

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:29-02-2008

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.13440 and 46153 of 2006  
and connected miscellaneous petitions

New Kenilworth Hotel Pvt., Ltd.,  
No.1 & 2 Little Russel Street  
Kolkatta 700 071  
rep. By its Authorised Signatory  
Mr.Sudipta Nandi.

... Petitioner in WP.13440/06

New Kenilworth Hotel Pvt., Ltd.,  
No.1 & 2 Little Russel Street  
Kolkatta 700 071  
rep. By its Authorised Signatory  
Mr.A.Joseph Vincent.

... Petitioner in WP.46153/06

vs.

- 1.State of Tamil Nadu  
rep. By the Secretary to the  
Government, Social Welfare and  
N.M.P.(SW-V) Department,  
Fort St.George, Chennai 9.
- 2.The State of Tamil Nadu  
rep. By its Secretary to the  
Government, Revenue Department  
Fort St.George, Chennai 9.
- 3.Tamil Nadu Corporation for  
Development of Women Limited  
(MAHAM) Government of Tamil Nadu  
undertaking No.100, Anna Salai  
Guindy, Chennai 600 032  
rep. By its Managing Director.
- 4.The District Collector  
District Collectorate  
Coimbatore 641 018.

- 5.The Member Secretary  
Coimbatore Local Planning Authority  
Corporation Commercial Complex  
Coimbatore 641 018.

6.Jumhao's Joys Park Limited  
rep. By its Director P.V.Ravi  
No.36, K.P.N.Colony, First Street  
Tirupur 641 601.

.. Respondents in both WPs.

R6 impleaded as per order  
dated 04.01.2007 in WPMP.No.17272/06

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, (1) calling for the records of the first respondent in G.O. (2D).No.20, Social Welfare and Nutritious Meal Programme Department dated 20.04.2005 and communicated to petitioner's counsel on 27.04.2006 in WP.No.13440 of 2006 (2) in G.O.No.31 Social Welfare and Nutritious Meal Programme Department, dated 09.05.2005 and communicated to petitioner's counsel on 07.11.2006 and quash the same and consequently direct the respondents to permit the petitioner to proceed with the development of hotel project in terms of G.O.Ms.No.254 Social Welfare and Nutritious Meal Programme (Sw.V) dated 22.09.1994 with such approvals as may be required in law.

For petitioners : Mr.P.R.Raman  
for Mr.C.Seethapathy in both the WPs.

For respondents : Mr.S.Veeraraghavan  
Addl.Advocate General III  
assisted by  
Mr.I.Paranthaman,AGP and  
Mr.L.S.M.Hasan Fizal  
Government Advocate for R.1to5  
in both the WPs.

Mr.R.Muthukumarasamy,Sr.Counsel  
for Mr.S.Udayakumar for R.6  
in both the WPs.

#### COMMON ORDER

The writ petitioner in these writ petitions is a Private Limited Company incorporated under the Indian Companies Act, 1956 and carrying on the business of establishing, running and managing Hotels, among others. The Government, by G.O.Ms.No.111 dated 29.04.1993, issued by the Social Welfare Department, has decided to establish a Recreational-cum-Educational Complex and Children World for the welfare of the youth to be set up at Coimbatore and directed the District Collector to identify the location. Ultimately, as per the report of the District Collector, the land measuring 25.19 acres at Vilankurichi Village was found suitable, since the same is nearer to National Highways. The second respondent, Revenue Department, under

whom the administration of lands would vest, issued G.O.Ms.No.900 dated 18.10.1993, for establishment of an Amusement Park in the said location by the Social Welfare Department, viz., the first respondent, since the same is for a public purpose. As the lands were originally acquired, the first respondent, Social Welfare Department was directed to enter upon the lands declaring that the lands could be transferred from Medical Department to Social Welfare Department.

2. It is the case of the petitioner that subsequently, the lands were transferred from one Government Department to another, viz., from Medical Department to Social Welfare Department. The third respondent, MAHAM is constituted by the Government to look after the welfare of Children and Women in the State of Tamil Nadu and being the Government Company, it is run by the Social Welfare Department. The Government has entrusted the task of setting up the Amusement Theme Park to the third respondent with the authority, and therefore, the lands were vested at the disposal of the third respondent with the consent of other Departments. After the techno-economic survey by the Social Welfare Department through experts, it was decided to have the Theme Park as an Amusement Complex with Shopping Arcade, Country Club and a Star Hotel. Since it requires enormous amount for developing the lands, etc., the third respondent sought permission from the Government to implement the project by way of joint venture or by leasing out the lands to private entrepreneurs on a profit sharing basis or on long lease/rental basis. Hence, proposals were invited by wide publication in the newspapers by the Government on 03.08.1994, by way of tender.

3. The petitioner has made an application for setting up a Star Hotel and the same was made on 29.08.1994 along with Earnest Money Deposit of Rs.2 lakhs. The third respondent has ultimately accepted the tender of the petitioner for leasing out the lands in question on long term lease for 33 years and accordingly, the Government has issued G.O.Ms.No.254 dated 22.09.1994 through the Social Welfare Department granting lease in respect of 5 acres of land for establishing a Star Hotel and according to the petitioner, the petitioner continues to remain qualified for enforcing the said project.

