

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018

Pronounced on : 31.12.2019

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.26813 and 26814 of 2003
and W.P.M.P.Nos.32736 and 32737 of 2003

M/s. Dalmia Magnesite Corporation
(Prop. Dalmia Cement [Bharat] Ltd.,)
Salem - 636 012
Rep. by its General Manager,
S.Veeraraghavan,
S/o. Late Srinivasa Iyengar,
A.10-11, Dalmia New Colony,
Dalmia Magnesite Corporation,
Salem - 636 012. Petitioner in both the
writ petitions

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector
Salem - 636 001.
3. The Tahsildar
Omalur - 636 455,
Salem District. Respondents in both the
writ petitions

Prayer in W.P.No.26813 of 2003 : This Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent relating to Order in G.O.Ms.No.73, dated 09.02.2002 and quash part of the order contained in Paragraphs 5 and 7 of G.O.Ms.No.73, dated 09.02.2002 pertaining to grant of lease of Ac.6.67 in Vellakkalpatti, Chettichavadi villages at Salem.

Prayer in W.P.No.26814 of 2003 : This Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent relating to Impugned Demand order, dated 29.08.2003 made in Na.Ka.706/97 (E) and quash the same and consequently forbearing the respondents from initiating and taking action against the petitioner under Revenue Recovery Proceedings in respect of the Impugned Demand Order of the Impugned Demand Order of the third respondent dated 29.08.2003 made in the third respondent, dated 29.08.2003 made in Na.Ka.706/97 (E) under the Tamil Nadu Revenue Recovery Act.

For Petitioner : Mr.T.Poornam

For Respondents : Mr.C.Manishankar, AAG
assisted by Mr.K.Ravikumar, AGP

COMMON ORDER

In W.P.No.26813 of 2003, the petitioner challenged paragraphs 5 and 7 of G.O.Ms.No.73, Revenue [Ni.Mu.2(2)] Department, dated 09.02.2002, whereby, the first respondent Government, while extending the lease of Government land to the extent of 6.67 acres had fixed the lease amount as well as the local cess and local cess surcharge payable by the petitioner.

2. In W.P.No.26814 of 2003, the petitioner challenged the consequential demand order, dated 29.08.2003 made in Na.Ka.706/97 (E), where under, the third respondent made a demand to the petitioner to pay the lease amount as well as the local cess and surcharge due payable by the petitioner.

3. Since in both writ petitions, the petitioner as well as the respondents are one and the same and the issue raised in both the writ petitions are interconnected, both writ petitions are disposed of by this common order.

4. The necessary facts which are required to be noticed for the disposal of these writ petitions are as follows :

(i) In the year 1958, a rotary kiln was set up at Salem for manufacturing dead burnt magnesite, originally by the Magnesite Corporation of India and Dalmia Cement (Bharat) Ltd., who manufactured dead burnt magnesite, jointly. However later on in 1966 Magnesite Corporation of India got merged with Dalmia Cement (Bharat) Ltd., and the magnesite manufacturing business was named as "Dalmia Magnesite Corporation", and the same is owned by Dalmia Cement (Bharat) Ltd. The said M/s. Dalmia Magnesite Corporation, in short, "the petitioner Corporation", is located at a village called Vellakkalpatti, which is situated 7 Kms away from Salem town. It engaged in excavating magnesite mineral and production of dead burnt magnesite, monoliths and magnesia carbon bricks.

(ii) In order to have access to the open cast mine of the petitioner corporation which is situated at 7 kms from Salem town to reach the said place from National Highways, i.e., Salem-Bangalore National Highways No.7, an approach road was required branching near the side of Arabic college in S.F.No.46 of Vellakkalpatti.

(iii) Therefore the petitioner corporation, in the year 1969 seems to have made an application or request for giving lease hold right of the Government lands to the extent of 9 acres at Vellakkalpatti, Chettichavadi as well as Karuppur villages in Salem District. The said request of the petitioner had been engaging the consideration of the Government for some years. In the meanwhile, in view of the urgency, since the mining operation was to be undertaken, for which the approach road was necessary, an enter upon permission was given by the District Collector of Salem to the petitioner corporation to enter upon the said lands to make an access road towards the mining site. Accordingly a blacktop road was laid and the same was utilised by the petitioner corporation from 21.12.1977.

(iv) Thereafter the said request of the petitioner corporation, having been considered at various level, had reached the Government for consideration and for necessary orders. Accordingly, the Government, after having considered the request of the petitioner as well as the enter upon permission already given by the second respondent, District Collector and the land of the Government, which was proposed to be leased out to the petitioner corporation, had been put into use, had come forward to issue Government Order in G.O.Ms.No.1471, Revenue (D1) Department, dated 08.09.1989.

(v) As per the said G.O.Ms.No.1471, Government lands at various survey numbers in Vellakkalpatti village and Karuppur village, Omalar Taluk and Chettichavadi village in Salem Taluk to the extent of 9.41 acres had been leased out to the petitioner corporation with various conditions by fixing the lease amount at the rate of 7% of the market value of the land per year, which was accordingly fixed as Rs.45,547/- per acre per year.

(vi) Pursuant to the said G.O.Ms.No.1471, whereby land in question has been leased out to the petitioner, the petitioner corporation had been continuously enjoying the same by using it as a road and off late for some other purposes including some construction which had been taken place in part of the said land.

(vii) Thereafter even though some request had been made by the petitioner corporation at various point of time to the

respondents to reduce the lease amount, that was not considered favourably towards the petitioner corporation and ultimately since the very 10 years lease period as contemplated under G.O.Ms.No.1471 was itself over at the time of issuance of the said Government Order on 08.09.1989 as the 10 years period started from 21.12.1977, the date on which enter upon permission was given and ended on 20.12.1987, whereas the G.O.Ms.No.1471 was issued only on 08.09.1989, therefore in the very G.O.Ms.No.1471 itself, at para 7, the Special Commissioner and Commissioner of Land Administration was requested by the Government to send proposals for renewal of lease in favour of the petitioner corporation with effect from 21.12.1987.

(viii) Thereafter number of correspondences and communications had been there between the petitioner corporation and the respondents and in the meanwhile also the proposal for renewal of lease for another period of 15 years from 21.12.1987 was made to the Government, which infact had engaged the Government for its consideration for some years.

(ix) In the meanwhile, the Government thought it fit to issue a Government Order called G.O.Ms.No.460, Revenue [Ni.Mu (1)] Department, dated 04.06.1998. The reason for issuance of such G.O was that, wherever the Government lands are leased out for commercial purposes or any other purposes, the lease amount, hitherto which was fixed to be recovered from the lessee was 14% of the land value per year in case of commercial ventures and 7% in case of others. It is to be noted that, whenever such Government lands located in any village panchayat or panchayat union or town panchayat is leased out, as per the provisions of The Tamil Nadu Panchayats Act 1958 and subsequently, The Tamil Nadu Panchayats Act, 1994, Local Cess (LC) and Local Cess Surcharge (LCS) have to be collected. Under the provisions of the said two Acts, the local cess leviable on these kind of transactions was 100% of the amount fixed by the Government as lease amount and 500% of local cess surcharge also to be levied. Therefore if the said provisions are implemented, the lease amount totally to be collected from the lessees in respect of commercial transactions would come as, lease amount 14% plus cess 14% plus surcharge 70%, which is equal to 98% of the land value. In case of non-commercial transactions, the said fixation would be lease amount 7% plus cess 7% plus surcharge 35%, totally 49%.

