary legislations Kerala has ever produced introducing ceiling on holdings. It is not in dispute that HMT being a Company is a "person" as defined u/s 2(43) of the Act and hence the Act is applicable to the Company. Chapter III of the said Act provides for "Restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands". Section 81 of the Act provides for exemptions, wherein it is stated that the provisions of the Chapter III dealing with restriction on ceiling will not apply to the exempted categories indicated under Sub-section (1). Section 81(2) was omitted and Section 81(3) has been introduced reserving power to the Government to exempt such lands from the provisions of the Chapter subject to the restrictions and conditions, in case they are meant for the prescribed purpose in public interest. Section 81 of the Kerala Land Reforms Act reads as follows:

81. Exemptions.-

(1) The provisions of this Chapter shall not apply to-

(a) lands owned or held by the Government of Kerala or the Government of any other State in India or the Government of India or a local authority or the Cochin

Port Trust or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, from the provisions of this Chapter;

Provided that the exemption under this clause shall not apply to lands owned by the Government of Kerala and held by any person under lease whether current, or time expired or otherwise,

Explanation I: "Lands owned by the Government of Kerala" shall, for the purposes of this clause, have the same meaning as "Government lands" under Sub-section (1) of Section 2 of the Kerala Government Land Assignment Act, 1960, but lands escheated to the Government and held by tenants entitled to fixity of tenure u/s 13 shall not be deemed to be lands owned by the Government of Kerala.

Explanation II: Lands, the right, title and interest in respect of which have vested in the Government under Sub-section (9) of Section 66 or Section 72, shall not be deemed to be "lands owned by the Government of Kerala" for the purposes of this clause.

Explanation III: For the purposes of this clause, "other authority" shall include a corporation owned or controlled by the Government of Kerala or the Government of any other State in India or the Government of India;

(b) lands taken under the management of the court of wards:

Provided that the exemption under this clause shall cease to apply at the end of three years from the commencement of this Act;

(c) lands comprised in mills, factories or workshops and which are necessary for the use of such mills, factories or workshops;

(d) private forests;

(e) plantations;

(f) xxxxxxxxx

(g) xxxxxxxxx

(h) lands mortgaged to the Government, or to a co-operative society (including a co-operative land mortgage bank) registered or deemed to be registered under the Co-operative Societies Act for the time being in force, or to the Kerala Financial Corporation, or to the Kerala Industrial Development Corporation or to the State Small Industries Corporation, as security for any loan advanced by the Government or by such society or Corporation, so long as the mortgage subsists;

Provided that the exemption under this clause shall cease to apply at the end of three years from the commencement of this Act;

(i) lands purchased by the Kerala Co-operative Central Land Mortgage Bank or a Primary Mortgage Bank u/s 18 of the Kerala Co-operative Land Mortgage Banks

Act, 1960, or by the Kerala State Co-operative Bank Ltd. or by a primary agricultural credit co-operative society or by a scheduled bank as defined in the Reserve Bank of India Act, 1934 so long as such lands continue in the possession of the bank;

(j) lands purchased by the Kerala Financial Corporation or lands the management of which has been taken over by that Corporation, u/s 32 of the State Financial Corporations Act, 1951, so long as such lands remain in the ownership, or continue under the management, as the case may be, of the said Corporation;

Provided that the exemption under this clause shall not apply in the case of lands the management of which has been taken over by the Corporation on or after the 1st day of April, 1964;

(k) lands belonging to or held by an industrial or commercial undertaking at the commencement of this Act, and set apart for use for industrial or commercial purpose of the undertaking.

Provided that the exemption under this clause shall cease to apply if such land is not actually used for the purpose for which it has been set apart, within such time as the District Collector may, by notice to the undertaking, specify in that behalf;

(l) xxxxxxxx

(m) house sites, that is to say, sites occupied dwelling houses and lands, wells, tanks and other structures necessary for the convenient enjoyment of the dwelling houses.

Explanation: For the avoidance of doubt, it is hereby declared that a compound wall shall not be deemed to be a structure necessary for the convenient enjoyment of a dwelling house, if the land on which the dwelling house is situated and enclosed by the compound wall is more than the land necessary for the convenient enjoyment of the dwelling house.

(n) xxxxxxxx

(o) sites of temples, churches, mosques and cemeteries and burial and burning grounds.