4. A registered lease deed was executed by the third respondent with the petitioner on 05.10.1994 and possession of the lands was handed over to the petitioner. The registration was done after obtaining permission from the concerned authorities, like Income-tax Department, etc., and it was expressly mentioned that the first respondent had acquired the lands by transfer on 06.07.1994 under a Government Order. By letter dated 28.10.1994, the first respondent has directed the District Collector, Coimbatore, to earmark the place leased out to the petitioner for setting up the Star Hotel and to another entrepreneur viz., M/s.Jenneys Residency Private Limited, to set up a Shopping Arcade and a Country Club. Accordingly, boundaries were marked and the lands were handed over to the petitioner after the registration of the lease deed.



5. Two Public Interest Litigations in W.P.Nos.1152 of 1995 and 9695 of 1995 were filed. W.P.No.1152 of 1995 for direction to form the Annai Sandhya Theme Park, as per G.O.Ms.No.900 dated 16.10.1993, and not to use the land for any purpose other than the formation of Theme Park on the allegation that the Hotels, Shopping Complex, Country Club are not related to the Amusement Park. The other writ petition, viz., W.P.No.9695 of 1995, filed for quashing G.O.Ms.No.900 dated 16.10.1993, contending that the transfer of property from the Government Medical College, Coimbatore to the Social Welfare Department for establishing the Theme Park is illegal. After hearing all the parties, including the petitioner herein, by a common order dated 22.09.1995, the writ petitions were dismissed, upholding the lease granted in favour of the petitioner and others and also holding that G.O.Ms.No.900 dated 16.10.1993, transferring the land from the Medical Department to Social Welfare Department for formation of Theme Park is valid and the lease granted to the petitioner for the purpose of starting a Star Hotel is also permissible. The order of the Division Bench has become final. The petitioner has been paying rent regularly from 1994 onwards, till 1999. However, because of the pendency of various cases, the petitioner is unable to undertake the project.

6. The petitioner is still complying with the terms of lease by paying the lease amount continuously and the petitioner has made an application to the Local Planning Authority, Coimbatore on 20.11.1996, for approval of the building plan to put up a Five Star Hotel. That was rejected on 05.12.1996 on the basis that the lands could be used only for educational purposes and the hotel project cannot come within the said object. Therefore, the petitioner has filed an appeal to the Secretary, Town Planning, Coimbatore, and also to the Director of Town and Country Planning, Chennai, against the said order. The said authorities have received the representation/appeal, but so far they have not passed any orders. In the meantime, on 11.03.1998, the petitioner has received a notice from the first respondent, stating that the transfer of lands from the Medical Department to Social Welfare Department is non-est in law and the agreement entered between the petitioner and the third respondent is also not valid and the Government has decided to resume the lands allotted to the petitioner.

7. The petitioner has filed W.P.No.4404 of 1998, challenging the said show-cause notice, which was disposed of by this Court on 01.04.1998, directing the petitioner to file its objection to the Government and accordingly, the petitioner has filed its objection on 08.04.1998. According to the petitioner, pursuant to the decision of the Division Bench of this Court in dismissing the Public Interest Litigation cases (W.P.Nos.1152 and 9695 of 1995) and also on the basis of the lease granted in its favour, the petitioner has spent more than Rs.55 lakhs, including the payment of lease rent. It is the further case of the petitioner that the annual lease of Rs.7.63 lakhs has been received by the respondents as on 09.05.1996. The petitioner has also sent three more demand drafts on 23.06.1997, 13.10.1998 and 17.03.1999

and having received the same, the Government has neither encashed them nor returned the same.

8. The first respondent issued further notice to the petitioner proposing to conduct enquiry based on the show cause notice issued earlier which forced the petitioner to approach this Court by filing W.P.No.19830 of 1998, forbearing the respondents from dispossessing the petitioner from the 5 acres of land as per the lease deed dated 05.10.1994. The said writ petition was disposed of on 12.12.1999, by directing the Government to give opportunity to the petitioner before passing any order on the show cause notice dated 11.03.1998 with respect to its power to cancel the agreement. As per the direction of the first respondent dated 26.03.2002, the petitioner made his representation on 05.04.2002, clearly stating that the petitioner is still interested in proceeding with the project for constructing a Five Star Hotel as per the original lease deed and hence, requested to reduce the lease rent and adjust the amount already paid against the future rent. Thereafter, there was no communication from the first respondent and the petitioner has also sent a reminder on 21.04.2004.

9. In the meantime, another lessee, viz., M/s.Jenneys Residency Private Limited, who was also allotted 5 acres under the same Scheme to put up a Shopping Complex and Country Club has moved this Court, challenging a similar show cause notice dated 11.03.1998, by filing W.P.No.5109 of 1998. The learned single Judge of this Court, by order dated 08.01.1999, quashed the show cause notice dated 11.03.1998, directing the authorities to grant planning permission; against which the State has preferred appeals in W.A.Nos.428 of 1999 and 582 of 1999 and by common judgement dated 18.09.2000, the Division Bench has dismissed the appeals filed by the State Government and consequently quashed the show cause notice dated 11.03.1998; directing the Planning authorities to grant permission to the said M/s.Jenneys Residency Private Limited and the said judgement has become final and as on today, the said M/s.Jenneys Residency Private Limited, is operating the Country Club in the said premises. The writ appeals were dismissed on the ground that the petitioner in that case, viz., M/s.Jenneys Residency Private Limited has acted upon the promise and incurred heavy expenditure. In the said proceedings, the present petitioner was not a party, however, the Division Bench in the said Judgement has also stated that "if, as it is stated in the letter dated 22.09.1996 by the Collector of Coimbatore, other two allottees have not taken any action pursuant to the acceptance of their tenders, the Government is free to take such action as it deems fit". According to the petitioner, the said direction is not binding, since the petitioner was not a party to that petition and petitioner herein as M/s.Jenneys Residency Private Limited are put on the same pedestal, because both of them have taken effective steps.

