

(2008) 09 KL CK 0015

In the High Court Of Kerala

Case No : WP (C) No. 16260 of 2008 (I)

The Trivandrum Golf Club

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 299, 299(1)
Easements Act, 1882 — Section 64
Evidence Act, 1872 — Section 116

Citation : (2008) 4 ILR (Ker) 474 : (2009) 1 KLJ 189

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : T. Krishnan Unni and Saju S.A, for the Appellant; Renjith Thamp, Spl. G.P., for the Respondent

Judgement

V. Giri, J.—Common issues which arise for consideration in these cases, relate to the validity of the action taken by the Government in resuming possession of the properties being used by the Trivandrum Golf Club, as a Golf Course, along with buildings situate in the same property and being used by the Club as such for ancillary purposes. While the Trivandrum Golf Club (hereinafter referred to as "the petitioner"), is the petitioner in W.P (C) No. 16393 and 16260 of 2008, two of the members of the Club are the petitioners in W.P.(C) No. 16363/08. The adjudication of the dispute raised in W.P.(C) No. 16393/08 would obviously govern the result of the other two cases also. Therefore, I will refer to the facts and contentions raised in W.P (C) No. 16393/08.

2. An extent of 25.38 acres of land in Peroorkada village, situated at Kawdiar in the heart of Trivandrum City, is the subject matter of this litigation. The said extent of land originally belonged to the Maharaja of Travancore and apparently it became Government land on the formation of the State. But, even earlier, in the late 1890's a Golf Course was established in the said land. Thereafter, it became the property of the Government. In 1950, the Government entrusted the management of the Golf Course with the Trivandrum Golf Club (There is a

dispute as to whether the club, as it exists now, is the same entity or a successor in interest of the club as it stood then. It is not necessary to consider it now).

3. By Ext.R1 (d) dated 8-8-1963, the Government issued directions relating to the management of the Golf Club was to pay a rent of Rs. 30/- per month for the period from 1-4-1962 onwards for using the Golf Course. But it was made clear that Golf Course was to be made available for the tourists sponsored by the Tourism Department. The expenditure incurred by members, charges for use of the telephone, water and sanitary expenses and the maintenance of the furniture were to be borne by the club.

4. On 11-10-1966 in modification of Ext.RI(d), by G.O.(MS) No. 226/66 dated 11-10-1966, marked as Ext.P6, the Government, taking note of the request made by the president of the Club that a long term agreement would enable the Golf Club to develop the Golf to National standards, issued an order, inter alia, directing that the Golf club will have the right to user of the property for a period of 99 years, non-alienable, from the date on which the Golf Club was permitted to use the property.

5. There is a dispute as to what happened thereafter. It is the petitioner's case that Ext.P1 licence deed was thereafter executed between the Government (Governor of Kerala represented by the concerned Executive Engineer and the members of the Club (representatives of the club) as such. Ext.P1 licence deed is seen to have been executed on 24-6-1967. There is now a dispute raised by the Government as to whether such a licence deed was executed or not. But, it is to be noted that the original of the licence deed said to have been executed on 24-6-1967 has not been placed on record. The Government figures as the Licensor and Trivandrum Golf Club as the Licensee. The petitioner submits that the Government is the custodian of the licence. The Government on the other hand, submits that they are not in possession of the "original document executed, signed and sealed in that behalf. Ext.P1 licence deed refers to Ext. R1(d) Government order, which is the same as Ext.P12 order dated 11 -10-1966. As stated above, the Government is the Licensor and the Trivandrum Golf club is the Licensee, as per Ext. P1.

6. Clauses vii, xi and xii of the Licence deed are the matters on which considerable contentions have been raised. Therefore, they are extracted hereunder:

vii. The Licensee shall keep the premises neat and the properties of the Licensor shall be preserved carefully.

xi. in case the land and buildings are required for any purpose of the Licensor the Licensor shall have the right to cancel the licence and to resume the property at the expiry of 30 years from 11th October, 1966 by giving the licensee two years" notice. The Licensor shall also have the right to cancel the licence and resume the property at any time without notice in case the buildings and premises are used for purpose other than that for which it is given.

xii. in case the Licensee defaults payments of the rent as specified above, the Licensor shall have the power to recover the dues if any from the Licensee in the manner hereinafter contained.

