TATA STEEL LTD.

v.

STATE OF JHARKHAND & OTHERS

(Civil Appeal No. 7929 of 2015)

SEPTEMBER 24, 2015

[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]

Bihar Industrial Areas Development Authority Act, 1974:

State of Bihar (predecessor-in-interest of the respondent State) transferred an interest in land admeasuring 350 acres for a period of 99 years by a document dated 18.3.1969 – To appellant-Company for setting up industry – One of the terms and conditions for transfer [Condition No. 4 (xiv)] stipulated that the land was to be used by the appellant for the specified purpose within a period of one year failing which lease was to be terminated – Appellant utilized only 200 acres of land for setting up industry – Enactment of 1974 Act with the object of planned development of industrial areas – Respondent-Authority constituted under an ordinance which preceded the Act – State of Bihar as per document dated 18.07.1973 made another grant of 1266 acres of land to the Authority, to own, possess and hold the same for the development of Industries – Show Cause Notice issued by the Authority to appellant for surrender of unutilized 150 acres of land out of the allotted 350 acres of land by taking action u/s. 6(2-a) of the Act and Clause 4 (xiv) of the document dated 18.03.1969 – Subsequently 100 acres of the land out of the 150 acres was cancelled by order dated 17.11.2008 – Appellant-Company's writ petition against the order dated 17.11.2008 dismissed – On appeal, held: The respondent-Authority has the power u/s. 6(2-a) to cancel the allotment of

A *land only in the case of allotment made by it – In the case of property transferred by the State (prior to the Act) can be dealt with by the Authority only in terms of the original document by which the property was transferred – Clause (xiv) of the terms and Conditions of the document dated 18.3.1969 (by* B *which the property in question was transferred by the State) does not contemplate taking possession of part of the land – It only contemplates termination of the Grant in the event of failure to use the land for specified purpose – Thus, it can only be invoked in case of total failure – The allottee-* C *Company in the present case, since established the industry, cannot be said not to have utilised the land for specified purpose – Clause (xiv) r/w clause (v) shows that it was never intended by the Grant that every inch of the land must be* D *utilised for the purpose of establishment of industry.*

Government Grants Act, 1895:

Applicability of the Act – Held: The Act does not apply to instrumentalities and bodies corporate controlled by the E *State.*

s.2 – Transfer of land or any interest therein by the Government – Is not governed by the Transfer of Property Act, 1882 – They are to be ascertained from the tenor of the F *document made by the Government evidencing such transfer.*

Allowing the appeal, the Court

HELD: 1. As per section 2 of the Government Grants G **Act, 1895, when Government transfers land or any interest therein to any person, such a transfer is not governed by the Transfer of Property Act, 1882. The rights and obligations flowing from the transfer of either a piece of land or an interest therein by the Government** H **cannot be determined on the basis of the rights and**

obligations specified under the Transfer of Property Act, 1882. They are to be ascertained only from the tenor of the document made by the Government evidencing such a transfer. The transaction dated 18.3.1969 is a grant (Grant-I) covered by the Government Grants Act. Therefore, the rights and obligations created by the documents dated 18.03.1969 (Grant I) and the document dated 18.07.1973 (Grant II) are regulated only by the terms of the documents by which those grants were made. [Paras 6, 16, 17] [11-A; 17-B-D; 18-A, F]

Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. Government of Tamil Nadu 1997 (2) SCR 413 : (1977) 3 SCC 466 – relied on.