10. Further, in respect of M/s.Jenneys Residency Private Limited, they have put up construction and the petitioner is not able to do so due to the pendency of various cases. Further, the said

M/s.Jenneys Residency Private Limited has put up the said construction without waiting for planning permission, however the petitioner has waited for such permission. As stated above, the petitioner has given its representation and in the meantime, when the officials of the petitioner sensed that some local persons have proceeded to measure the land, the petitioner had to move the Civil Court, viz., District Munsif, Coimbatore by filing O.S.No.244 of 2006 for injunction, which was subsequently withdrawn, on ascertaining that the persons who measured the land were Government officials only and the petitioner's remedy lies somewhere else. Accordingly, the petitioner approached this Court by filing W.P.No.10786 of 2006 challenging the show cause notice dated 11.03.1998, based on the earlier judgement stated above.

11. The said writ petition was filed and moved on 19.04.2006. The counsel for respondents took notice and the matter was listed on 24.04.2006, to ascertain the status of the matter. The case was further adjourned at request of the learned counsel for the respondents to 26.04.2006 and on the basis of oral instructions received, the proceedings were concluded on 27.04.2006.

12. The learned Government Advocate has produced copy of G.O. (2D)No.20 dated 20.04.2005, which is impugned in W.P.No.13440 of 2006, by which the first respondent has cancelled the lease of the land and ordered refund of the lease rent. It was, recording the said fact, W.P.No.10786 of 2006, filed by the petitioner challenging the show cause notice dated 11.03.1998 was closed on 27.04.2006, with liberty to the petitioner to challenge the subsequent order dated 20.04.2005, which was produced before the Court. It was, thereafter, W.P.No.13440 of 2006 was filed challenging the said G.O.(2D)No.20 dated 20.04.2005, cancelling the lease without issuance of notice to the petitioner and this Court while entertaining the above said writ petition ordered interim stay of dispossession, which remains operative and in that factual position, the 6<sup>th</sup> respondent, M/s.Jumhao's Joys Park Limited has sought to implead itself as a party and filed a petition to vacate the stay in W.P.No.13440 of 2006.

13. According to the petitioner, the 6<sup>th</sup> respondent was also originally allotted about 10 acres of land in the year 1995 for the purpose of setting up of an Amusement Park as per G.O.Ms.No.3 dated 09.01.1995 by the first respondent. Two other persons were also allotted land of an extent of 5 acres each for the purpose of setting up of Shopping Arcade and Country Club and also a Star Hotel. According to the petitioner, it is only when the 6<sup>th</sup> respondent has filed impleading petition in W.P.No.13440 of 2006, for the first time, the petitioner came to know that the Government by G.O.Ms.No.31 dated 09.05.2005, which is impugned in W.P.No.46153 of 2006, has allotted 3.30 acres of land to the 6<sup>th</sup> respondent from and out of the 5 acres of land allotted to the petitioner under the lease granted by G.O.Ms.No.245 dated 22.09.1994.

14. Since the impugned G.O.No.31 dated 09.05.2005 was not served on the petitioner, the petitioner made a request on 23.09.2006,



for issuance of copy of the impugned Government Order and the same was served on the petitioner on 07.11.2006, based on which W.P.No.46153 of 2006, is filed. It is the case of the petitioner that G.O.(2D)No.20 dated 20.04.2005 impugned in W.P.No.13440 of 2006 as well as G.O.Ms.No.31 dated 09.05.2005 impugned in W.P.No.46153 of 2006, were never served on it. It is only in some other proceedings when the petitioner came to know about the Government Orders, the petitioner was constrained to file these writ petitions on various grounds, including that the impugned orders are illegal and that the impugned Government Order cancelling the lease granted to the petitioner for 33 years is violative of the principle of promissory estoppel. By passing the impugned order, the Government has shown bias in favour of the 6<sup>th</sup> respondent and that the impugned G.O.(2D)No.20 dated 20.05.2005 was passed illegally by terminating the lease and within a period of one month the other impugned G.O.Ms.No.31 dated 09.05.2005 came to be passed, allotting 3-1/2 acres of land to the 6<sup>th</sup> respondent in an illegal manner, apart from stating that the impugned Government Orders are violative of principles of natural justice.

15. The first respondent through its Deputy Secretary has filed the counter affidavit in both the writ petitions. While it is admitted that the first respondent under G.O.Ms.No.111 Social Welfare Department and Nutritious Meal Programme Department dated 29.04.1993, has issued orders for the establishment of Annai Sandhya Children World at Coimbatore and also by a subsequent G.O.Ms.No.900 Revenue Department dated 18.10.1993, the Social Welfare and Nutritious Meal Programme Department was permitted to enter upon the lands to an extent of 25.19 acres and thereafter, the third respondent, which is a Government Corporation was entrusted with the work of implementation of the Scheme and persons including the petitioner were chosen on the basis of tender for lease. It is the case of the first respondent that the transfer of land has never taken in favour of the first respondent, viz., Social Welfare Department and therefore, the Government decided to resume the land. It is admitted that this Court while allowing the writ petition in W.P.No.19830 of 1998 on 12.02.1999 has directed the Government to give opportunity to the petitioner before passing orders on the show cause notice dated 11.02.1998.