7. It is common case that the Golf Club continued in management of the Golf Course as such. Maintenance of the building situated in the same premises was apparently being undertaken by the Public Works Department of the Government, through it seems that, at some point of time, the club also got itself involved in the up keep of the building as such. But till 1979, as evidenced by Ext. P2 dated 2-8-1979, the maintenance of the buildings. Garden, golf course etc., was being done at Government expenses. I do take note of the stand taken by the petitioner in this regard that they were involved in the maintenance of the golf club at some point of time. But apparently taking note of the report of the Public Accounts Committee of the State Legislature, that there is non-fulfillment of the main purpose for which the Trivandrum Golf Club came to be established and that the Golf Course came to be entrusted with the club viz., promotion of tourism, had not been achieved. The said Public Accounts Committee recommended that if the Government still felt that the Golf Club should be run for attraction of tourist, the Government should reconsider whether all the concessions extended to the club were indispensable and reasonable. It seems that, taking note of the recommendations, Ext.P2 order dated 2-8-1979 was issued declaring that the practice of maintaining the buildings, garden, golf course etc of the club fully at Government expenses should be stopped. The Government then directed that the club will be paid an annual grant of Rs. 35,000/- and the maintenance of the building of the club premises will continue to be the responsibility of the Public Works Department, but the cost must be met from the annual grant paid to the club. The maintenance of the golf course, garden, premises etc. will be the responsibility of the club, but the grant was to be routed through the Kerala Sports Council. The executive committee of the Trivandrum Golf Club was to be a 11 member body of which 6 will be Government nominees. As stated above, the Articles of Association of the club were to be amended suitably.

8. There does not seem to have been any dispute for some time. But, in 1999, fearing a proposal on the part of the Government to take over the management of the club and to resume possession of the premise where the golf club was being run, the petitioner here in approached this Court with O.P. No. 18222/99 for interdicting the Government in that behalf. Ext.P3 counter affidavit was filled by the Under Secretary of the PWD. Reference was specifically made to Ext.P1 licence deed and Ext.P12 government order. Apparently, the Government affirmed that the relationship between the Government on one hand and the Golf club on the other was regulated by Ext. P1 Licence deed, though the Government has the pre-eminent right to resume possession and management of the property as a Licensor under Ext. P1 licence deed. The said writ petition was disposed of by Ext.P4 judgment, where, after recording the stand taken by the Government that they do not have a proposal to take over the Golf Course as

such, this Court directed the Government to communicate the decision, if any, taken in the matter, after considering the recommendation made by the members of the Kerala Legislative Assembly. The right of the petitioner to challenge the decision taken by the Government was left in tact.

9. Again there was a lull in the hostilities for some time. But, in 2002, apparently, taking note of the fact that, apart from conducting the Golf Course, some of the members were also making, what will have to be described as "extensive use of premises" for activities which were not related to game of golf, the Government thought it appropriate that it should get an additional share of the income which the club was amassing. Ext.P5 came to be passed on 29-6-2002. Paragraphs 2 and 3 of the said order read as follows:

2. Government have examined the request of the Club with reference to the conditions of the lease agreement. The lease agreement (clause 1 and V) provides that Government should meet the cost of maintenance and also the gardener's pay and water charges of the building. Government have since stopped meeting such expenditure as provided in clauses 1 and V. In such a circumstances the additional income by means of permitting the premises for meeting and other activities of the members of the Club as now proposed to be raised would enable the club to upgrade the level of maintenance and up-keep of the premises to be required standard.

3. In consideration of the above mentioned reasons, Government are pleased to grant the request of the club. The club will, however, remit to Government a share of the additional income so generated. The club will remit an amount of Rs. 25,000/- per annum initially. The amount of remittance to Government will be subject to further review after assessing the level of such income that the club is likely to received.

10. Again, there does not seem to have been any significant resumption of the hostilities between the Government and the golf club. But it seems that in the year 2007, the Government felt that the conditions of the licence, as evidenced by Ext. P1, were not being strictly followed by the club and therefore, this gave rise to a situation where the Government decided to resume the management of the club and resume possession of the property forming the subject matter of Ext.P1 licence deed. The Government took note of report of the petitions committee of the Kerala Legislative Assembly Ext.R1 (C) and issued a show cause notice to the club Ext.P6. Ext P6 proceeded on the premise that the Government have signed a licence deed (Ext.P1) as stipulated in Ext.P12 Government Order dated 11-10-1966. Apparently, since the licence deed specifically contemplated the Government being enabled to resume the land and buildings immediately if there is a violation of the terms of the agreement in the licence deed, the show cause notice required the club to explain why the resumption of the subject matter of licence deed along with other building should not be effected by the Government in exercise of the powers made available to the Government in the licence deed as such.