2.1 The power (legal authority) of the respondent Authority to deal with any land can flow from two sources, (i) the statutory powers conferred on it under various provisions of the Bihar Industrial Areas Development Authority Act, 1974 over the areas notified under the Act to be either "industrial area" or "development area". The powers and functions of the respondent Authority are not common with reference to those two categories; and (ii) holding of land - The Authority is a body corporate by virtue of Section 3(2) of the Act. (It is capable of holding and disposing of properties both movable and immovable and the expression holding can mean holding either as owner or lessee or mortgagee etc.). Such right to hold immoveable property extends to holding of such property even beyond the areas which are notified under the Act either as "industrial area" or "development area". [Para 27] [22-F-G; 23-A-D]

2.2 It is not correct to say that a transfer of land evidenced by Grant-II could not have been legally made

A insofar as the property in dispute is concerned without the State of Bihar first resuming the lands which are in the possession of the appellant pursuant to Grant-I. Though the State of Bihar did not have possession of the land in dispute when it made the Grant-II in favour of
B the Authority, the second grantee (i.e. the Authority) takes the property covered by the Grant-II subject to the rights of the earlier grantee. There is no need in law for the termination of the interest created under Grant-I in favour of the appellant, before the State of Bihar chose to
C transfer the property covered by the Grant-II, because the interest created under Grant-I was a limited interest and the title of the property still vested with the State of Bihar. [Para 29] [24-D-G]

D 2.3 The power to terminate the lease in exercise of the statutory power under Section 6(2-a) can be resorted to only in one contingency that is "necessary effective steps are not taken within the fixed period to establish the industry". Section 6(2) authorizes the respondent
E Authority to make an allotment of land and execute a lease deed. It also authorises the Authority to cancel "such allotment or lease", obviously meaning allotments and leases made by the Authority. The expression "allotment" in the context only means a formal
F administrative decision of the Authority to lease a particular piece of land in favour of an applicant who is desirous of establishing industry thereon. Once such a decision is taken, the respondent Authority can transfer an interest in such a piece of land by way of a lease. The
G expression lease in the context of sub-section (2) can only mean a 'lease' as defined under the Transfer of Property Act because the Government Grants Act does not apply to instrumentalities and bodies corporate
H controlled by the State. A lease of immovable property

granted for the agricultural or manufacturing purposes is terminable only in the manner indicated under Section 106 of the Transfer of Property Act. [Para 33] [25-D-G; 26-A-B]

2.4 Section 111 of the Transfer of Property Act specifies various contingencies in which a lease of immovable property determines. Sub-section (h) stipulates that expiration of a notice to determine the lease duly given by the lessor (in compliance with the requirements of Section 106) is one of such contingencies but Transfer of Property Act does not authorize the lessor to physically recover possession of the property on the determination of the lease. The lessor is still required to approach the competent court for the recovery of the possession of the property over which the lease is terminated. Section 6(2-b) of the Act on the other hand authorizes the respondent Authority to take possession of the property which it had allotted and leased out earlier in exercise of the power under sub-section (2). Sub-sections (2-a) and (2-b) do not make any mention of the termination of lease. They only speak of the "cancellation of allotment" made, which clearly indicates that the cancellation of allotment and taking of possession of the "plot/shed" can be resorted to only in the case of allotment made by the respondent Authority. [Para 33] [26-B; 27-A-E]

2.5 In the cases of property transferred by the State (prior to the Act by whatever name such transfer is called) can be dealt with by the respondent Authority only in terms of the original document by which the property was transferred because such a transfer is a grant within the meaning of Government Grants Act, i.e. Grant-I transfer by the document dated 18.3.1969 insofar as the appellant is concerned. Therefore the Authority is entitled

A to deal with the land in question only as a 'grantee' under the 'Grant-II' dated 18.07.1973 and holder of the land. [Para 33] [27-E-F]

3.1 Clauses (iv), (v), (xiv) and (xvii) of Condition No.4 B of the Terms and Conditions of the 'lease' under Grant-I dealt with the termination of the grant made in favour of the appellant. The only clause, invoked in the show cause notice dated 15.1.2002 of the Authority is clause (xiv). Clause (xiv) stipulates that in the event of the appellant C failing to "use the land for the specified purpose within a period of one year from the date of the lease" (Grant-I), the same may be terminated and the appellant be evicted from the lands without notice. [Paras 34, 41, 43] [27-G-H; 28-A; 31-F-G; 32-C]