(x) By virtue of this exorbitant amount under the head of lease amount as well as the local cess and local cess surcharge are to be fixed on the lessee to be collected, hence, it seems to have been reported by the authorities concerned to the Government, that it is very difficult to collect 98% of the land value as lease amount, therefore it seems to have been

suggested to the Government either to amend certain provisions of the Panchayat Act, otherwise to reduce the lease amount either to 1% or 2% instead of 14%. The said situation triggered the Government to come out with the said G.O.Ms.No.460, dated 04.06.1998 under which the lease amount including local cess and surcharge in total has been fixed only as 14% for commercial transactions and 7% for non-commercial transactions.

(xi) In order to appreciate the same, the relevant portion of G.O.Ms.No.460, dated 04.06.1998, Revenue [Ni.Mu.2(1)] Department is extracted hereunder :

"புறம்போக்கு நிலங்கள் தனியாருக்கு குத்தகைக்கு விடப்படும்போது, வணிகம் அல்லாத நோக்கத்திற்காக குத்தகைக்கு விடப்படும் புறம்போக்கு நிலங்களுக்கு நடப்ப, நில மதிப்பில் 7 சதவீதமும், வணிக நோக்கத்திற்காக குத்தகைக்கு விடப்படும் நிலங்களுக்கு நடப்ப, நிலமதிப்பில் 14 சதவீதமும் குத்தகைக் கட்டணமாக நிர்ணயம் செய்யப்படுகிறது.

2. தற்போது தமிழ்நாடு ஊராட்சிகள் சட்டம், 1994இன் படி, குத்தகைக் கட்டணங்கள் மீது 100% தலவரியும், 500% தலமேல்வரியும் விதிக்கப்படுகிறது. இதன்படி வணிக நோக்கத்திற்காக குத்தகைக்கு விடப்படும் புறம்போக்கு நிலங்களுக்கு, குத்தகைதாரர், நில மதிப்பில் 98 சதவீதத் தொகையை (குத்தகைக் கட்டணம் 14% + தலவரி 14% தலமேல்வரி 70% = 98%) ஒரு வருடத்திற்கு செலுத்த வேண்டியுள்ளது. வணிகம் அல்லாத நோக்கத்திற்காக வழங்கப்படும் புறம்போக்கு நிலங்களுக்கு நடப்ப, நில மதிப்பில் 49 சதவீதத் தொகையை (குத்தகைக் கட்டணம் 7% + தலவரி 7% + தலமேல்வரி 35% = 49%) ஒரு வருடத்திற்கு செலுத்த வேண்டியுள்ளது. இதனால், குத்தகைதாரரிடமிருந்து தலவரி, தலமேல்வரியை மட்டுமின்றி, குத்தகைக் கட்டணத்தையும் வசூலிக்க இயலவில்லை.

3. புறம்போக்கு நிலங்களை குத்தகைக்கு விடும்போது தலவரி மற்றும் தலமேல்வரி வசூலிக்கக் கூடாது எனவும் இதற்கேற்ப தமிழ்நாடு ஊராட்சி சட்டத்தை திருத்துமாறும் அல்லது குத்தகைத் தொகையினை 1% அல்லது 2% ஆக குறைக்குமாறும் நில நிர்வாக ஆணையர் அரசைக் கேட்டுக் கொண்டுள்ளார். எனினும், தலவரி மற்றும் தலமேல்வரி ஆகியவற்றை நீக்கவோ, குத்தகைத் தொகையினை குறைக்கவோ செய்தால், ஊராட்சி அமைப்புகளுக்கு இதனால் கணிசமாக நிதி இழப்பு ஏற்படும் என ஊரக வளர்ச்சித் துறை இயக்குநர் தெரிவித்துள்ளார்.

4. புறம்போக்கு நிலங்களை குத்தகைக்கு அளிக்கும் போது வசூலிக்கப்பட வேண்டிய தொகை குறித்து அரசு நன்கு ஆய்வு செய்து, ஆண்டுக் குத்தகை, தலவரி மற்றும் தலமேல்வரி ஆகியவற்றினை கீழ்க்கண்டவாறு நிர்ணயிக்க வேண்டும் என அரசு ஆணையிடுகிறது.

பயன்பாடு	குத்தகை கட்டணம்	தலவரி	தலமேல்வரி	மொத்தம்
வணிக நோக்கம்	2%	2%	10%	14%

பயன்பாடு	குத்தகை கண்டணம்	தலவரி	தலமேல்வரி	மொத்தம்
வணிகமற்ற நோக்கம்	1%	1%	5%	7%

(ஆளுநரின் ஆணைப்படி)

ஆர்.செல்லமுத்து

அரசு செயலர் "

This G.O.Ms.No.460 had come into effect from 04.06.1998.

(xii) Therefore after having considered the request of the petitioner corporation for extending the lease for another 15 years from 1987, as the said proposal was pending at the time before the Government, the Government ultimately has come forward to issue a Government Order in G.O.Ms.No.73, Revenue [Ni.Mu.2(2)] Department, dated 09.02.2002. Under the said G.O.Ms.No.73, the lease period was extended 30 years instead of 15 years as the 15 years period sought for was almost about to be over even at the time of issuance of G.O.Ms.No.73, hence the Government thought it fit to extend the lease for 30 years, i.e., from 21.12.1987 up to 20.12.2017. In the very G.O.Ms.No.73, as per the request of the petitioner corporation, some of the lands at Karuppur village and Vellakkalpatti village in various survey numbers to the extent of 2.79 acres had been assigned for the value of the land to the petitioner corporation itself by the Government and in respect of the remaining land of 6.67 acres out of the total 9.41 acres originally leased out under G.O.Ms.No.73, Government made an extension of lease for 30 years period as stated above.