11. On the premise that there was no specific allegation in the show cause notice and all that Ext. P6 show cause notice contained was a reference to Ext.R1(C) report of the Legislative committee a reply was given as per Ext.P7 by the club on 18-1-2008.

12. It seems that the members of the Club were called for a hearing by the Revenue Secretary. Thereafter by Ext. P8 Government Order dated 31 -5-2008 the government passed an order, which reads as follows:

(i) The land extending 25.38 acres now in possession of the Golf Club, Thiruvananthapuram survey numbers 2/2,2/5,227/2-4,250/2,250/1-3 and 256/3 (Re-survey No. 4 (block 27) in Peroorkada Village, Thiruvanthapuram Taluk shall be resumed to Government with immediate effect.

(ii) The District Collector, thiruvananthapuram will take immediate action to resume the land.

II. The Government has also decided that the future management of the Golf Course so resumed by the Government from the Club may be on the basis of the recommendations to be made jointly by the Minister Revenue), Minister (Education and Culture) and the Minister (Law and Parliamentary affairs).

13. Consequential orders Exts. P9, P10 and P11 were also issued. The land in the possession of the club was taken possession of by the Government. Exts. P8 to P10 have been challenged by the petitioner.

14. A detailed counter affidavit has been filed by the Government. I will have to straight away mention the fact that there was considerable controversy, resultant upon the resumption of the land by the Government and the first prayer made by the petitioner was to interdict the Government from resuming possession of the land and the buildings as such. This Court, by an interim order, directed the Government to hand over possession of the property. The same has been complied with by the Government. But, later a detailed counter affidavit has been filed by the Government, traversing each and every contention taken by the petitioner.

15. I consider it necessary to recapitulate the contentions taken up by the Government.

(1) There is no licence deed executed between the Government and the petitioner as contended by the petitioner. At any rate, there is no licence deed as contemplated by Article 299 of the Constitution. Consequently, the petitioner is not entitled to assert the status of a licensee.

(2) Assuming, without admitting that there is a licence deed, as contended by the petitioner, the relationship between the petitioner and the Government is purely contractual and therefore, revocation of the licence or breach of contract, as the case may be, will not enable the club to continue to maintain this writ petition. The remedy, if any, lies elsewhere.

(3) There is a consistent breach of Ext.P1 licence deed (assuming that there is a licence deed). This is inter alia evidenced by the fact that the premises of the club were used for purposes other than the maintenance of the golf course and the game of golf. The premises have been commercially exploited.

(4) Portion of the premises is used as a Bar. This is a breach of the conditions as such.

(5) At any rate, the question as to whether a licence was brought into existence and whether there was any breach of the conditions are disputed questions of fact, which cannot be resolved in proceedings under Article 226 of the Constitution.

(6) Assuming that there has been illegal revocation of the licence, as contended by the petitioner, the remedy of the petitioner is only by way of claim for damages in Civil Court, in terms of Section 64 of the Easements Act.

16. A detailed reply affidavit has been filled by the petitioner.

17. I heard learned Senior Counsel for the petitioner Sri. T. Krishnan Unni, in W.P (C) No. 16393/08 and Sri. George Thomas, learned Counsel for the petitioner in W.P. (C) No. 16363/08 and Sri. Ranjit Thampan, learned Special Government pleader on behalf of the Government.

18. Sri. Ranjit Thampan contends quite vehemently that the substratum of the case built up is rested on Ext.P1 licenced deed. If there is no licence deed, obviously there is no violation of the conditions of the same. The propriety of the Government in issuing a notice and resuming possession as such really do not arise. After all, it is not disputed by any person, that the Government is the paramount title holder of the property. There cannot be any implied licence. If there is no licence deed, then obviously the Government can merely seek and assert its rights over its own property and seek resumption of land or management of the golf club or both together. The Government only asserts its paramount title over the property. It is further contended that insofar as the Government is concerned, unless there is a written, signed and executed licence deed, which satisfies the ingredients of Article 299 of the Constitution, it is not open to any one to content that there is a licence. Mr. Thampan made reference to the following decisions of the Supreme Court in this regard.