(p) sites of buildings including warehouses;

(q) commercial sites;

(r) lands occupied by educational institutions including land necessary for the convenient use of the institutions and playgrounds attached to such institutions;

(s) lands vested in the Bhoodan Yagna Committee;

(t) lands owned or held by -

(i) a University established by law; or

- (ii) a religious, charitable or educational institution of a public nature; or
- (iii) a public trust (which expression shall include a wakf):

Provided that -

- (i) the entire income of such lands is appropriated for the University, institution or trust concerned; and
- (ii) where the University, institution or trust comes to hold the said lands after the commencement of this Act, the Government have certified previously that such lands are bona fide required for the purposes of the University, institution or trust as the case may be; and
- (u) lands granted to defence personnel for gallantry.

(2) xxxxxxxx

(3) The Government may, if they are satisfied that it is necessary to do so in the public interest-

- (a) on account of any special use to which any land is put; or
- (b) on account of any land being bona fide required for the purpose of conversion into plantation or for the extension or preservation of an existing plantation or for any commercial, industrial, educational or charitable purpose, by notification in the Gazette, exempt such land from the provisions of this Chapter, subject to such restrictions and conditions as they may deem fit to impose:

Provided that the land referred to in Clause (b) shall be used for the purpose for which it is intended within such time as the Government may specify in that behalf; and where the land is not so used within the time specified, the exemption shall cease to be in force.

9. u/s 81(1)(a), lands owned or held by the Government of Kerala or the Government of any other State in India or the Government of India or a local authority or the Cochin Port Trust or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, are exempted from the provisions of Chapter III dealing with ceiling. Under Explanation III, the "other authority" as appearing in Section 81(1)(a) includes a corporation owned or controlled by the Government of Kerala or the Government of any other State in India or the Government of India. There is no serious dispute that HMT is an "authority" as stated u/s 81(1)(a) of the Act. It is by virtue of this power in the Government that the Government issued Ext.R1(i) notification dated 4.7.2000 gazetted on 11.7.2000 whereby 100 acres of land held by HMT was exempted from the provisions of Chapter III of the Land Reforms Act, in public interest. In other words, while computing the ceiling limit of HMT under the Kerala Land Reforms Act, 100 acres shall not be liable to be included in the returns by virtue of the statutory notification. However, it may not be totally out of context to take note of the fact that the public interest considered by the Government of Kerala

in issuing the statutory notification is the industrial investment and development in the State since the original request of HMT for such exemption was on the ground of massive industrial investment.

10. u/s 81(1)(c), the lands comprised in mills, factories or workshops and which are necessary for the use of such mills, factories or workshops are also exempted, whereas u/s 81(3)(b), in case any land is bona fide required for industrial, commercial, educational or charitable purposes, it is open to the Government in public interest, by notification in the gazette, exempt such land from the provisions of Chapter III subject to the restrictions and conditions as they may impose. Ext.R1(b) dated 29.7.1991 gazetted on 29.10.1991 is the notification thus issued u/s 81(1)(3) of the Land Reforms Act. The schedule contains an extent of 781 acres 59 cents and 766 sq.links. The notification contains four specific conditions, (i) the lands shall not be alienated by the Company, (ii) the lands shall be used only for industrial purpose, (iii) the lands shall be so utilised within four years from the date of publication and (iv) if any of the conditions is violated, the exemption would cease to be in force and excess lands would be resumed by the Government.

11. Apparently HMT did not comply with the conditions and hence only the Kerala State Industrial Infra Structure Development Corporation (KINFRA) mooted a joint venture company by utilising 400 acres of unutilised portion of the lands in the possession of HMT. Thus by Ext.R1(c) Government order dated 28.8.1995 the Government decided to resume 400 acres of land from the HMT on giving equity participation of shares at the rate of Rs. 2000/- per cent in the proposed joint venture company. The share value would come to Rs. 8 crores. Suffice it for the present to note that exemption in respect of the lands otherwise exempted u/s 81(3) ceased to operate by the year 1995.

12. In this context it is also necessary to take note of the fact that C.R.P. No. 1026 of 2002 is pending before this Court in respect of the ceiling case of HMT. That civil revision petition will have to be considered with reference to the various factual issues involved in the matter. We make it clear that we are not pronouncing anything on the said case since the same will have to be considered by the revisional court on examining the claims for eligibility and exemption.