(xiii) In this regard the issue as come up now is only with regard to two paragraphs, i.e., paragraphs 5 and 7 of G.O.Ms.No.73, dated 09.02.2002. For easy understanding, the relevant paras i.e., paragraphs 5 and 7 of G.O.Ms.No.73 is extracted hereunder :

"5. டால்மியா மேக்னைசட் நிறுவனத்தின் கோரிக்கை, மாவட்ட வருவாய் அலுவலர் அறிக்கை மற்றும் சிறப்பு, ஆணையர் பரிந்துரை ஆகியவை அரசால் ஆய்வு செய்யப்பட்டது. குத்தகையை பொறுத்தவரை 20.12.87 முதல் 15 ஆண்டுகளுக்கு குத்தகை நீட்டிப்புச் செய்யலாம் என்று பரிந்துரை செய்யப்பட்டுள்ளது. பதினைந்து ஆண்டுகளுக்கு குத்தகை நீட்டிப்பு, செய்தால் இக் குத்தகைக் காலம் 20.12.2002 உடன் முடிவடையும. உத்தேச குத்தகைக் காலம் 15 ஆண்டுகள் முடிவடைய இன்னும் குறைந்த காலமே உள்ளது. எனவே கேட்ப, நிறுவனத்தின் கோரிக்கையை ஏற்க உத்தேச குத்தகை காலத்தை 15 ஆண்டுகளுக்கு பதிலாக 21.12.87 முதல் 20.12.2017 வரை 30 ஆண்டுகளுக்கு வழங்கலாம் என்று கருதப்பட்டது. குத்தகைக்கு வழங்கப்பட்ட நிலங்களுக்கு அரசாணை (நிலை)

எண்.1471, வருவாய்த் துறை, நாள் 08.9.89ல் நிலமதிப்பில் 7% குத்தகையாக நிர்ணயிக்கப்பட்ட தொகையினை 3.6.98 வரை நிலுவையின்றி வசூலிக்கப்பட வேண்டும் என்றும் 4.6.98 முதல் அரசாணை (நிலை) எண்.460, வருவாய்த் துறை, நாள் 4.6.98ல் வெளியிடப்பட்ட ஆணைக்கிணங்க குத்தகைத் தொகை வசூலிக்கப்பட வேண்டும் என்றும் கருதப்பட்டது. மேலும், தற்போதுள்ள அரசாணைகளின்படி முன்றாண்டுகளுக்கொருமுறை அவ்வப்போது நிலவும் நிலமதிப்பின் அடிப்படையில் குத்தகைத் தொகை திருத்தியமைத்து குத்தகைத் தொகை வசூலிக்கப்பட வேண்டும் என்றும் அரசு கருதுகிறது.

7. குத்தகைக்கு கோரப்பட்டுள்ள 6.67 ஏக்கர் நிலம் டால்மியா மேக்னசைட் நிறுவனத்தின் தொழிற்சாலைக்கும் சுரங்கத்திற்கும் செல்லும் பாதையாக பயன்பட்டு வருகிறது. இந்த பாதையை பொது மக்களும் அரசு போக்குவரத்து பேருந்துக்களும் செல்ல பயன்படுத்தப்பட்டு வருவதைக் கருத்தில் கொண்டு, சேலம் மாவட்டம், ஓமலூர் வட்டம், வெள்ளக்கல்பட்டி மற்றும் சேலம் வட்டம் செட்டிச் சாவடி கிராமங்களில் டால்மியா மேக்னசைட் நிறுவனத்தின் அனுபவத்தில் உள்ள கீழே குறிப்பிடப்பட்டுள்ள 6.67 ஏக்கர் நிலங்களை ஏற்கனவே இந்நிறுவனத்திற்கு அரசாணை (நிலை) எண்.1471, வருவாய், நாள் 8.9.89ல் நிர்ணயிக்கப்பட்டவாறு நில மதிப்பு, 7% குத்தகைத் தொகையை 3.6.98 வரை நிலுவையின்றி வசூலித்துக் கொண்டும், 4.6.98 முதல் அரசாணை (நிலை) எண்.460, வருவாய் நாள், 4.6.98ல் வெளியிடப்பட்ட ஆணைக்கிணங்க, நில மதிப்பில் 2% குத்தகை, 2% தலவரி, 10% தலமேல்வரி ஆக மொத்தம் 14% என நிர்ணயம் செய்து வருவாய் நிலை ஆணை எண்.24ஏன் கீழ் உள்ள வழக்கமான நபந்தனைகளுடனும் கீழ் குறிப்பிடப்பட்டுள்ள தனி நபந்தனைகளுடனும் 21.12.1987 முதல் 30 (முப்பது) ஆண்டுகளுக்கு டால்மியா மேக்னசைட் நிறுவனத்திற்கு குத்தகை நீட்டிப்பு, வழங்கி அரசு ஆணையிடுகிறது. வெள்ளக்கல்பட்டி கிராமம் (ஓமலூர் வட்டம்)

ச.எண்	விஸ்தீர்ணம்	வகைபாடு
69/1ஏ	0.28.0	தரிக
69/3	0.09.5	ஒடைப் புறம்போக்கு
70/4	0.25.0	பாதைப் புறம்போக்கு
75/2	0.14.0	பாதைப் புறம்போக்கு
83/2	0.30.0	பாதைப் புறம்போக்கு
83/4	0.13.5	தரிக
83/5	0.03.0	பாதைப் புறம்போக்கு
.....		
மொத்தம்	1.23.0	செறக்டேர்
.....		
(அல்லது)	3.04	ஏக்கர்

செட்டிச் சாவடி கிராமம் (சேலம் மாவட்டம்)		
ச.எண்	விஸ்தீர்ணம்	வகைபாடு
2/2	0.22.5	சாலைப்பறம்போக்கு
2/3	0.24.5	சாலைப்பறம்போக்கு
2/4	0.19.0	சாலைப்பறம்போக்கு
5/2	0.81.0	சாலைப்பறம்போக்கு

.....
மொத்தம் 1.23.0 செக்டர்

.....
(அல்லது) 3.63 ஏக்கர்
ஒட்டு மொத்தம் 2.70.0 செக்டர்
(அல்லது) 6.67 ஏக்கர்

தனி நிபந்தனைகள்

1. குத்தகைக்கு வழங்கப்பட்ட நிலங்களுக்கு 1987 முதல் அவ்வப்போது நிலவும் நிலமதிப்பின் அடிப்படையில் முன்றாண்டுகளுக்கு ஒருமுறை குத்தகை தொகை திருத்தியமைத்து திருத்தியமைக்கப்படும் தொகையினை டால்மியா மேக்னசைட் நிறுவனம் அரசுக்கு செலுத்த வேண்டும்.
2. குத்தகைக்கு வழங்கப்பட்ட நிலத்தில் அமைக்கப்பட்டுள்ள பாதையை பொது மக்கள் தொடர்ந்து பயன்படுத்துவதை டால்மியா மேக்னசைட் நிறுவனம் தடையோ அல்லது இடையூறோ செய்யக் கூடாது."

(xiv) Aggrieved over these two paragraphs of G.O.Ms.No.73, the petitioner has filed the first writ petition, i.e., W.P.No.26813 of 2003.