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3.2 To understand the meaning and scope of clause (xiv), the following factors are required to be examined ; (i) purpose for which the Grant was made, (ii) the terms and conditions upon which the Grant was made, (iii) the E various contingencies under which the Grant could be terminated in full or in part etc. (iv) the scheme of the Grant. The land in dispute was transferred to the appellant for a specific purpose under Grant-I. The appellant did in fact establish the industry for the F establishment of which the Grant-I was made and has been successfully running the industry for the last about 40 years (approximately). For the said purpose, the appellant utilised a substantial portion of the land covered by the Grant and therefore, it cannot be said G that the appellant did not utilise the land for the purpose specified under the Grant-I. Such a Grant was made for a consideration (Salami of Rs. 24,48,670/-) apart from an annual rent for the land which the appellant has admittedly been paying. [Para 44] [32-F-H; 33-A-C]

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3.3 Analysis of the scheme of clauses (iv), (v), (xiv) and (xvii), reveals that only clauses (iv) and (v) speak about "any part" or "parts" of the land which the appellant is liable to transfer on demand by the Authority under clause (iv) or voluntarily under clause (v). Clause (xvii) stipulates the right of the respondent-Authority "to resume and enter upon the whole of the said land" in the event of breach by the appellant of any of the terms and conditions of Grant-I, whereas clause (xiv) significantly does not employ the expression "part" or "parts of the land". [Para 44] [33-D-E]

3.4 Clause (xiv) does not contemplate 'taking possession of parts of the land' in contra-distinction to clauses (iv) and (v). It only contemplates the termination of the Grant-I in the event of the failure on the part of the appellant to use the land for the specified purpose and eviction of the appellant from the land. Therefore, it can only be invoked in the case of total failure to utilise the land for the specified purpose. Clause (xiv) read with the right of the appellant under clause (v) to sell a part of the land covered by the Grant-I which is no longer required by him, can lead to only one conclusion that it was never intended by the Grant-I that every inch of the land must be utilised for the purpose of the establishment of the industry. Any other construction of clause (xiv) would simply render the clause (v) meaningless and destructive of the right created thereunder in favour of the appellant. Therefore, the respondent-Authority is not entitled to invoke clause (xiv) in support of its impugned decision. [Para 44] [33-F-H; 34-A-C]

Case Law Reference

1997 (2) SCR 413	relied on	Para 16

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7929 of 2015.

From the Judgment and Order dated 10.09.2012 of the High Court of Jharkhand at Ranchi in Writ Petition No. 6042 of 2008.

B A. M. Singhvi, Gaurab Banerjee, Sr. Advs., Amar Dave, Ms. Nandini Gore, Abhishek Roy, Ms. Tahira Karanjawala, Ms. Trishala Kulkarni, Amit Bhandari, Sahil Tagotra, M//s. Karanjawala & Co. for the Appellant.

C Ajit Kumar Sinha, Neeraj Kr. Jain, Sr. Advs., Tapesh Kumar Singh, Mohd. Waqvas, Manish Mohan, Aniket Jain, Ardhendumauli Kumar Prasad, Umang Shankar for the Respondents.

The Judgment of the Court was delivered by

D **CHELAMESWAR, J.** 1. Leave granted.

2. Aggrieved by the judgment of the Jharkhand High Court dated 10.09.2012 in Writ Petition No. 6042 of 2008, the unsuccessful petitioner therein preferred the instant appeal.

E 3. The writ petition was filed aggrieved by an order dated 17.11.2008 of the Managing Director (respondent no.3 herein) of the Adityapur Industrial Area Development Authority, (respondent no.2 - hereinafter referred to as the "AUTHORITY"), a body corporate created under Section 3 of the Bihar Industrial F Areas Development Authority Act, 1974 (hereinafter referred to as "the ACT").

4. The first respondent (the State of Jharkhand) is carved out of the State of Bihar on 15th November 2000 by a parliamentary enactment called 'the Bihar Reorganization Act, G 2000'. The first respondent is the successor-in-interest of the State of Bihar insofar as the property in dispute is concerned.