16. It is the case of the first respondent that the writ petitioner has decided not to run the business and therefore requested the Government for the refund of the expenditure that it has incurred under various heads, viz.,

1.Lease amount	:Rs.38.17 lakhs;
2.Building cost	:Rs.13.24 lakhs;
3.Stamp duty	:Rs. 3.24 lakhs; and
4.Inagural expenses	:Rs.10.00 lakhs
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Total	:Rs.64.65 lakhs.
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Therefore, according to the first and second respondents, by letter dated 14.05.2004, the petitioner has requested the Government to refund the entire amount which shows that the petitioner is not interested in carrying on the business, for which the lease was granted to it. It was only after considering the same, the Government has passed G.O.(2D)No.20 dated 20.04.2005, cancelling the order issued in G.O.Ms.No.254 Social Welfare and Nutritious Meal Programme dated 22.09.1994, allotting 5 acres of land to the petitioner, apart from refund of Rs.15.26 lakhs that had already been encashed towards the lease rent by the third respondent, to the petitioner, besides returning 3 demand drafts for Rs.22.93 lakhs received towards lease rent and Rs.13.24 lakhs being part of the amount spent by the petitioner in respect of the Scheme.

17. According to respondents 1 and 2, the petitioner has not done anything in furtherance of the lease agreement and therefore, it has no right to claim to run the business. Further, the petitioner has not paid the lease amount regularly. As per the lease, the petitioner was in enjoyment of the property nearly for 12 years and it was only after the petitioner has expressed its willingness for amicable settlement, the amounts were directed to be settled to it, by return of 50% of the expenditure stated to have been incurred by the petitioner. It is the specific case of the first and second respondents that the impugned orders cancelling the lease as well as granting the property to the 6<sup>th</sup> respondent were made on the basis of the request of the petitioner only, since the petitioner wanted to have amicable settlement. It is also denied that the petitioner is equally situated as that of M/s.Jenneys Residency Private Limited on the basis that it has put up the construction as per the agreement.

18. It is the further case of the respondents that the property originally belonged to the Coimbatore Medical College and was transferred in the name of first respondent. The Medical College has requested the property back since the College objected to the formation of an I.T. Park in the property belonged to the Medical College and in those circumstances, the Managing Director of M/s.ELCOT has identified the property leased out to the petitioner as well as other 5 acres of land given to M/s.Jumhao's Entrepreneurs to be resumed and given back to the Coimbatore Medical College. Therefore, it is now proposed to resume the lease land of the petitioner, which has already been cancelled by the impugned Government Order in G.O. (2D).No.20 Social Welfare and Nutritious Meal Programme Department dated 20.04.2005 and the lease land of M/s.Jumhao's Joys, for construction of Dental College.

19. It is the further case of the respondents that even though by G.O.Ms.No.111 Social Welfare and Nutritious Meal Programme Department dated 29.04.1993, there was a proposal to establish Annai Sandhya Children World, actually the property which was selected for the said purpose belonged to the Medical College, Coimbatore and the concerned Department has never transferred the property in favour



of the Social Welfare Department at all and therefore, the property has never vested with the Social Welfare Department. In those circumstances, the Government has decided to resume the lands allotted in favour of other people including the petitioner.

20. It is the further case of the respondents that two demand drafts sent by the petitioner for the value of Rs.15.28 lakhs towards the lease from 05.10.1994 to 04.10.1996 have been returned to the petitioner. It is also their further case that the petitioner has not paid the lease amount up to date. If really the intention of the petitioner was to proceed with the project, they would have paid the rent as on date. As per the judgement in the writ petition filed by M/s.Jumhao's Joys Park, in W.P.No.7652 of 1999, the District Collector of Coimbatore has found that the 6<sup>th</sup> respondent was having only 6.70 acres out of 10 acres allotted, since the remaining 3.30 acres was utilised by the Coimbatore Corporation for public road and after finding that the land allotted to the petitioner can be given to the 6<sup>th</sup> respondent, in order to avoid any contempt proceedings relating to the judgement given in the case filed by M/s.Jumhao's Joys Park, the Government has cancelled the allotment of 5 acres of land to the petitioner and allotted a part of the said land to the 6<sup>th</sup> respondent.

21. It is also the case of the first respondent that as per the lease deed, the construction should be completed within 12 months but the petitioner has not completed the construction till date and the petitioner has also failed to pay the lease rent up to date, and it was only thereafter, due to inability the petitioner has expressed its desire to have the settlement. It is the case of the first respondent that allotment of 3.30 acres of land to the 6<sup>th</sup> respondent from and out of the property which has been leased out to the petitioner was only as per the direction of this Court. It is also the case of the first respondent that the property in possession of Coimbatore Medical College has been identified for the purpose of I.T.Park and when the College objected to the same and decided to take away the property, the petitioner had to give up its claim under the lease deed.

22. Mr.P.R.Raman, learned counsel appearing for the petitioner would submit that the impugned orders in these two cases have not been served on the petitioner and the petitioner came to know about the cancellation of lease, which was granted to it on 05.10.1994 for a period of 30 years, when it was revealed before the Court by the learned Government Pleader on 27.04.2007 in the writ petition filed by the petitioner in W.P.No.10786 of 2006, challenging the show cause notice issued by the first respondent dated 11.03.1998 and no orders were passed in spite of repeated representations.