(xv) Pursuant to G.O.Ms.No.73, the petitioner corporation has subsequently seems to have sent some communications making request to the Government to reduce the lease amount and also raised objection with regard to the levy of local cess and local cess surcharge. However the said request made by the petitioner have been rejected by the Government through the letter dated 12.06.2003 addressed to the Special Commissioner and Commissioner for Land Administration. Pursuant to which, the third respondent, Tahsildar has issued a communication in Na.Ka.706/97(E), dated 29.08.2003, whereby, he made a demand to the petitioner to pay the arrears of lease amount including local cess and local cess surcharge for several years, otherwise action would be initiated against the petitioner corporation under Section 5 of the Revenue Recovery Act. For easy understanding, the said demand letter, dated 29.08.2003 is extracted hereunder :

"டால்மியா மாக்னசைட் நிறுவனத்திற்கு ஒமலூர் வட்டம், கருப்பூர் மற்றும் வெள்ளைக்கல்பட்டி கிராமங்கள் மற்றும் செட்டிச்சாவடி (சேலம் மாவட்டம்) கிராமங்களில் 9.41 ஏக்கர் நிலத்தை அரசு ஆணை எண்.1471வது நாள் 08.09.1989ன் படி குத்தகை வழங்கப்பட்டு 9.41 ஏக்கரில் 6.67 ஏக் நிலத்தை அரசு ஆணை எண்.73வது நாள் 02.09.2002ன் படி குத்தகைக்கு விடப்பட்டுள்ளது. இந்த குத்தகை காலம் 21.12.1987 முதல் 30 ஆண்டுகளுக்கு வழங்கப்பட்டு உள்ளதையும் தாங்கள்

நன்கு அறிவீர்கள். குத்தகை செலுத்தக் கோரி பல்வேறு கடிதங்கள் அனுப்பியும் 20.12.1987 வரை உள்ள காலத்திற்கு மாநில கணக்காயர் அவர்களின் தணிக்கை குறிப்பில் சுட்டிக் காட்டப்பட்டுள்ள விவரங்களின் படி தங்கள் செலுத்தப்பட வேண்டிய குத்தகை தொகை தலவரி மற்றும் தலமேல்வரி, வரி பாக்கி விவரங்கள் குறித்த பட்டியல் ஒன்றை இத்துடன் மீண்டும் உங்களது தகவலுக்காக அனுப்பி உள்ளேன். இதன்படி தங்கள் செலுத்த வேண்டிய குத்தகை பாக்கி பின்வருமாறு உள்ளது.

கேட்பு, இதுவரை தாங்கள் நிலுவை
செலுத்தியது

நிலுவை	26,37,386.50	2,30,000	24,07,386.50
நடப்பு,	1,91,970		1,91,970
மொத்தம்	28,29,356.50	2,30,000	25,99,356.50

மேற்படி தொகை சம்பந்தமாக தாங்கள் அரசுக்கு அனுப்பிய கடிதங்களின் பேரில் தங்களுடைய கோரிக்கை ஏற்க இயலாது என்றும் குத்தகை தொகையை வசூல் செய்த பின்பே அரசு விதிகளின் படி குத்தகை நிலங்களை நிறுவனத்தினரிடமிருந்து மீள்பெற்று சம்பந்தப்பட்ட ஊராட்சி வசம் ஒப்படைப்பதற்கு உரிய நடவடிக்கை எடுக்குமாறு அரசு தனது கடிதத்தில் சிறப்பு, ஆணையர் மற்றும் நில நிர்வாக ஆணையர் சென்னை அவர்களை கேட்டுக் கொண்டுள்ளதை தங்களுக்கு மீண்டும் மீண்டும் நினைவுபடுத்த விரும்புகிறேன்.

எனவே இந்த கடிதம் கிடைக்கப்பெற்ற 7 தினங்களுக்குள் குத்தகை வரி பாக்கி தொகை முழுவதையும் அரசு கணக்கில் உரிய தலைப்பில் செலுத்தி அந்த சலான் செக்கை உடனடியாக அனுப்பிவைக்குமாறு கேட்டுக் கொள்கிறேன். தவறும் பட்சத்தில் வருவாய் வசூல் சட்டம் பிரிவு, 5ன்படி ஜப்தி நடவடிக்கை மற்றும் தங்கள் நிறுவனத்திற்கு பாத்தியப்பட்ட நிலங்களை பொது ஏலம் விடுவதற்கான நடவடிக்கைகளை மேற்கொள்வதைத் தவிர்க்க இயலாது என்பதையும் இந்நேரத்தில் அரசுக்கு முழு ஒத்துழைப்பை நல்குமாறு தங்களை கனிவுடன் கேட்டுக் கொள்கிறேன்.

ஓம்
வட்டாட்சியர், ஓமலூர்
ஓம்
2/9/03"

5. Therefore the said demand letter, dated 29.08.2003 of the third respondent has been put under challenge, as a consequential challenge, in the second writ petition, i.e., W.P.No.26814 of 2003.

6. This is how both these writ petitions came to be filed before this Court with aforesaid respective relief.

7. I have heard Mr.T.Poornam, learned counsel appearing for the petitioner and he has made submissions raising the grounds assailing paragraphs 5 and 7 of the G.O.Ms.No.73 as well as the consequential impugned demand letter of the third respondent, dated 29.08.2003.

8. The sum and substance of the arguments as well as the grounds urged by the learned counsel for the petitioner are as follows :

(i) That the very lease amount fixed

even at the initial stage for the land leased out to the petitioner was exorbitant as only a nominal lease amount alone ought to have been fixed.

(ii) Since the land was leased out to the petitioner corporation for the purpose of laying the road and to use the road to reach the mine site and in the said road, it is not the permission given by the Government to the petitioner corporation to exclusively use it, instead a condition was imposed to the petitioner that, the general public of the said three villages and nearby villages should not be hindered or prevented from using the road as a public road. Therefore since the land in question used by the petitioner is being used majority as a public road, such an exorbitant lease amount should not have been levied.

(iii) In the year 1979 itself, the lands in question have been taken away from the purview of the village panchayat by the Government for the purpose of leasing out these lands to the petitioner corporation. When that being so, the lands in question are no more belongs to the concerned village panchayat, therefore, the levying of local cess or local cess surcharge, which is the duty or power vest under the Tamil Nadu Panchayats Act only to the local authority, i.e., village panchayat to exercise, therefore the Government, which had leased out the land to the petitioner corporation, cannot levy a local cess and local cess surcharge, therefore, the entire levy and demand of local cess and local cess surcharge on the lease amount fixed by the Government on the leased out lands are unauthorised or not sanctioned by the legislation. Therefore the said component of local cess and local cess surcharge levied and demanded through the impugned orders are liable to be set aside or quashed .

9. Mainly on these grounds, the learned counsel appearing for the petitioner made his submissions and he further urged that, in view of these grounds, paragraphs 5 and 7 of G.O.Ms.No.73 which is impugned in the first writ petition and demand letter made by the third respondent, dated 29.08.2003

which is impugned in the second writ petition, are liable to be interfered with and quashed, he contended.