13. The writ petitions are filed in public interest and attacking the transfer of land by HMT to a private party. Though voluminous documents have been produced before this Court and extensive arguments have been addressed, particularly on the part of the writ petitioners, we do not think it necessary, in view of what we have summarised above, to advert to all those contentions. Yet we may extract the main prayers sought in the writ petitions which read as follows:

Prayers in W.P.(C) No. 3258 of 2008:

i) Declare that the decision arrived as per Ext.P5 minutes of proceedings sanctioning the sale of 70 acres of land comprising in the land which was originally assigned to 3rd respondent Company which also comes under the

schedule area of Resurvey No. 717/5 to the 4th respondent for starting IT business is illegal, arbitrary and hence it is null and void.

ii) Declare that the HMT, (Machine Tools) Pvt. Ltd., the 3rd respondent Company herein has no authority to sell the property to the extent of 100 acres assigned to them by the State Government and the agreement entered into by the 3rd respondent with the 4th respondent company and the sale executed are illegal and hence void.

iii) to issue a writ of mandamus or any other appropriate writ, order or direction commanding the 9th respondent to conduct proper investigation and enquiry regarding the sale of 70 acres of land scheduled in Resurvey No. 717/5 of Kanayannoor Taluk which was originally assigned to 3rd respondent Company, to the 4th respondent private company and also other related matter which lead to give any clearance by the Government to the 4th respondent to start their business on the particular land.

iii(a). to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 1, 6, 7, 10 and 11 not to effect the mutation of the 70 acres of land comprised in Resurvey No. 717/5 Thrikkakara North Village, Kanayannoor Taluk which has been sold by the 3rd respondent to the 4th respondent and if in case, the mutation is already done, to declare that the mutation done is null and void as it is not in accordance with the statutory norms and regulation imposed by the Government.

iii(b). to issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent, 6th respondent Tahsildar and 7th respondent District Collector to take immediate and appropriate steps to resume/repossess the 100 Acres of land comprised in Resurvey No. 717/5 of Thrikkakara North Village, Kanayannoor Taluk which has been sold by the 3rd respondent to the 4th respondent as the sale is ab initio void, without the prior sanction of the 1st respondent State and also is in violation of the statutory norms.

Prayers in W.P.(C) No. 4271 of 2008:

i) Issue a Writ of mandamus or appropriate writs, orders or directions directing the first respondent to order a judicial enquiry into the sale of 70 acres of land by the 13th respondent to the 14th respondent as evidenced by Exhibit P-5 by a retired Judge of this Hon'ble Court;

ii) Issue a writ in the nature of declaration to declare that document No. 59271/06 of S.R.O. Edapilly executed between the 13th and 14th respondents is null and void;

iii) Issue a writ of mandamus or other appropriate writs, orders or directions directing the respondents 1 to 5 to implement the recommendations contained in the letter dated 18.11.2006 of District Collector, Ernakulam (Ext.P-7) forthwith.

Prayers in W.P.(C) No. 8172 of 2008:

- i) Declare that issuance of Exhibit P2, P4 and P5 orders are not sustainable and contrary to the law, to the extent of giving permission to effect the sale by giving unconditional exemption to the 100 Acres of land from the 2nd respondent to the 3rd respondent by the State Government as the same is also contrary to the decision taken by this Hon'ble Court in this aspect.
- ii) Issue a writ of certiorari to quash Ext.P2, P4 and P5 to the extent of granting unconditional exemption to the 2nd respondent by invoking Section 81(1)(a) of the Kerala Land Reforms Act which in turn enabled the 2nd respondent to effect sale of the property to the 3rd respondent as the same is illegal, arbitrary and without any authority.
- iii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent State to take necessary steps to re-possess the land which was sold by the 2nd respondent to 3rd respondent by observing the fact that second respondent have no authority to effect the sale and also violated the conditions of exemption.
- iv) Direct the Government to effect public auction after resuming the 100 Acres of land which was allowed to be retained by the 2nd respondent and now sold by them to the 3rd respondent for enabling the 1st and 2nd petitioners and similarly situated persons to participate in the public auction to reclaim their original land acquired by the Government by offering present market value of the land.
- v) Declare that Rule 24 of the Kerala Land Assignment Rules 1964 conferring power of the State Government to assign land other than public purpose is impermissible, and bad in law and also contrary to the spirit of the Kerala Land Reforms Act.