(i) U.P. Rajkiya (I) Nigam Ltd. v. Indure Pvt. Ltd. AIR 1996 SC 1973

(ii) K.P. Chowthary v. State of M.P. AIR 1967 SC 2203

(iii) Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum,

(iv) The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others,

(v) State of Punjab and Others Vs. Om Parkash Baldev Krishan, and

(vi) Vidhyadharan v. State of Kerala 1980 KLT 421

19. Under the Indian Easements Act, licence amounts to a permission without which, the act is rendered invalid. But a licence need not always be in writing. A licence could be oral as well. The definition of licence does not exclude the possibility of an oral licence. An oral licence could be inferred even ex post facto. A licence over a prolonged period may give rise to other rights. Existence of a written agreement enables a person to claim* certain rights. These are possibly the principles that could be treated as trite in the context of a licensee-licensor relationship otherwise comprehended by the Easements Act.

20. But obviously, these aspects will have to be kept at bay when a person asserts the status of a licensee qua Government as a Licensor. In such cases, there has to be a written agreement and the competent authority contemplated under Article 299 of the Constitution will have to sign a licence agreement of behalf of the Governor. Such person must, in terms of the Rules of Business, be competent to enter into a contractual relationship on behalf of the Government. If the contract between the Government and another person is not in strict compliance with Article 299(1), it would be no contract at all and could not be enforced either by the Government or by the other person as a contract" Vidhyadharan v. State of Kerala 1980 KLT 421. The conditions provided in Article 299 are not to be diluted. Substantial compliance with the said Article is not sufficient. The provisions of Article 299(1) the Constitutions are mandatory in character and as the Supreme Court has held, the contravention of the provisions of Article 299(1) nullifies the contracts and renders them void (see the judgment of the Supreme Court in Mulamchand Vs. State of Madhya Pradesh, . It is not open even to the Government to dispense with the requirements under Article 299. There is no question of estoppel or ex post facto ratification being raised against the Government qua the requirements of Article 299 The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, . A letter of acceptances signed by the Executive Engineer, who is otherwise competent, will not constitute a binding contract (See State of Punjab and Others Vs. Om Parkash Baldev Krishan, . The contract should be approved and signed on behalf of the Governor with its seal by a duly competent officer. The doctrine of indoor management cannot be extended to formation of the contract under Article 299 U.P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. and others, . The contention of Mr. Thampan that the conditions under Article 299 cannot be diluted and a signed licence deed, in which the Governor represented by a competent authority and the members of the golf club have subscribed their signature, is a pre-requisite for the petitioner to assert the status of a licensee and also claim the limited rights, otherwise flowing in their behalf deserves to be accepted.

21. It is the specific stand taken by the Government, in the counter affidavit as also in the impugned order Ext.P8, on behalf of the Government that they have not been able to trace out the original signed licence deed as such. Expatiating

on the same stand, it is now the stand taken by the Government that in the absence of a licence deed, it is not possible for the petitioner to assert the status of a licensee. The petitioner claims to be a party to Ext. P1. Even going by their own stand, therefore, there is nothing improbable in the petitioner being required to produce the original of the licence deed. But the stand taken up by the petitioner is that the Government was the custodian of the licence deed and it is up to the government to produce the licence deed. If it is found that there is no licence deed or if this Court is not capable of finding that, there are sufficient materials to indicate that there was a licence deed executed by the members of the committee and the competent authority of the Government, then it may not really be necessary to refer to the other contentions of the petitioner.

22. But there are some telltale circumstances which support the case of the petitioner though the original of the licence deed is not forthcoming.

23. Ext. P1 licence deed, though only a photo copy, refers to Ext. P12 and Ext. R1(d) Government orders. Secondly, Ext. P2 Government order dated 2-8-1979 specifically refers to the licence deed (though described as a lease deed as such). Thirdly, Ext. R1 (c) report of the Petitions Committee of the Legislative Assembly specifically refers to the licence deed. Fourthly, Ext. P3 Counter affidavit filed by the under Secretary of the PWD in O.P. No. 18222/99 not only refers to Ext. P12 Government Order, but also to Ext. P1 licence deed. In fact, it is stated as follows:

Licence deed dated 24-6-1967 was also executed between the Honorary Secretary, Trivandrum Golf Club on the one part and Executive Engineer, B & R Division, Thiruvananthapuram for and on behalf of the Governor of Kerala on the other part.