10. Per contra, Mr.C.Manishankar, learned Additional Advocate General appearing for the respondents would make submissions refuting the said allegations made as well as the grounds urged by the petitioner side. The learned Additional Advocate General would contend that, the 9.41 acres of land originally was leased out to the petitioner as per the conditions imposed in G.O.Ms.No.1471, dated 08.09.1989. Before issuance of the said G.O, from 21.12.1977 itself enter upon permission was given by the second respondent Collector to the petitioner corporation due to urgency as the mining operation had already been commenced. Therefore while fixing the lease amount as well as the local cess and local cess surcharge, what was the rule and practise, which was in vogue during that time, was taken into account and accordingly, under G.O.Ms.No.1471, the lease amount as well as the local cess and local cess surcharge has been fixed. Though subsequently the petitioner had made some request to reduce the lease amount, that was found not feasible as what has been fixed by the Government was strictly in accordance with the prevailing condition as well as under the provisions of the Tamil Nadu Panchayats Act 1958, therefore the said request had not been considered.

11. Thereafter, a further request was made by the petitioner corporation to renew the lease for next 15 years and before finally the said request was considered for extending the lease, almost the 15 years period was over, therefore the Government thought it fit to extend it for a 30 years period from 1987 to 2017. Accordingly, G.O.Ms.No.73 was issued. In G.O.Ms.No.73, 2.79 acres of land, as mentioned above, has been assigned to the petitioner corporation for the value of the land then prevailing as per the statute and Government Order which was in vogue and only in respect of the remaining portion of the land, i.e., 6.67 acres at villages called Vellakkalpatti and Chettichavadi are concerned, lease was extended for a period of 30 years up to 2017, of course with the conditions which were almost available or imposed in the earlier G.O.

12. The main condition imposed in G.O.Ms.No.73 was that, the lease was extended for 30 years upto 20.12.2017 and the road already laid and being used by the public of some villages shall not be disturbed as those villages also using the said road as access road, however the major user since is the petitioner corporation, they can continue to use the road with the movement of heavy vehicles to transport the mine ore, i.e., magnesite.

13. The learned Additional Advocate General would also contend that, in the 6.67 acres leased out land, the petitioner

corporation not only laid the road, but also has put up some permanent structures or constructions including the quarters / Guest House for Managing Director and also a cattle shed and a considerable portion of the land had been fenced permanently and has been put in exclusive use of the petitioner corporation. The learned Additional Advocate General would further contend that, in order to substantiate these factual contentions, photographs have been taken in survey number wise and had been produced before this Court.

14. The learned Additional Advocate General would further contend that, in so far as the legal issue raised by the petitioner side, to state that, since the land in question had already been taken from the purview of the Village Panchayats concerned in 1979 by issuance of District Gazette in this regard, those lands are no more the lands of the village panchayat concerned, therefore the provisions contained in Tamil Nadu Panchayats Act, 1958 and the Tamil Nadu Panchayats Act, 1994 for levying of local cess and local cess surcharge are no more available to the panchayats to implement or exercise and in this regard the Government cannot usurp the power of the village panchayats to levy local cess and local cess surcharge is concerned, the learned Additional Advocate General would contend that, the said submissions as well as the grounds raised by the petitioner side is a complete misconception of the fact as well as law.

15. The learned Additional Advocate General, in support of his contention, by elaborating his arguments, would contend that, both in 1958 Act as well as in 1994 Act, there are clear provisions for levying of local cess and local cess surcharge. The leviability of local cess and local cess surcharge is primarily the legislative function, in view of the clear provision, i.e., Section 115 in the 1958 Act and Section 167 in the 1994 Act and moreover since the local cess and local cess surcharge are collected only as part of land revenue by the Revenue Department of the State Government and after collecting the local cess and local cess surcharge, what shall be the apportionment of the said local cess and local cess surcharge, have also been made clear in the said legislative part of the two Acts, the said contention raised by the petitioner that, it is not the job of the Government to levy and collect local cess and local cess surcharge as it is the exclusive job of the panchayat concerned, does not hold water and therefore the said contention is liable to be rejected, the learned Additional Advocate General contended.

16. The learned Additional Advocate General would also contend that, though there had been number of communications between the petitioner corporation and the respondents and at one point of time, the petitioner corporation also had stated that, they had not agreed with the terms, namely the quantum of

lease amount as well as local cess and local cess surcharge fixed by the Government through G.O.Ms.No.73, the fact remains that, the petitioner corporation had been continuously using the land in question as admittedly there had been permanent structures constructed by them and being utilized by them. The 30 years lease period also was over by 20.12.2017, thereby the full 30 years of extended lease period and earlier 10 years had been thoroughly enjoyed by the petitioner corporation. Therefore the petitioner corporation by virtue of filing these petitions, by challenging the two paragraphs of G.O.Ms.No.73 and subsequent demand letter issued by the third respondent, cannot turn around and say at this length of time that, the condition imposed by the Government and the rate fixed by the Government for leasing out of the land are not agreeable to the petitioner. Therefore the learned Additional Advocate General would contend that, the said plea raised by the petitioner in these two writ petitions are not worthy to be considered, as absolutely there is no scope for considering the same, otherwise it would be a case of unjust enrichment on the part of the petitioner corporation as having enjoyed the land in question for 40 long years, the petitioner cannot escape from the clutches of law without paying the lease due, which includes local cess and local cess surcharge. Hence the learned Additional Advocate General would contend that, both the writ petitions are liable to be dismissed.

17. I have given my anxious consideration to the said submissions made by both the learned counsel appearing for the parties and have perused the materials placed before this Court.

18. After having analysed the materials placed before this Court and the arguments and counter arguments put forward by the learned counsel appearing for the parties, this Court is of the view that, the only legal issue to be looked into in these writ petitions is, as to whether the local cess and local cess surcharge levied by the Government or demanded by the Government, i.e., the respondents herein, through the impugned G.O, under which the lease was extended to the petitioner for 30 years up to 2017, is justifiable or not.

19. In order to dwell into these issues, first let me take the relevant provisions of the Act, namely, The Tamil Nadu Panchayats Act, 1958 and The Tamil Nadu Panchayats Act 1994. Under 1958 Act, Section 115 and 116 speak about local cess and local cess surcharge which reads thus :

"Local cess - 115. (1) There shall be levied in every panchayat development block, a local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli.

[Explanation.-In this section and in section

116, 'land revenue' means public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence, but does not include any other cess or the surcharge payable under section 116, provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose of this section.]

(2) The local cess payable under sub-section (1) shall be deemed to be public revenue due on all the lands in respect of which a person is liable to pay local cess and all the said lands, the buildings upon the said lands and their products shall be regarded as the security for the local cess.

(3) The provisions of the [Tamil Nadu] Revenue Recovery Act, 1864 ([Tamil Nadu] Act II of 1864), shall apply to the payment and recovery of the local cess payable under this Act just as they apply to the payment and, recovery of the revenue due upon the lands in respect of which the local cess under this Act is payable.

(4) (a) Out of the proceeds of the local cess so collected in every panchayat development block, a sum representing four-ninths of the proceeds shall be credited to the Panchayat Union (Education) Fund.