5. The appellant herein is a company running various industries. At the request of the appellant, the State of Bihar H transferred an interest in land admeasuring 350 acres at

Adityapur for a period of 99 years. It appears from the impugned judgment that the said land was divided into "a few hundreds of plots of different dimensions in various small areas". The transfer is covered by a document dated 18.03.1969, purported to have been executed on behalf of the Governor of Bihar in favour of the appellant company. Parties have been described as LESSOR and LESSEE in the said document. The crux of the transaction is described in the document as follows:

> "WHEREAS the lessee has applied for the lands described and specified in Part 1 of the Schedule appended hereto together with all rights, covenants and appurtenances thereto belonging except and reserving unto the lessor all mines, minerals in and under the said land or any sort thereof **for establishing** (i) Alloy Tool and Special Steel Plant (ii) the Roll Foundry Project.
>
> NOW THIS INDENTURE WITNESSETH:
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> In consideration of the payment to the lessor by the lessee of the premium or salami of Rs.24,48,670/- (Rupees Twenty four lacs forty eight thousand six hundred seventy only) calculated at Rs.7000/- (Rupees Seven thousand only) per acre (including proportionate development case of the area on or before the execution of these presents and of the rent hereby reserved and of the covenants and agreements on the part of the lessee and fully mentioned in Part II of the Schedule, the lessor doth hereby demise unto the lessee all the piece of land mentioned and described in Part I of the Schedule."

The transfer is subject to various terms and conditions specified in Part-II of the said document. Under condition No.1, the "lease" is given for 99 years subject to renewal at the option of either party for such period as may be mutually agreed upon.

A Condition No.2 stipulates annual payment of Rs17,490.50 at the rate of Rs.50/- per acre in one installment payable on or before 31st March every year. Rent is liable to be revised every twenty years.

B "1. That the lease of land detailed in Part I of the Schedule is given for ninety nine (99) years to the lessee by the lessor subject to renewal at the option of either Party for such period as may be mutually agreed upon.

C 2. That the lessee shall pay annually to the State Government or their nominee as rent, the sum of Rs.17,490.50 (Rupees Seventeen Thousand Four Hundred Ninety and Fifty Paisa only) at the rate of Rs.50/- per acre in one installment on or before 31st March, every year. The said rent is liable to be revised every twenty years in accordance with provisions of law or any Rules framed by Government of Bihar as may be in force for the time being and in the absence of any such law rules then as may be fixed by the lessor."

E 6. Condition No.4 contains various "covenants" between the parties. Clause (xiv) stipulates that the land shall be used by the appellant for the specified purpose within a period of one year from the date of the lease failing which the lease may be terminated and the appellant evicted from the land without notice.

"4.(xiv) That the lessee shall use the land for the specified purpose within a period of one year from the date of the lease, failing which the lease may be terminated and the lessee evicted from the lands without notice. In case extension is required it can be granted within the discretion of the lessor."

The transaction, in our opinion, is a grant (hereinafter referred H to as GRANT-I for the sake of convenience) covered by the

Government Grants Act 1895. We shall deal with the said Act and the reasons for our conclusion that the so called lease dated 18th March, 1969 is a grant in some detail later in this judgment.

7. Admittedly, the appellant herein utilized an extent of about 200 acres of the abovementioned 350 acres of land for setting up (i) Alloy Tool and Special Steel Plant (ii) the Roll Foundry Project, the specified purpose for which the GRANT-I was made to the appellant.

8. In the year 1974, the State of Bihar made the ACT. The object of the ACT is to "provide for planned development of Industrial Areas and promotion of Industries and matters appurtenant thereto". (The ACT was preceded by an Ordinance of 1972) The ACT was adopted by the State of Jharkhand.

9. By a document dated 18.7.1973, the Governor of Bihar made another grant (hereinafter referred to as GRANT-II for the sake of convenience) of an extent of 1266 acres of land, described in the Schedule attached to the said document, to the AUTHORITY "to own, possess and hold the same for the purposes of the development of industries of that area".