Prayers in W.P.(C) No. 9927 of 2008:

- a) call for the records of this case leading upto Ext.P5 and to quash the same by issuing a writ of certiorari or any other appropriate writ, order or direction.
- b) Declare that Ext.P6 assignment in favour of the 3rd respondent by the 2nd respondent is void in law and the 3rd respondent has not obtained any interest in the property by virtue of the above assignment.
- c) issue a writ of mandamus or any other appropriate writ, order or direction directing the 5th respondent to initiate proceedings u/s 85 and 87 of KLR Act against the 3rd respondent with respect to the property covered by Ext.P6 sale deed.

14. Essentially the challenge is on Ext.R1(i) notification dated 4.7.2000 issued by the Government of Kerala u/s 81 (1)(a) of the Kerala Land Reforms Act and on the sale made by HMT to the private party for consideration. In other words, the question is whether the HMT is entitled to sell the land owned by them under Ext.R1(i) notification dated 4.7.2000.

15. It is not in dispute that 70 acres of land now sold to the party respondent for

consideration forms part of the 100 acres notified by the Government of Kerala u/s 81(1)(a) of the Kerala Land Reforms Act as per Ext.R1(i) notification dated 4.7.2000. While tracing the genesis of Ext.R1(i) notification we have to take note of the fact that the entire extent of 781 acres of land was assigned by the Government to HMT free of cost with absolute rights of inheritance and alienation. The land had become vested absolutely in HMT by the assignment made as per Ext.R1(a) notification dated 20.11.1972. Any disturbance to the absolute enjoyment of the property thus assigned to HMT as per Ext.R1(a) and covered by the patta issued to HMT can only be by way the operation of the Kerala Land Reforms Act. Thus the question boils down to the impact of the Kerala Land Reforms Act on the lands assigned to the HMT and it boils down pointedly to the validity of Ext.R1(i) notification dated 4.7.2000. If Ext.R1(i) notification dated 4.7.2000 is in order, then the only further question to be examined is whether a property exempted under the provisions of the Kerala Land Reforms Act can be alienated and if so whether the property is subjected to any restriction on such alienation in the matter of use of the property.

16. As per Ext.R1(b) notification dated 29.7.1991, 781.59.766 acres of land was exempted u/s 81(3) of the Kerala Land Reforms Act. The exemption by way of that notification ceased to operate by efflux of time since apparently HMT did not comply with the conditions stipulated in Ext.R1(b) notification. It was in that context Ext.R1(c) order dated 28.8.1995 was issued for resuming 400 acres of the unutilised portion of the lands owned and held by the HMT. The idea was to form a joint venture company with a State Government undertaking by giving equity shares at the rate of Rs. 2000 per cent to HMT. It is seen that the attempt of the Government was challenged by HMT in a writ petition filed before this Court as O.P. No. 19718 of 1995. It is also seen that HMT was not willing for a joint venture company with the Kerala Government undertaking. The negotiation was on surrender of 300 acres of land sought to be resumed on the Government granting permanent and unconditional exemption for the balance 100 acres of unutilised land owned and held by the HMT. It may be seen that the offer in the year 1995 by the Government was to give shares to the tune of Rs. 8 crores for resumption of 400 acres of land. On negotiation it was agreed between the Government and the HMT that HMT would surrender 300 acres unconditionally to the Government. There is no joint venture set up. Only condition was that the Government should permit HMT to enjoy absolutely 100 acres by granting exemption u/s 81(1)(a) of the Land Reforms Act. The files would indicate that HMT had plans for massive investment in future in respect of 100 acres of land. Since such a conditional exemption was not contemplated u/s 81(1)(a) of the Land Reforms Act and since what the HMT negotiated as a pre-condition for surrendering 300 acres of land and withdrawing the writ petition was unconditional and permanent exemption of 100 acres u/s 81(1)(a) of the Land Reforms Act, the Government issued Ext.R1(e) order dated 4.6.1998 permitting the Company to retain 100 acres of land. Since Ext.R1(e) order was not in true spirit of the negotiation, the Government, it appears, issued Ext.R1(i) statutory

notification dated 4.7.2000 u/s 81(1)(a) of the Kerala Land Reforms Act. No doubt, the exemption u/s 81(1)(a) of the Land Reforms Act exempting an authority from the operation of Chapter III of the Land Reforms Act regarding ceiling restriction can only be in public interest.