(b) Out of the proceeds of the local cess collected in every panchayat town in a panchayat block, a sum representing two-ninths of the said proceeds shall be credited to the town panchayat fund.

(c) Out of the balance of the proceeds of the local cess collected in the panchayat development block, such percentage as the panchayat union council may fix shall be credited to the village panchayat fund, and the percentage shall be fixed so as to secure as nearly as may be that the total income derived by all the village panchayats in the panchayat union does not fall short of an amount calculated at 20 naye Paise for each individual of the village population in the panchayat union.

(d) The balance of the proceeds of the local cess collected in the panchayat development block shall be credited to the funds of the

panchayat union council.

Local cess surcharge - 116. Every panchayat union council may levy on every person liable to pay land revenue to the Government in respect of any land in the panchayat union a local cess surcharge at such rate as may be considered suitable as an addition to the local cess levied in the panchayat development block under section 115 provided that the rate of local cess surcharge so levied (shall not exceed two rupees and fifty paise on every rupee of land revenue) payable in respect of such land]."

20. Like that, under the 1994 Act, Sections 167 and 168 speak about the local cess and local cess surcharge, which are extracted hereunder :

"167. (I) There shall be levied in every panchayat development block, a local cess at the rate of one rupee on every rupee of land revenue payable to the Government in respect of any land for every fasli. Explanation.- In this section and in section 168, 'land revenue' means public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence, but does not include any other cess or the surcharge payable under section 168, provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose of this section.

(2) The local cess payable under sub-section (I) shall be deemed to be public revenue due on all the lands in respect of which a person is liable to pay local cess and all the said lands, the buildings upon the said lands and their products shall be regarded as security for the local cess.

(3) The provisions of the Tamil Nadu Revenue Recovery Act, 1864, shall apply to the payment and recovery of the local cess payable under this Act just as they apply to the payment and, recovery of the revenue due upon the lands in respect of which the local cess under this Act is payable.

(4) Out of the proceeds of the local cess so collected in every panchayat development

block, a sum representing twenty percent of the proceeds shall be credited to the Panchayat Union (Education) Fund. (5) The balance of the proceeds of the local cess collected in the panchayat development block shall be credited to the funds of the panchayat union council.

168. Every panchayat union council may levy on every person liable to pay land revenue to the Government in respect of any land in the panchayat union, a local cess surcharge at such rate as may be considered suitable as an addition to the local cess levied in the panchayat development block under section 167 provided that the rate of local cess surcharge so levied shall not be less than five rupees and not more than ten rupees on every rupee of land revenue payable in respect of such land."

21. In fact, in so far as the lands in question, the first lease was given to the petitioner by the Government under G.O.Ms.No.1471, dated 08.09.1989, of course with retrospective effect from 21.12.1977, the date on which enter upon permission was given by the second respondent Collector to the petitioner corporation and pursuant to which, the petitioner corporation had been occupying and enjoying the property in question. Therefore the lease period commences from 21.12.1977 upto 20.12.1987. Subsequently, by G.O.Ms.No.73, dated 09.02.2002, the lease was extended for 30 years from 21.12.1987 to 20.12.2017.

22. Therefore in the whole lot of 40 years of lease period, up to 1994, the Tamil Nadu Panchayats Act 1958 was in force and thereafter Tamil Nadu Panchayats Act 1994 came into effect. If we analyse the provisions of 115 and 116 of 1958 Act and Sections 167 and 168 of 1994 Act, they are similar and there is no material change in the provisions between these two Acts. Therefore for the period up to 1994 under Sections 115 and 116 of the 1958 Act, local cess and local cess surcharge can be levied and demanded. Thereafter up to 2017, local cess and local cess surcharge can be levied and demanded under 1994 Act.

23. In this context, whether under Section 115 of the 1958 Act, the state Government has got power to levy local cess and demand the same is the question. If we look at the language used in Section 115 of 1958 Act, it makes clear with the following words that "there shall be levied in every panchayat development block, a local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli."

24. Therefore the legislature itself, under Section 115 levied or levying local cess in respect of any land for every fasli year at the rate fixed therein. Subsequently, the rate originally fixed as 45 naye paise, seems to have been modified.

25. Under Section 116 of the 1958 Act, the words employed are "every panchayat union council may levy on every person liable to pay land revenue to the Government in respect of any land in the panchayat union a local cess surcharge at such rate as may be considered suitable as an addition to the local cess levied in the panchayat development block under Section 115".

26. Almost similar provisions are available in 1994 Act, i.e., Sections 167 and 168 under the heading local cess and local cess surcharge which has already been extracted herein above.

27. A similar issue came to be considered before this Court in the year 1979, where also similarly, the Government land had been leased out to the lessee who raised the issue whether the local cess and local cess surcharge can be levied by the Government and can be demanded. In this context, it seems that, two fold objection had been raised in the said issue, i.e., firstly there must be a separate levy to be made under Section 115 of the Act for local cess, without which there cannot be any demand. Secondly under Section 116 for levying local cess surcharge, every panchayat union council has to make a special resolution to that effect without which no local cess surcharge can be levied or imposed or demanded.

28. The said question raised before this Court was considered in the case of Kwaliti Monuments Represented by.... vs. The Tahsildar & 3 others, reported in 1980 (1) MLJ 461. In the said decision, this Court has considered the similar issue in the context of Sections 115 and 116 of the 1958 Act and the said Judgment would throw some light on this issue. Accordingly the relevant portions of the said decision are extracted hereunder :

4. Having regard to the fact that the lease is terminable by six months' notice by either side, the learned Counsel for the respondents conceded that the demand for local cess and local cess surcharge can be made only upto the end of the current fasli, and that for the subsequent faslis, there must be separate levy of the local cess and local cess surcharge. Therefore it has to be stated at the outset itself that the demand by the impugned order could be confined only to the amount of local cess and local cess

surcharge payable upto the end of the current fasli, 1389. Thus, the only ground surviving for consideration is, whether the local cess and local cess surcharge can be levied only by the Panchayat Union Council concerned, and not by the second respondent, the Collector of Dharmapuri.

5. In the course of the arguments, the learned Counsel for the petitioner submitted that there must be a separate levy of local cess by a separate resolution and that one general resolution for that purpose is not sufficient.

6. I shall first consider the question whether, as stated earlier, there is a resolution for the levy of local cess surcharge of at 1 1/2 times the land revenue. There is no substance in the contention that there should be a separate resolution for each person who is required to pay the local cess surcharge. I am of the opinion that a single resolution levying local cess surcharge would be sufficient. The question then for consideration is, whether a levy by way of resolution is necessary in the case of local cess. The local cess is payable under Section 115 of the Tamil Nadu Panchayats Act, 1958. Sub-section (1) of that section lays down that: There shall be levied in every panchayat development block, a local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli.

The learned Counsel for the petitioner submitted that this sub-section is only a direction to the panchayat development block to levy local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli, and that a resolution for levying local cess at the rate mentioned in that sub-section is necessary.