23. It is his further contention that even the other impugned order, viz., G.O.Ms.No.31 dated 09.05.2005, by which the first respondent has taken away 3.30 acres of land which has been leased out, from the petitioner to the 6<sup>th</sup> respondent, which fact came to light only when the 6<sup>th</sup> respondent has filed an impleading petition in

W.P.No.13440 of 2006, filed by the petitioner challenging the G.O.(2D) No.20 dated 20.04.2005 and therefore, according to the learned counsel for the petitioner, patently, both the impugned orders are violative of the basic principles of natural justice. The learned counsel would also rely upon the judgement of the Division Bench of this Court in W.A.Nos.428 and 582 of 1999, which was relating to M/s.Jenneys Residency Private Limited, who is similarly situated as that of the present writ petitioner, wherein it has been held clearly that the Government cannot claim that they have right to resume the lands when the lease has been given.

24. He would also submit that in the letter dated 04.04.2002, the petitioner has stated that the lease for the period from 04.10.1994 to 03.10.1999 at the rate of Rs.7.63 lakhs per year has been paid and the return of the cheques was not accepted by the petitioner at all. He would also submit that by subsequent letter dated 16.05.2002, addressed to the first respondent, the petitioner has made it clear that the reason for not starting construction was the pendency of various cases and the petitioner has made it very clear that the petitioner is in the hotel industry and it is interested in proceeding with the construction after permission has been granted by the concerned Departments, however, requested for reducing the lease rent. His contention is that by the letter dated 14.05.2004, the petitioner has not surrendered its right of lease and the petitioner has only explained that in spite of the fact that the lease was granted in the year 1994, no progress could be made due to the pendency of several cases and in the said letter the petitioner has made it clear that it is still interested in the project to be executed. According to him, since for the 10 years period the petitioner was not allowed to enter into the lands due to various cases and since the petitioner has incurred heavy expenditure of about Rs.13.24 lakhs by way of construction and Rs.38.17 lakhs towards lease rent already paid and Rs.3.24 lakhs towards stamp duty apart from Rs.10 lakhs towards pre-opening expenses, it has made a request to refund the said amounts by stating that it will partially compensate the loss incurred by the petitioner. According to the petitioner, it does not mean that the petitioner has surrendered the right of lease and therefore, the impugned G.O.(2D)No.20 made on the basis of the letter of the petitioner dated 14.05.2004 is a total misnomer.

25. His further contention is that the defence raised by the respondents that the property has not been transferred to Social Welfare Department in the inter-departmental transfer and therefore, the Social Welfare Department has no right to execute lease deed is totally a mockery of law and if there is a dispute among the Government Departments, it cannot be said that the lease executed will become inoperative. He would also submit that the impugned G.O.Ms.No.31 dated 09.05.2005, has been passed only to avoid some contempt proceedings at the hands of the said M/s.Jumhao's Joys Park.

26. He would also rely upon the judgement of the Supreme Court in Teri Oat Estates (P) Ltd., vs. U.T., Chandigarh and Others [2004(2) SCC 130], to substantiate his contention that the resumption of land and forfeiture of money deposited by the lessee should not be resorted to in normal circumstances. The learned counsel would submit that it is the categoric case of the petitioner that both the impugned orders have never been served on the petitioner and no opportunity has been given. He would also submit that the lease amount has been paid upto 1998 and after 1998, when a show cause notice was issued, a reply was made and the cases have been pending in Court and till date on the explanation submitted by the petitioner to the show cause notice, the respondents have not passed any order or communicated any such order, however, only from the impugned orders the petitioner came to know for the first time that the transfer of land to Social Welfare Department itself is illegal and therefore the lease will become inoperative. It is his further contention that the 6<sup>th</sup> respondent has also paid the rent only for one year. It is his submission that even when the third respondent has sent a proposal to the first respondent dated 20.05.2004, the first respondent has not passed any orders and communicated the same to the petitioner.

27. On the other hand, Mr.R.Muthukumarasamy, learned senior counsel appearing for the 6<sup>th</sup> respondent would submit that while it is true that the petitioner and the 6<sup>th</sup> respondent have been allotted the lands under the above said Scheme, out of 10 acres of land, which was allotted to the 6<sup>th</sup> respondent, 3.30 acres was taken away by the Corporation for the purpose of formation of a road with the result, the 6<sup>th</sup> respondent was left with only 6.70 acres. In the writ petition filed by M/s.Jenneys Residency Private Limited, this Court has set aside the show cause notice for cancellation, which was confirmed in the writ appeal. It is also his submission that the 6<sup>th</sup> respondent has also filed W.P.No.7652 of 1998, challenging the show cause notice dated 11.03.1998 and following the judgement given in W.P.No.5109 of 1998 in respect of M/s.Jenneys Residency Private Limited, this Court by order dated 30.12.2002 has set aside the said notice in respect of 6<sup>th</sup> respondent also and therefore, 6<sup>th</sup> respondent's lease remains in force as on date, whereas the petitioner has never challenged the said show cause notice at all.

28. He would also submit that it was only at the instance of the petitioner the allotment given in favour of the petitioner has been cancelled and the portion of the property given to the petitioner has been allotted to the 6<sup>th</sup> respondent and there is no illegality in the same. His further contention is that the petitioner has not even paid the lease amount after 1998 till date and therefore, he cannot claim the right of continuation of lease.