24. Ext. P3 counter affidavit thereafter refers to various clauses in the licence deed either for the purpose of asserting government's right or for repudiating the rights asserted by the petitioner. It also affirms the paramount authority of the Government to resume possession at any point of time, without giving any reasons, subject to the provision of a minimum notice of 2 years or in the alternative for violation of the conditions of the licence as such. Apparently Ext.P3 counter affidavit was referred to by this Court while disposing of the earlier writ petition. 5thly, Ext.P5 order dated 29-6-2000 also refers to the licence deed though described as a lease agreement) Ext. P1 and suggests the pattern of expenditure. Lastly, and I take this as quite important, it has been mentioned in Ext.P6 show cause notice, as follows: Government signed a licence deed for 99 years vide conditions stipulated in G.O.(MS) No. 226/66/PW dated 11 -10-1966." In fact a show cause notice was issued on 26-11 -2007 on the premise that a notice is necessary in terms of the provisions of the licence deed, where resumption of the land is contemplated for violation of the conditions of the licence. I do not find any material placed on record to clearly indicate that, at any point of time, prior to the issuance of the impugned order, the Government had specifically taken a stand that no licence deed, at all, satisfying the requirements of Article 299, was executed."

25. There are certain other factors which persuade me to come to the conclusion that a licence deed was executed on 24-06-1967. There is no dispute by any person that the Government is the owner of the property. The golf course apparently came into existence in the 19th century. The management of the golf course was actually entrusted with the club. The actions taken by the Government and the golf club subsequent to 1967, the date on which the licence was executed have been consistently affirmative of their status as licensor and licensee. It may, therefore, not be fair or reasonable to permit one of the parties to the agreement to take up the stand that there is no licence deed.

26. For all the above reasons, I am of the view that one will have to proceed on the premise that there was actually a licence deed and it contained the same conditions as are now reflected in Ext.P1 licence deed.

27. There is yet another fact which impels me to come to the same conclusion. Even consistent with the status of the petitioner as licensee, it is not open to it to contend that the Government is not the paramount title holder. The Government is, of course, the paramount title holder of the property, and it had, albeit in a limited manner, permitted the Trivandrum Golf Club to maintain the Golf Course. As is trite, no licensee is entitled to repudiate the title of the owner (Section 116 of the Evidence Act). More importantly, the petitioner does not even make any attempt to repute the paramount right of the Government over the property where the golf course is situate and the buildings that are being used by the club as such. Therefore, an inference that there is actually a licensor-licensee relationship between the Government and the golf club and that it is governed by the conditions of the licence contained in Ext.P1 would not either dilute the stand taken by the Government or resultantly confer any additional right on the petitioner as such.

28. It was then contended that even if it is held that there is a licence between the Government and the petitioner, satisfying the requirements of Article 299 of the Constitution, it still would not enable the petitioner to approach this Court under Article 226 of the Constitution, complaining of alleged illegal revocation of the licence and for consequential reliefs. Mr. Thampan contends that even if one were to accept the contention, it would only mean that there was a breach of contract on the part of the Government and if that be the case, the remedy of the petitioner, if at all, would lie only before a civil court and not in proceedings under Article 226 of the Constitution. Reference in this regard is made to the decisions in:

(A) Radhakrishna Agarwal and Others Vs. State of Bihar and Others, .

(B) State of Punjab v. Nalbir Singh AIR 1977 SC 1717

(C) Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, and

(D) S.E.G. Fishermen Co-op. Society v. Sipahi Singh 1977 (4) Sec. 145

29. On the other hand, it is contended by learned Counsel for the petitioner that even in the matter of contractual obligations, there is an obligation on the part of the State to act in a fair and reasonable manner. The view, that was earlier taken by the Supreme Court that the Jurisdiction of this Court under Article 226 of the Constitution should not be involved at all in matters which involve a contractual relationship between the State or the Instrumentalities of the State as such, was later explained by the Supreme Court in several decisions. It was pointed out that the restraint on the exercise of jurisdiction by a constitutional court is more a self-imposed restriction than a fact of the jurisdiction of the Court. In *Ramanna Dayaram Shetty v. International Airport Authority of India* AIR 1979 SC 1626. The Supreme Court undertook a review of the earlier decisions and came to the following conclusion, which incidentally has been quoted in several decisions later: "The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual". The law was again reviewed by the Supreme Court in the decision reported in *G.B. Mahajan and Ors. v. Jalgaon Municipal Council and Ors.* 1991 SCC 91. It was held that "reasonableness in administrative law may not distinguish between the proper use and improper abuse of power. The following passage in an article by Ms. Sue Aitow Smith on "judicial review and the contractual powers of public Authorities" 106 *The Law Quarterly Review* 277 was referred with approval by the Supreme Court.