7. On the other hand, the learned Counsel for the respondents submitted that the section itself levies the local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli and that there is no need for a separate resolution for

that purpose. "Levy", according to the Chambers Twentieth Century Dictionary (New Edition 1972) means "to raise, collect as an army or tax; to call for; to impose ; to begin to wage". Giving the meaning "collect" to the word "levy" in Sub-section (1) of Section 115 of the Tamil Nadu Panchayats Act, 1958, used in the past tense, it will read that there shall be "collected" in every panchayat development block, a local cess at the rate of 45 naya paise on every rupee of land revenue payable to the Government in respect of any land for every fasli. Therefore, I agree with the learned Counsel for the respondents that no resolution for levying local cess under Section 115(1) of the Tamil Nadu Panchayat Act, 1958, is necessary and that Section 115 (1) of that Act itself is sufficient to collect the local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli.

8. The learned Counsel for the petitioner submitted that only the Panchayat Union Council can collect the local cess and local cess surcharge, and that the second respondent was not entitled to demand the same by the impugned order. Section 115(3) of the Tamil Nadu Panchayats Act, 1958, lays down that:

The provisions of the Madras Revenue Recovery Act, 1864(Madras Act II of 1864), shall apply to the payment and recovery of the local cess payable under this Act, just as they apply to the payment and recovery of the revenue due upon the lands in respect of which the local cess under this Act is payable.

Sub-section (4)(a) of that section lays down that:

Out of the proceeds of the local cess so collected in every panchayat development block, a sum representing four-ninths of the proceeds shall be credited to the Panchayat Union (Education) Fund.

9. G.O. Ms. No. 1615, (L.A.) Rural Development and Local Administration, dated 1st October, 1960, deals with the monthly adjustment of Local Cess to the Panchayat

Union (General) Fund. At page 235 of the Manual on Panchayat Administration (1967 Edition), it is stated that the local cess shall be collected along with the land revenue and shall be credited to the State accounts under the same head of account as the land revenue and that it has also been the practice so far in respect of land cess. At page 237, it is stated that following the principles laid down for the collection and adjustment to Panchayat Union Funds of Local Cess, the Government have decided and accordingly direct that the Panchayat Unions shall be paid in advance of collection of local cess surcharge levied by them, and that such advance payments will be made with reference to the resolutions of the Panchayat Union Councils concerned, deciding to levy the Local Cess Surcharge and the notification in the District Gazette for such levy. It is also stated that the Local Cess Surcharge is collectable along with the kist and the local cess during the kistabandi. Thus, it is seen from the Manual of Panchayat Administration that both the local cess and the local cess surcharge are collectable along with the land revenue by the Revenue Department and that they should be credited to the State accounts under the same head of account as the land revenue in accordance with the usual practice. Therefore it is not possible to agree with the learned Counsel for the petitioner that the local cess and the local cess surcharge could be collected only by the Panchayat Union Block concerned.

29. The said decision of this Court referred to above, i.e., 1980 (1) MLJ 461 has, in threadbare, discussed the said issues and has given a complete answer to those issues.

30. I am in respectful agreement with the said view expressed by this Court in the said decision. Accordingly, this Court is of the view that, in so far as the levy of local cess is concerned, since it has already been levied under Section 115 of the 1958 Act and 167 of 1994 Act, there need not be any separate levying of local cess either by the panchayat or by the Government.

31. In so far as the levy of local cess surcharge is concerned, Section 116 of the 1958 Act and the 168 of the 1994 Act make it clear that, local cess surcharge also in addition to local cess can be levied.

32. In this context, a separate resolution of the panchayat union council was not required as has been held in 1980 (1) MLJ 481 (cited supra). Therefore in respect of the said issue, which has already been concluded in the said decision, if the aforesaid facts is applied, the contention raised by the learned counsel for the petitioner cannot be appreciated, instead, the arguments in this regard made by the learned Additional Advocate General is to be accepted.

33. Merely because in 1979 by issuing District Gazette, lands in question have been taken away from the panchayat for the purpose of leasing out the same to the petitioner corporation, that would not ipso facto take away the rights of the Government for levy and demand of local cess and local cess surcharge. As has been explained in the said decision of this Court referred to above, it is the prime job of the Government to collect the local cess and local cess surcharge along with land revenue by the Department of Revenue of State Government and after collecting local cess and local cess surcharge amount, how it should be apportioned alone have been spelt out in the said provisions of the two Acts referred to above. Therefore it cannot be said that, once the land has been taken away by the Government for the purpose of leasing out the same for any commercial purpose or private purpose, the power of levying local cess and local cess surcharge and demanding the same has been taken away or denuded by the Government. Therefore on this ground, the petitioner cannot successfully assail the import of G.O.Ms.No.73 as well as the consequential demand letter issued by the third respondent.

34. Accordingly, the main issue in so far as the leviability and capable of demand of the local cess and local cess surcharge by the State Government while leasing out the Government land for commercial or private purposes are to be answered in favour of the Government and not in favour of the petitioner.

35. The other grounds raised by the petitioner side is that, even at the time of entrusting the land and subsequently at the time of issuance of two Government Orders, granting the lease as well as extending the lease, it was the condition imposed by the Government that, the land in question shall be used for road purposes and after laying the road, apart from the usage of the petitioner corporation it would be usable by the general public in that villages, therefore such usage cannot be prevented by the petitioner corporation.

36. In this context, it is the point urged by the learned

counsel for the petitioner that, since the land in question, even though was put in use for laying the road for the petitioner to reach the mining site, it has not been entrusted to the petitioner corporation for its exclusive usage, instead, it has been entrusted for the use of petitioner corporation as well as the general public and therefore the amount of lease fixed by the Government to be imposed and demanded from the petitioner is not in commensurate to the usage, therefore in so far as the quid pro quo, is concerned, there has been no proportionality between the Government and the petitioner corporation and on that ground the plea raised by the petitioner to reduce the lease amount ought to have been accepted or allowed by the Government, without which since the impugned G.O.Ms.No.73 was issued, extending the lease for 30 years, of course with the same conditions fixing 14% in a whole for both lease amount as well as local cess and local cess surcharge which are not in commensurate with the usage of the petitioner, it is liable to be interfered with, is concerned, this Court feels that, the said plea cannot be raised by the petitioner for the reason that, it is an admitted case that, the land in question not only is used for road purpose but also for very exclusive use of the petitioner corporation as dwelling buildings have been constructed by the petitioner corporation long back and has been put in use. That apart, vast extent of land out of the subject land had been fenced with pucca fence and has been put in exclusive use of the petitioner corporation.

37. These factors, normally this Court would not want to dwell into, as it is the writ jurisdiction, therefore complicated factual aspects cannot be gone into and empirical data cannot be looked into, however, prima facie it was proved by the respondent Government side by filing documents and photographs to the extent to establish that, considerable portion of the land in question have been put in exclusive use of the petitioner corporation not only as road but also for private use as set out above.