29. Mr.S.Veeraraghavan, learned Additional Advocate General appearing for respondents 1 to 5 would submit that it was only at the instance of the petitioner, as per its letter dated 14.05.2004, a compromise was arrived at for payment of expenditure incurred by the



petitioner and the petitioner has never carried out the construction at all and it is only a mutual compromise. According to him, being a party to the mutual compromise and having fully known about the impugned Government Orders passed, the petitioner now turns around and says that it does not know about the impugned Government orders. His further submission is that the writ petitions are filed after long delay and therefore, they are liable to be dismissed on the ground of laches. His submission is that the writ petitioner has encashed the amount of Rs.15.26 lakhs and Rs.26.2 lakhs, which shows the intention of the petitioner to accept the compromise.

30. I have heard the learned counsel for the petitioner, respondents and perused the entire records.

31. It is not in dispute that the third respondent on behalf of the first respondent has executed a lease deed in favour of the petitioner on 05.10.1994 for a period of 33 years for the purpose of putting up of a Five Star Hotel in an area of 5 acres allotted to the petitioner. On the face of it, the contention of the learned counsel for the first respondent that the property originally belonged to the Medical College, Coimbatore and it has never transferred to Social Welfare Department and therefore, the lease which was executed by the third respondent in favour of the petitioner on the basis of the direction of the first respondent will become invalid, has no basis. As rightly pointed out by the learned counsel for the petitioner, regarding the termination of lease in respect of a similarly situated person who has already come to this Court, the Division Bench has set aside the show cause notice of termination dated 11.03.1998.

32. The observation of the Division Bench in W.A.Nos.428 and 582 of 1999 dated 18.09.2000, is as follows:

" 16. The learned counsel for petitioner has also produced Xerox copies of receipts issued by the second respondent Corporation. These show payments of the annual lease amount which have been received by the second respondent for the year ending 26.10.1997. A certificate has been produced to show that the payment for the year 1997-98 had been encashed. This is issued by the Bank. So the submission is, having received the lease amount, the State cannot say that the lease is non-est in law.

17. At this stage, the appellant cannot be heard to urge that they have the right to resume the lands. The various letters issued by the Secretary to Government, Social Welfare & Nutritious Meal Programme Department addressed to the first respondent vie the impression that the procedure of transferring the land is complete or at any rate MAHAM's execution of lease in favour of the first respondent was with the concurrence and approval of the Government. MAHAM is after all only an Undertaking of the Government and therefore, it's right to transfer properties in favour of third parties would have been done only with the approval of the Government....."

That the present petitioner is not a party before the Division Bench itself is not sufficient for the first respondent to take action for passing the impugned orders. Further, the Division Bench has also held, of course, in respect of the writ petitioner therein, viz., M/s.Jenneys Residency Private Limited, that the respondent has received the lease for the period 1997-1998 and encashed the same and having encashed the same, the State cannot say that the lease is non-est in law. The Division Bench has further held that at this stage the Government cannot further urge that they have the right to resume the land, on the basis that the third respondent has executed the lease in favour of the petitioner therein only with the concurrence and approval of the Government. The Division Bench has held,

" 20. It is made clear that we are quashing the Government's action with regard to the first respondent alone only because the first respondent had acted upon the promise and incurred the heavy expenditure. If, as it is stated in the letter dated 22.09.1996 by the Collector of Coimbatore other two allottees have not taken any action pursuant to the acceptance of their tenders, the Government is free to take such action as it deems fit. ...."

33. The main reasons for the Government in passing the impugned G.O.(2D)No.20 dated 20.04.2005, which is impugned in W.P.No.13440 of 2006, by cancelling the lease granted to the petitioner are that:

- (i) the transfer of land has not been taken place in favour of Social Welfare and Nutritious Meal Programme Department and therefore, the first respondent has no right to issue lease in favour of the petitioner and therefore, the Government has decided to resume the land; and
- (ii) that the writ petitioner has stated in the letter dated 14.05.2004 that it is unable to run the business and therefore, requested the Government to refund the loss incurred towards expenditure and therefore, taking the said letter into consideration by directing the payment of Rs.15.26 lakhs towards lease rent; amount of Rs.22.93 lakhs being the total value of three demand drafts sent by the lessee/petitioner towards lease rent; and an amount of Rs.13.24 lakhs being part of the amount spent by the petitioner for implementation of the Scheme, the Government cancelled the lease granted in G.O.Ms.No.254 dated 22.09.1994.

34. By G.O.Ms.No.254 Social Welfare and Nutritious Meal Programme (SW.V) Department dated 22.09.1994, the Government has in fact permitted the third respondent, which is a Government organisation to give an extent of 5 acres of land on lease to the petitioner initially for a period of 33 years at the rate of Rs.7.63 lakhs per annum on the conditions that may be finalised by the third respondent. The operative portion of the Government Order is as follows:

" 5.The Government also approve the proposal of the Managing Director, Maham and Project Director, "MAHAM" to give an extent of "Five acres of land to M/s.The Kenilworth, Calcutta, the highest tenderer on lease for an initial period of 33 years (and renewable thereafter) at a lease rent of Rs.7.63 lakhs (rupees seven lakhs and sixty three thousand only) per annum. The conditions of standard pattern shall be concluded by the Managing Director, "MAHAM"."