In this brief survey it has been suggested that the perception of contract as a "private" matter appears to have influenced the Courts approach to the judicial review of the Government's contractual activities. In a number of cases, the courts have looked for some special element of "public law" before they would review the exercise of contractual powers, an approach which has produced some artificial distinctions. It has been suggested that it is difficult to see why the simple fact that the power in question is a contractual one should affect the scope of judicial review. It may be purely fortuitous whether regulatory scheme involves a contractual relationship or whether it is carried out purely by unilateral regulation. Even when an activity has a parallel in the private sector-as with procurement, leasing or employment-public law principles designed to protect citizens should apply because of the public nature of the body and they may also have some role in protecting the public interests. The mere existence of a contract in any of these cases is not a convincing argument for saying that the applicant should have negotiated for himself the protection normally given by public law.

30. It is, therefore, the nature of the body which justifies the judicial review of actions taken even in contractual matters. The restraint that is imposed by a constitutional court in contractual matters is essentially a self-imposed restriction and almost always, the court declines jurisdiction where it finds that disputes facts require adjudication: and the relief sought for by the party who impugns the State action would essentially be in the nature of damages. But the courts also would be reluctant to exercise jurisdiction where the ultimate relief sought

for by the party is essentially in the nature of specific performance of an agreement. But, illegality, impropriety, irrationality and unreasonableness instate action could always be the subject matter of judicial review under Article 226 of the Constitution of India. This is the law. Essentially such judicial review be to consider whether the action taken by the state is fair and reasonable so as to pass muster on the touch stone of Article 14 of the Constitution of India. This is how the Supreme Court has evolved the parameters of judicial review that is not only possible but also desirable under Article 226 of the Constitution of India. *Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others*, , *Hindustan Petroleum Corporation Ltd. v. Darius Shapur*, Chennai 2006 (1) KLT 230 (SC), *Maharashtra Distilleries Vs. State of Kerala*, and *State of Kerala v. Anil* 2002 (1) KLT 371 (by the Division Bench and Full Bench of the Kerala High Court). The court does not, therefore, advocate a hands off policy in matter where judicial review is sought for in relation to state action even where the relationship with the state is otherwise governed by the terms of a contract. Mr. Thampan is correct when he says that the extent of judicial review must be different in cases where judicial review is sought in matters where the action of the state prior to entering into the contract is questioned and in a case where breach of contract is alleged. This principle might have deterred this Court in entering into an adjudication of the disputes raised in this case had the case been one of breach of reciprocal obligations on the part of the two contracting parties and quantification of damages or liability arising therefrom. What has been impugned in this cases is a decision taken by the State at its highest level, no less than the Council of Ministers and apparently carried out by the Principal Secretary of the Revenue Department. Moreover, judicial review would be restricted to the decision making process and not the merits of the actual decision.

31. Mr. Thampan then contended that assuming that judicial review is possible, a writ petition is not maintainable in the instant case as the Government is a licensor and the petitioner is a licensee. Licence is defined in the Easements Act. Licensee's right, pursuant to revocation of a licence, is comprehended by Section 64 of the Easements Act. There cannot be any residuary right, it is contended.

32. Section 64 of the Easements Act states that where a licence has been granted for a consideration and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed the right under the licence, for which he contracted, he is entitled to recover compensation from the grantor. The consequence is positively expressed, as an enabling provision at the instance of the grant as such. No doubt if the claim on the part of the petitioner is one for damages resultant upon the revocation of the licence or even a specific performance of the deed of licence as such, this Court might have relegated the petitioner to seek remedy before a civil court.

33. But, as I mentioned earlier, what is being challenged is only the constitutionality or fairness or reasonableness of the Government decision taken at its highest level and if the answer to the contention raised by the petitioner to

the effect that the state action is not fair and reasonable, is in the affirmative, then the extent of judicial review would be limited to requiring the state to reconsider the issue. But if it is found that the action does not warrant interference by this Court under Article 226 of the Constitution, then obviously this Court would not exercise its power for either determining the damages or quantifying the compensation which otherwise the petitioner may be entitled in terms of Section 64 of the Easements Act.