38. These factual aspects have not been denied by the petitioner with any contra documents as the photographs shows the building have been constructed in some of the portion of the land in question by the petitioner corporation and some of the lands have been fenced on permanent basis and those aspects have not been denied by the petitioner side and in fact they admitted the same.

39. Therefore the proportionality theory in respect of quid pro quo as has been projected by the learned counsel for the petitioner, in view of the factual matrix of this case, cannot be accepted, as that theory would not in any way enhance the winability of the petitioner side in these two writ petitions.

40. In so far as the other ground, namely that, the petitioner had not agreed upon the conditions imposed by the Government in the impugned Government Order, i.e., at paragraphs 5 and 7 of G.O.Ms.No.73 is concerned, it is not a unilateral decision on the part of the Government, as the earlier lease also does contain the same clauses. The said Government Order which has given the earlier lease from 1977 to 1987, i.e., G.O.Ms.No.1471 has not been admittedly challenged or assailed by the petitioner.

41. More over, during the pendency of the issue between 1989 and 2002, the Government has come forward with G.O.Ms.No.460, Revenue Department, dated 04.06.1998. Under the said G.O, the rigorousness of the quantum of lease amount and corresponding local cess and local cess surcharge which amount to claim 98% of the value of the property as lease amount from the lessee was considered and accordingly, considering that rigorousness, the Government thought it fit to reduce the same as 2% lease amount, instead of 14% for commercial transactions and 1% instead of 7% for non-commercial transactions. However in G.O.Ms.No.460 also the Government has carefully dealt with the issue as to whether the local cess and local cess surcharge can be tinkered with or not.

42. In this context, since it is the wisdom of the legislature to fix 1% local cess and 5% local cess surcharge on the lease amount, the same cannot be reduced by the Government by issuing Government Orders.

43. It is also an admitted fact that, the G.O.Ms.No.460, dated 04.06.1998, Revenue Department has not been put into challenge by the petitioner, thereby the import of G.O.Ms.No.460 can very well be made applicable to the petitioner also.

44. When such being the position, the petitioner, after having enjoyed the lease for 40 long years, cannot come now to make a hue and cry and say that, the lease amount was exorbitant and correspondingly the local cess and local cess surcharge was also exorbitant and therefore the same cannot be imposed, levied or demanded from the petitioner and in this context, the petitioner is ready to surrender the lease hold rights or leased out lands and accordingly, the issue can be decided and the impugned orders can be interfered.

45. The said stand now taken by the petitioner is absolutely unjustifiable and untenable, because, full enjoyment have been made by the petitioner, as admittedly, even till date, the private occupation of the petitioner corporation in the subject land by constructing the building and other usage has not been changed or those buildings have not been vacated and the vacant possession have not been surrendered to the Government.

46. Assuming that, if the petitioner now surrender vacant possession, till such time, the petitioner is liable to pay the lease amount as well as the corresponding local cess and local cess surcharge amount as the lease amount is just 2% because it is certainly a commercial transaction and the local cess and local cess surcharge is levied and demanded based on the legislative intend, earlier, under the provisions of Tamil Nadu Panchayats Act, 1958 and later under the provisions of Tamil Nadu Panchayats Act, 1994. Therefore these fixation, levy and demand made on the part of the respondents to the petitioner for the leasehold lands, which had been admittedly in complete and thorough usage of the petitioner, cannot be said to be either unlawful or unjustifiable and therefore all these grounds raised by the petitioner side towards assailing these impugned orders are not sustainable and hence all these grounds urged by the petitioner side are liable to be rejected.

47. In the result, both the writ petitions fail and therefore they are liable to be dismissed. In fine, the following orders are passed :

Both the writ petitions are dismissed. Since the lease period, even according to the extended period of 30 years as per G.O.Ms.No.73, Revenue Department, dated 09.02.2002 expired on 20.12.2017, for the subsequent period, it is for the petitioner to approach the Government to get further extension of lease, if it desired to do so. However till such time, the petitioner enjoying the property in question of the Government, it is liable to pay the lease amount as well as local cess and local cess surcharge to be fixed, levied and demanded from time to time as per the provisions in the said two legislation and other relevant Government Orders which are in force. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Secretary to Government
State of Tamil Nadu
Revenue Department,
Fort St. George,
Chennai - 600 009.

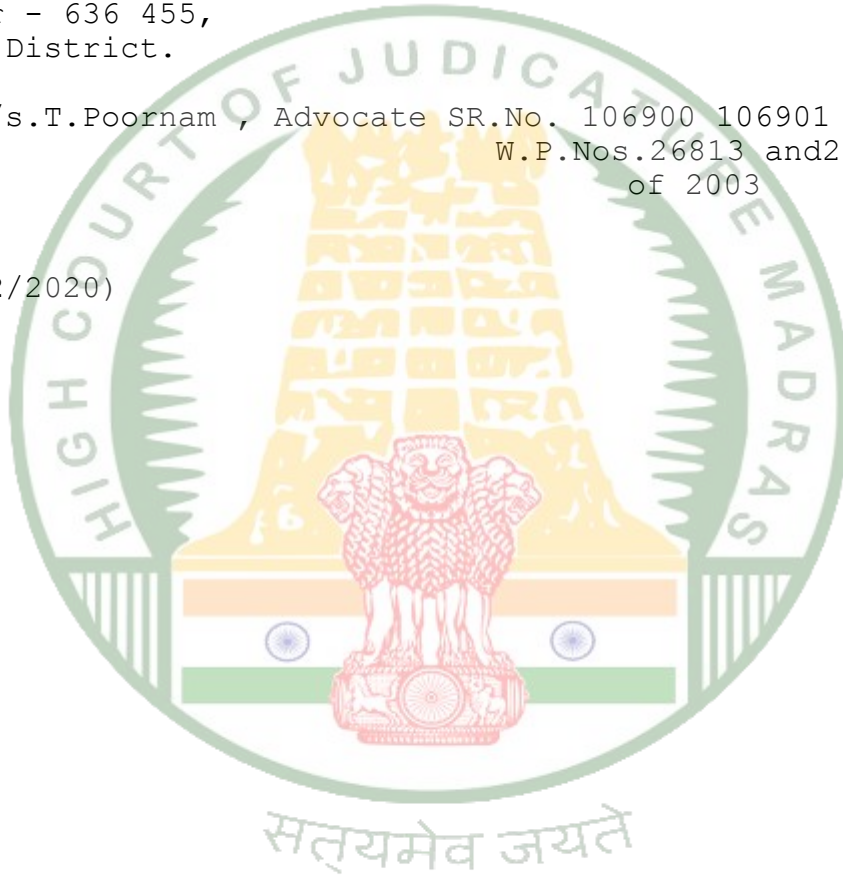
2. The District Collector
Salem - 636 001.

3. The Tahsildar
Omalur - 636 455,
Salem District.

+1cc to M/s.T.Poornam , Advocate SR.No. 106900 106901
W.P.Nos.26813 and26814
of 2003

rgn

A.SK(10/02/2020)



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