17. Public interest is an expression used often in the legislations, both the plenary and subordinate. In the simplest of its meaning, it means in the interests of the general public, the welfare of "we the people". Industrial growth of a State is certainly a matter of paramount importance for the State, in terms of the welfare of the people. Industries not only generate direct and indirect employment, they would also contribute to the overall economic development and growth of the State. HMT which is a wholly owned Government of India undertaking has thus generated employment in the State and has helped the overall economic growth and development of the country, as envisaged under the Third Five Year Plan of the Central Government. The contribution of the Government of Kerala was the free assignment of land to the Company. The first order in this regard is G.O.MS. No. 327/1963 of the Industries Department dated 9.4.1963. The first three paragraphs of that order read as follows:

The Government of India have decided to establish a Machine Tool Factory in the Central Sector in Kerala in the course of the Third Five Year Plan and to entrust the work of setting up the factory to the Hindustan Machine Tools Ltd., Bangalore. The construction of the factory with a capacity of 1000 machine tools per annum & capable of being doubled in due course requires about 900 acres of land. The Government of India have requested that 900 acres of land required for the project may be acquired and made available to the Hindustan Machine Tools Ltd., Bangalore free of cost. A team of experts of the Hindustan Machine Tools Ltd., has selected the site at Kalamassery in Trikkakara Village in Ernakulam District and finalised the alignment of the site.

Government have carefully considered the request of the Government of India and are pleased to sanction the acquisition of 900 acres of land at Kalamassery in the Ernakulam District for the establishment of a Machine Tool Factory in the Central Sector. Sanction is also accorded for making the area available to the Hindustan Machine Tools Ltd., Bangalore, free of cost.

The expenditure on account of the cost of acquisition will be treated as a "new service" and debited to a new head of account "35 (a)VII-F- Machine Tool Factory - State Contribution - Land Acquisition charges".

18. It is doubtful whether the project had been fully implemented. Be that as it may. Even in the year 1995, the HMT had its plan for massive investment. Naturally the investment is only to be on the industrial sector. So the public interest with which and for which exemption was granted to HMT for 100 acres of land u/s 81(1)(a) of the Kerala Land Reforms Act is the industrial growth in the State, by industrial investment in the land.

19. There is no restriction on alienation of the lands exempted u/s 81(1)(a) of

the Land Reforms Act, since such lands are exempted from the operation of Chapter III of the Kerala Land Reforms Act dealing with ceiling on holding. It is not the excess land that is alienated, but the exempted land. Yet we may advert to one contention advanced by the learned Counsel for the petitioners that the exemption u/s 81(1)(a) will be available only so long as the land is held by the HMT and the moment the land is not held by HMT, exemption ceases to operate. We are afraid the contention cannot be appreciated. It has to be seen that only at the time the land is owned and held by the HMT, the exemption was granted. In other words, the exemption from operation of the ceiling provisions is given in respect of a land owned and held by the HMT. That is not an exemption intended to enable the HMT to hold the land, but to enable HMT to enjoy the land without the restrictions contemplated under the provisions of the Kerala Land Reforms Act. In this context it is also to be noted that Section 81(1) itself provides that the provisions of the Chapter dealing with ceiling on holdings will not apply to the land notified u/s 81(1)(a) and, therefore, once the land is exempted u/s 81(1)(a), there is no restriction on use or enjoyment except as indicated above in the matter of public interest. However, on such transfer, the exempted land will be subjected to the test as to the eligibility and entitlement for exemption under the exempted provision on which the transferor had been exempted. Public interest by way of investment for industrial development is a covenant that runs with the land for ever. If a person transfers land exempted under the Kerala Land Reforms Act, the transferee will be called upon to establish his eligibility and entitlement for the exemption and only if the transferee is otherwise entitled and eligible for exemption in terms of the original exemption, the land would be free from the ceiling provisions. In this case, as we have already noted above, public interest with which and for which the Government of Kerala granted exemption in respect of 100 acres of land to HMT u/s 81(1)(a) of the Land Reforms Act is use of the land for industrial purpose. Therefore, in case the transfer is otherwise valid, the transferee will be liable to be put to the same acid test as to the use of the land. In other words, the 100 acres of land covered by Ext.R1(i) notification can be used only for industrial purposes.