34. Once this position is settled as mentioned above, I have to then consider the case of the petitioner that the order impugned Ext.P8 in W.P (C)No. 16393/08 is vitiated essentially for the reason that it is violative of Article 14 of the Constitution,. I should hasten to observe that no statutory infraction or violation of any other fundamental right is pleaded or proved.

35. It is the petitioner case, as noted at the outset, that it is Clause II of Ext.P1 licence deed which deals with the resumption of the property by the Government. Clause 11 makes it clear that in case the land and buildings are required for any purpose of the licensor, the licensor shall have the right to cancel the licence and to resume the property at the expiry of 30 years from 11th October, 1966, by giving the licensee two years" notice. The second limb of the clause further provides that the licensee shall have the right to cancel the licence and resume the property at any time "without notice" In case the building and premises are used for any purpose other than that for which it is given.

36. Now that the parties have joined issue on Clause II, I think it is only appropriate to ascertain the scope and ambit of the provisions. The Ist part of Clause 11 gives a right to the licensor Government to resume the property at any point of time subsequent to 11-10-1996, by giving the licensee the requisite notice. It is an unrestricted right available to the licensor. It is unnecessary for the licensor, in such a case to offer any reason. It is not for the licensee to question the decision taken by the Government. In my view, if the Government had thought it appropriate to exercise the pre-eminent right available under the first limb of Clause 11, there would really have been no controversy. What is required in such a case is to give a notice of two years. The propriety or the wisdom of any action taken by the Government cannot be the subject matter of enquiry, even if the licensee thought it fit to question the same.

37. That is not what has been done in this case. The Government has thought it necessary to resume the property in exercise of the powers under the second limb of Clause 11 viz., to resume the property in case the buildings and premises are used for a purpose other than for which it is given. It is accordingly that Ext. P6 show cause notice was issued and had the government been able to establish, after following the procedure, which would be in accord with the principles of natural justice, that the premises have been used for purposes other than for which the licence was issued, then it would not be necessary for the Government, as a licensor, to give 2 years" notice under the 1st limb. It is here that Ext. P6 show cause notice assumes importance. I do not find any specific

allegation in Ext.P6 that the premises have been used for a purpose than the one for which it was licensed. It has come out in Ext.P8 order that what the state had in its mind was essentially two reasons. Firstly that an FL4-A outlet is being run in the club premises. The stand taken in the counter affidavit and reiterated in the statement is infraction of the licence condition as such. It is secondly contended that the premises are used for social gatherings at the instance of the members and even others.

38. Learned Counsel for the petitioner pointed out that there was no specific allegation. In Ext.P6 show cause notice. Therefore, the principles of natural justice dictated that if the state wants to resume the property for its own use, the licensee should have been given notice of the specific infraction and should also have been given an opportunity of hearing. Both sides have made extensive arguments regarding the running of FL4-A outlet and the alleged user of the building in the club for purposes other than what it was originally licensed for. It is contended by the petitioner that after all the FL4A licence was granted by the Government itself. Therefore, if the government had granted such a licence in favour of the petitioner, it cannot be said that the Government is unaware of the user of the club premises as an FL-4A outlet. In my view, the question as to whether the grant of FL4 licence or even user of any portion of the premises for FL4 outlet amounts to an infraction of Clause 11 of the conditions of the licence, could be decided by the Government in the first instance only if a specific allegation is made in that behalf in the notice and an objection in that behalf was invited from the club. If proceedings are taken by the Government under the second limb of Clause 11 on the ground that there is infraction of the conditions of the licence deed, then the principles of natural justice demand that the allegations must be brought to the notice of the licensee. Obviously, a detailed enquiry in this regard may not be contemplated and if a finding is arrived at by the Government in this regard, the extent of judicial review, in such cases, would be limited to cases of perversity or lack of application of mind or consideration of irrelevant factors.

39. That is different from the contention of the Government that the allegation need not specifically be brought to the notice of the licensee. The same principle holds good in relation to the allegation that there is user of the premises by the club members for purposes other than what is specifically contemplated by the licence deed. In my view, such an allegation should also have specifically found a place in the show cause notice.