35. In fact, the third respondent has executed a lease deed in favour of the petitioner on 05.10.1994 under a registered document. On 11.03.1998, the first respondent has issued a show cause notice to the petitioner stating the proposal of resumption of land on the ground that the transfer of land to Social Welfare Department has not been done absolutely and therefore, the lease deed is inoperative. It is relevant to point out that it is the only reason given in the show cause notice dated 11.03.1998. It is also not in dispute that a similar show cause notices were given to other occupants including M/s.Jenneys Residency Private Limited, who has approached this Court by filing writ petition in which this Court has set aside the said show cause notice and also the 6<sup>th</sup> respondent.

36. It is relevant to point out that even though the petitioner has not challenged the show cause notice dated 11.03.1998, it has in fact filed W.P.No.19380 of 1998, forbearing the Government from dispossessing the petitioner under the said notice without offering any reasonable opportunity to the petitioner before passing any final order in furtherance of the show cause notice dated 11.03.1998 and in the said writ petition, this Court has held as follows:

" 3. Taking into consideration of the said submission, though the prayer sought for as such cannot be granted, the Government is directed to give an opportunity to the petitioner before passing order in the Show Cause Notice dated 11.03.1998 to satisfy the Government with respect to their power to cancel the agreement. With the above observation, the Writ Petition is disposed of. Consequently, W.M.P.No.30026 of 1998 is also closed."

37. In fact, in furtherance of the said order and subsequent to the representation of the petitioner dated 07.07.2000, the first respondent has issued notice dated 26.03.2002 to the petitioner, calling upon it to appear for enquiry on 05.04.2002. The petitioner has made further representations on 16.05.2002 and also on 21.04.2004, in which the petitioner has stated,

" However, due to various litigations in the Madras High Court, land could not be allotted to us for setting up of the star hotel and we have lost considerable time, apart from



incurring expenses for the said hotel. For your kind information, the State of Expenditure incurred for the hotel project at Coimbatore is enclosed.

In view of the above, we state that:

\* In spite of huge delay and cost overruns for no fault of us, we are still keen in the said hotel project at Coimbatore.

\* Since we have paid lease rent for consecutive five years w.e.f. 04.10.1994 without land being allotted to us in the last 10 years, we would request the Government to adjust the lease rent already paid against lease rent payable by us after obtaining peaceful possession of the said land.

\* As because 10 years of the lease period have already elapsed without any benefit to the Company, we would request the Government to extend the lease period beyond 66 years.

In case it is not possible to consider our above proposal, we would request the Government to arrange refund of the lease rent already paid with interest."

So, it is clear that in the said letter the petitioner has said that it is still interested in the hotel project in the place allotted to it and it has paid rent for the land being allotted to it, nearly for 10 years and sought for another 66 years of lease, however, in the statement of expenditure, the petitioner has explained the amounts spent by it to the extent of Rs.54,86,307.25. Even then the first respondent has not passed any order on the explanation submitted by the petitioner based on the show cause notice issued on 11.03.1998, as per the direction of this Court dated 12.02.1999. However, suddenly, based on the letter dated 14.5.2004, the first respondent is stated to have passed the impugned G.O.No.20, dated 20.4.2005 cancelling the lease. Even though in the letter dated 21.4.2004, the petitioner has made it clear that it is interested in proceeding with the project, based on the letter dated 14.5.2004 the Government has come to a conclusion that the petitioner is not interested to continue, but it is willing for settlement of amounts spent. The said letter dated 14.5.2004 is as follows:

M/s.New Kenilworth Hotel Pvt. Ltd.,  
1&2 Little Russel Street  
Kolkata 700 071.  
India.

14.05.2007

To  
The Secretary to Government  
Social Welfare & NMP Department  
Secretariat  
Chennai 600 009.

Madam,

With reference to the meeting I had with you today regarding the future of the Annai Sandhya project, I wish to bring the following points to your kind notice:

a) That a tender notice for the land in consideration was published in "THE HINDU" newspaper dated 03.08.1994 to which our company applied after scrutinizing all relevant details, necessary particulars and payments terms.

b) That we were selected by the Government based on our credentials and tender submitted and no time were any special favours or bribed/commissions paid to any official or person concerning regarding the above project.

c) That after the lease deed was executed our company was ready to start and comply with all the formalities as stated in the lease deed to start the above project.

d) That due to various litigations in the Madras High Court we were unable to proceed with the project even though our company continued to pay the lease amount as mentioned in the agreement.

Subsequent of Court direction Government asked our views about continuing the project. I replied in my letter dated 16<sup>th</sup> May, 2002, and stated that in spite of huge delay and cost overruns, we are still interested in reviving the project as per the original lease deed executed. We requested the Government to reduce the lease rent for the subsequent period payment as we have not been able to have any benefits in the last 10 years as we were not allowed to enter the land due to various litigations in the Madras High Court.

In reply to our letter, the Government turned down the proposal stating that it is not possible for the Government either to reduce the lease rent in future or extent the lease period. In view of that we are willing to have a reasonable settlement with the Government.

We have incurred heavy loss by way of construction expenditure of about Rs.13.24 lakhs, loss of revenue during the period of litigation, the lease rent already paid so far amounting to Rs.38.17 lakhs, Rs.3.24 lakhs incurred towards stamp duty and Rs.10 lakhs incurred towards pre-opening expenses (statement of expenditure enclosed). We request that the amount may kindly be refunded to us which will partially compensate the loss incurred. This will result in an amicable settlement.

Hoping to hear from you soon,

Yours faithfully,

Sd/.....