20. Then the question is on the validity of Ext.R1(i) notification dated 4.7.2000. Section 81(1)(a) of the Kerala Land Reforms Act empowers the Government to exempt lands held by a Government Company in public interest, as we have already noted above. It has also to be seen that the entire lands held by States and Centre and Cochin Port Trust are exempted from the provisions of Chapter III of the Kerala Land Reforms Act dealing with ceiling; whereas in the case of other authority, it is only the extent notified by the Government. Still further, it has to be noted that under the scheme of the Act, the lands held for religious, educational, charitable purposes, plantations, private forests, lands held by the Kerala Financial Corporation, Kerala Land Mortgage Bank, commercial sites, etc. are also totally exempted from the operation of Chapter III of the Kerala Land Reforms Act. There are 21 such exempted categories. One category specified by the Legislature and left it to the Government to decide is, land held by certain

authorities, to the extent the Government is satisfied of the need of an authority to hold in public interest. And that is the 100 acres covered by Ext.R1(i) notification. The notification having roots starting from 1963 has a chequered history which also we have referred to above. The HMT having negotiated with the Government when the Government took steps to resume the unutilised portion of the lands set apart for expansion and in the process HMT having decided to forego any consideration for the resumption of the land though offered value to the tune of Rs. 8 crores in 1995 for 400 acres, the HMT having shown interest in expansion of its industry by putting the land for industrial purpose, the HMT having in the process of negotiation surrendered 300 acres of land without any consideration, the HMT having withdrawn the writ petition pending before this Court filed against the steps taken by the Government for resuming 400 acres of land and the Government in view of the circumstances referred to above having issued a notification u/s 81(1)(a) of the Kerala Land Reforms Act exempting 100 acres of land held by the Company from the operation of Chapter III of the Kerala Land Reforms Act, it cannot be held that no public interest in the circumstances was served. The notification was certainly in public interest, for avoiding also unnecessary and prolonged litigation for getting possession of 300 acres immediately for no consideration and for permitting HMT to go for future investment in 100 acres thus exempted. It is significant in this context to note that even in the statement of objects and reasons of the Kerala Land Reforms Act introduced in the year 1963, power is contemplated to the Government "...to exempt lands required bona fide for any plantation or industrial or commercial purpose the promotion of which will be in the public interest". We find from the files that Government has referred to all the relevant factors in weighing the public interest and no irrelevant consideration has crept in, in issuing Ext.R1(i) notification dated 4.7.2000. It is also significant to note that the notification was issued only after deliberations over a period of five years and discussions at various levels. It may not also be altogether out of context to note that the challenge to the notification is made only after seven years. Though in larger public interest we may ignore the factor of delay, in the given circumstances we find that the Government has taken into consideration all relevant aspects of welfare of the public before issuing the notification. Therefore, we do not find any merit in the challenge to Ext.R1(i) notification dated 4.7.2000.

21. As we have already noted above, as per Ext.R1(i) notification in public interest, Government of Kerala has exempted HMT for holding 100 acres of land free from the restrictions imposed under the Kerala Land Reforms Act. Any exemption from the ceiling provisions under the Kerala Land Reforms Act has a purpose and the purpose in the present case is public interest and that public interest is the use of the land for industrial purpose. Since under the Kerala Land Reforms Act there is no restriction on alienation of the exempted category of lands and since the transferee is subjected to the acid test of eligibility and entitlement for exemption in terms of use of the land, the transfer made by the

HMT will also be subjected to the same test, namely use of the transferred land for industrial purpose. In other words, HMT is legally entitled to transfer 100 acres of land notified under Ext.R1(i) notification, but the transferee will have to use that land for industrial purpose and that purpose only. Therefore, the transfer is not vitiated in any way; but the transferee will have to use the land only for industrial purpose. That is a covenant on the land.

22. We make it clear that none of our observations made in the judgment other than on 100 acres of land covered by Ext.R1(i) notification shall have any bearing on the ceiling proceedings initiated against the HMT and which is pending before this Court in C.R.P. No. 1026 of 2002. That case will have to be considered independently on the grounds raised therein and on the grounds of eligible exemption under Chapter III of the Kerala Land Reforms Act.

The writ petitions are disposed of as above.