40. The fact that there is a finding in the impugned order may not really be an answer to the contention. Absence of such allegation in the show cause notice violates the principles of natural justice. After all the principles of natural justice would only require that any fact which could apparently be used against the aggrieved party (which is the licensee in this case) should be specifically brought to its notice and it should be given an opportunity to rebut the allegation and produce documents in substantiation of its contentions. This is all part of the

decision making process of the Government, which as i stated above, is vulnerable to judicial review under Article 226 of the Constitution.

41. Mr. Thampan contends that reference is made in Ext. P6 show cause notice to the report of the petition committee and that the said report was available with the licensee. Therefore, there is actual compliance with the principles of natural justice in this case. I am unable to agree. The report of the petitions committee is of the year 1997. After all, the licensee has been continuing with its activities for several years thereafter. Moreover, Ext. P6 order was passed by which there is a direction by the Government to the club to remit an additional amount of Rs, 25,000/- annually from the year 2002. In such circumstances, it would have been appropriate, fair and reasonable that the Government specifies the allegations in the show cause, invites objections thereto and the arrives at a finding on the basis of the materials which are placed on record. After all, it is the Government which, with all its pre-eminent powers that hears the objections. More the power of the authority, more is the obligation to exercise the authority in a fair and reasonable manner.

42. In the circumstances, I am of the view that a reconsideration of the issue, as the whether the petitioner has used the premises in violation of the conditions of the licence, as such, has to be made by the Government.

43. Since the discussion undertaken by me was fairly elaborate, I consider it appropriate to summarize my conclusions.

(a) Undisputedly, the Government, is the owner of the property and therefore, the Government is entitled to exercise its power to protect its title and right over the property. The right available to the petitioner club is limited to the rights specified in the licence deed. The petitioner has no residuary right and cannot claim any right over and above what is specified in black and white in the licence deed.

(b) the relationship between the Government on one hand and the petitioner club on the other is that of a licensor and a licensee and the conditions of licence are those which are constrained in the licence deed dated 24-6-1967.

(c) The Government has comprehensive powers to put an end to the licence and resume the property and/or the management of the Golf Course in exercise of its power as contained in Clause 11 of the licence deed.

(d) The Government is entitled to revoke the licence and seek resumption of the property, either by exercise of the power under the 1st limb of Clause 11 in which case, it is open to the Government to dispense with a show cause notice and dispense with the requirement in give reasons. All that is required in such case is to give the club two years" notice before resuming possession.

(e) The Government also has the power under the second limb of Clause 11 to revoke the licence and resume possession of the property, if it is found that the club premises have been used for purposes other than the ones for which the

licence was granted.

(f) Principles of natural justice dictate that specific allegations be made in the show cause notice issued by the Government, prior to exercising the powers under Clause 11 of the licence deed, if the Government tentatively comes to the conclusion that the club premises are used for purposes other than the one for which the licence was granted.

(g) Ext. P6 show cause notice did not specify the reasons and a reasonable opportunity was not given to the petitioner to meet such allegations and convince the Government of the contra position. Ext. P8 order is vitiated on the ground of violation of the principles of natural justice.

44. For all these reasons, I am of the view that Ext. P8 requires interference to the limited extent as indicated above.

45. In the result, Ext. P8 order is quashed. The Government is directed to issue a fresh show cause notice to the petitioner within one month from the date of receipt of a copy of this judgment, keeping in mind the observations made above. The petitioner shall be given a minimum of 6 weeks time to give a reply to the show cause notice and place materials in support of its contentions and thereupon, it shall be afforded a reasonable opportunity of being heard. The Government shall take a Fresh decision in this matter. The entire procedure, as outlined above, shall be completed within a period of four months from the date of receipt of a copy of this judgment. I have to take note of the fact that the Golf Club is being run in the property since 1890. The licence in this regard was executed by the Government in 1967. It is more than 40 years now. In the circumstances, in the event of the Government finding that there has been an infraction of the conditions of the licence, it is only appropriate that sufficient time is given to the petitioner to vacate the premises in question. I am constrained to observe this, in the light of the fact that there has been an allegation that the action of resuming possession pursuant to Ext. P8 order was unnecessarily hurried and resulted in injustice. He that as it may, the controversy is no longer in existence. The Government has complied with the interim order passed by this Court. It is only in the fitness of things, if the Government decides to resume the property, in the manner aforementioned that a reasonable and fair time should be given to the petitioner club to vacate the premises. It is not for this Court to stipulate the time frame in this regard.

46. The writ petitions are disposed of as above.