(RAJU BHARAT) "

38. By construing the said letter, it is clear that the impugned order was passed by the Government on 20.4.2005 for termination of lease on the sole basis that the petitioner has accepted and is willing to surrender the lease. However, the representations made by the petitioner throughout including the one dated 14.4.2004 relate to the plea of the petitioner for extension of lease and also for reduction of lease rent. It is seen that in spite of the order passed by this Court on 12.9.1999 in W.P.No.19830 of 1998 directing the first respondent to give opportunity in respect of the show-cause notice dated 11.3.1998 and pass orders, the first respondent has not chosen to pass any orders nearly for a period of six years from the date of receipt of the order of the Court. However, suddenly, the first respondent has taken into account the letter of the petitioner dated 14.5.2004 and passed the impugned order, that too, after one year, viz., on 14.5.2005. It is the common knowledge that even assuming that the letter of the petitioner dated 14.5.2004 is an offer made by the petitioner for the purpose of surrendering the lease on payment of the amount claimed by the petitioner, it is not as if the first respondent has accepted the entire offer made by the petitioner. A reference to the impugned order in paragraph 6(iv) shows that when the petitioner has claimed to have spent Rs.26.48 lakhs, half of the amount viz., Rs.13.24 lakhs is directed to be paid unilaterally. That being the case, it cannot be said that it amounts to mutual settlement by compromise. In any event, a reading of the letter of the petitioner dated 14.5.2004 does not show that the petitioner was willing to surrender lease.

39. It is pertinent to point out that it was due to the reason that in spite of the direction given by this Court dated 12.2.1999 in W.P.No.19830 of 198, the first respondent has not passed any order, the petitioner has filed W.P.No.10786 of 2006 and at the hearing of the said writ petition, the impugned G.O.No.20 dated 20.4.2005 was produced before the Court in April 2006. There is no explanation from the first respondent as to what happened between the date of representation of the petitioner namely, 14.5.2004 and the impugned order dated 20.4.2005 and why such order has not been communicated to the petitioner till 26.4.2006. The stand taken by the first respondent that the first respondent is not competent to issue the lease in favour of the petitioner since the first respondent has not taken possession from the Medical College, Coimbatore is strange. The Supreme Court in Teri Oat Estates (P) Ltd., vs. U.T., Chandigarh and others [2004 (2) SCC 130], while referring to (Development and Regulation) Act, 1952, held that it is the duty of the Government to establish the dishonest intention or motive on the part of the allottee in not making due payments. The Supreme Court held as follows:



"57. We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to."

In view of the same, I have no hesitation to come to the conclusion that G.O.No.20 dated 20.4.2002 challenged in W.P.No.13440 of 2006 has no legal basis to stand and it is liable to be set aside.

40. In W.P.No.46153 of 2006 the impugned G.O.No.31 dated 9.5.2005 passed by the first respondent alleges that 3.30 acres originally given to the petitioner under the lease is given to the 6<sup>th</sup> respondent on the basis that the 6<sup>th</sup> respondent who was also given lease in respect of 10 acres of land had to loose 3.30 acres of land by the action of the Corporation in taking that portion of the property for laying road and therefore, the first respondent has decided to give an extent of 3.30 acres from and out of the land taken from the petitioner. This order is passed on the basis that the lease granted to the petitioner has been terminated. Even assuming that the 6<sup>th</sup> respondent has lost a portion of the property given on lease by the first respondent, when the first respondent has taken a stand in the impugned order challenged in the previous writ petition that the first respondent has never been vested with the property by the Medical Department and the first respondent who is not in possession has no right to execute the lease in favour of the petitioner, it is not known as to how the same stand will not apply to the 6<sup>th</sup> respondent, for, it is not in dispute that the entire extent of land has been allotted by the first respondent, Social Welfare Department to the third respondent to give lease to the petitioner and other persons including the 6<sup>th</sup> respondent. While the first respondent has taken a stand for cancelling the petitioner's lease that the first respondent has not been given legal possession, that yardstick is equally applicable to the 6<sup>th</sup> respondent. I have already set aside the termination of lease entered between the petitioner and the third respondent and therefore, the present G.O.No.31 dated 09.05.2005 has to be necessarily set aside, as the stand taken by the first respondent for allotting 3.30 acres of land in favour of the 6<sup>th</sup> respondent has no legal basis. In view of the same, the impugned G.O.No.31 dated 09.05.2005, is also liable to be set aside.

Consequently, both the writ petitions stand allowed. No costs.  
Connected miscellaneous petitions are closed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

- 1.The Secretary to the  
Government,  
State of Tamil Nadu  
Social Welfare and  
N.M.P.(SW-V) Department,  
Fort St.George, Chennai 9.
  - 2.The Secretary to the  
Government,  
State of Tamil Nadu  
Revenue Department  
Fort St.George, Chennai 9.
  - 3.The Managing Director  
Tamil Nadu Corporation for  
Development of Women Limited  
(MAHAM) Government of Tamil Nadu  
undertaking No.100, Anna Salai  
Guindy, Chennai 600 032
  - 4.The District Collector  
District Collectorate  
Coimbatore 641 018.
  - 5.The Member Secretary  
Coimbatore Local Planning Authority  
Corporation Commercial Complex  
Coimbatore 641 018.
- 1 cc To Mr.P.R.Raman, Advocate, SR.11195.  
2 cc To Mr.S.Udayakumar, Advocate, SR.11140, 11141.  
1 cc To Mr.I.Paranthaman, AGP, SR.11828.

W.P.No.13440 & 46153 of 2006

KSK(CO)  
RVL 05.03.2008