> "Now, therefore, the Governor of the State of Bihar, the GRANTOR, does hereby make **this grant of** an area of land together with structures and appurtenance thereto measuring more or less 1266 acres, fully described in the schedule below UNTO the GRANTEE to own, possess and hold the same for the purposes of the development of industries of that area with powers to use the said lands for the purposes of development of industry in planned manner and in that connection to lease out pieces of lands structures and appurtenance thereto to entrepreneurs for a period of not exceeding 99 years on such terms and conditions as the Authority may deem fit;

A And further whereas this grant is made subject to the condition that in the event of the GRANTEE ceasing to function or in the event of the lands hereby granted being of no use for the purposes for which the grant is made, the lands granted will automatically revert to the B GRANTOR and the GRANTEE will be divested of all the rights, title and interest would get vested in the GRANTOR but subject to the rights created in the entrepreneurs and further subject to the condition that the GRANTEE would abide by the instructions of the C Government from time to time."

10. By a letter dated 01.09.2000 of respondent no.3, the appellant herein was called upon to surrender an extent of 150 acres of land on the ground that out of 350 acres of land 'leased' D to the appellant, about 150 acres of land was still lying vacant for more than 25 years and there was demand for land from other entrepreneurs for setting up industries. After some correspondence in this regard, respondent no.3 issued notice dated 15.01.2002 asking the appellant herein to show cause E why action under Section 6(2-a) of the ACT and Clause 4 (xiv) of the 'lease deed' (GRANT-I) be not taken for resuming 150 acres of land which remained unutilized. Thereafter, there was lot of correspondence between the parties, the details of which F are not necessary.

11. On 17.11.2008, respondent no.3 passed an order purporting to cancel the allotment of 100 acres out of 150 acres of land lying vacant in the possession of appellant and terminating the GRANT-I interestingly without any qualification G with regard to the extent. The relevant part of the order reads as follows:

"Clearly, Tata Steel has failed to utilize the allotted land even after the lapse of almost 40 years and is only trying H to keep the land in its custody thus denying the

opportunity of land allotment to other entrepreneurs. Mentionable, that all the small and medium sector units located in AIADA area are governed by the same rules for setting up the industries and utilization of the land. Hence there appears to be no reason for any special consideration to be given to the Tata Steel for violating the conditions of lease. However, taking considerate and liberal view of the whole issue and also the all-round performance of TISCO LTD and finally the Jharkhand Industrial Development Authority Act and provisions of allotment and lease deed and by the powers confirmed upon me u/s. 6 sub clause 2(a) 2(b) of Jharkhand Industrial Area Development Authority **allotment of 100 acres of land** out of 150 acres lying unutilized and vacant **is cancelled, lease terminated** and cost forfeited.

Further the unit is directed to utilize the remaining portion of vacant land within six months failing which necessary action would be taken to cancel the land. A copy of this order may be sent to the company."

12. Aggrieved by the order dated 17.11.2008, the appellant herein filed Writ Petition No.6042 of 2008 in the High Court of Jharkhand. By the impugned judgment, the writ petition was dismissed, holding:

"29. A bare perusal of Sub-Clause(iv) will clearly indicate that it deals with two subjects one is based on the requirement of the State Government/or its successor which may require for resuming the lease or part of the lease "for public purpose". Here in this case the proceeding was not initiated under this provisions as it is not the case of the Government / lessor that the Government requires the land in question for any "public purpose". The lessor has started proceeding for eviction

A of the lessee under proviso to Sub-Clause (iv) of Condition 4 because of non-use of the part of the lease land therefore, in view of the proviso to Clause (iv) of the lease condition No. 4 of Part II of the lease, the lessor had right to proceed for determining the lease of the
B part of the property which has not been utilized for the purpose for which it was acquired by the lessee on lease."

Hence, the appeal.

C 13. The following principal submissions are made before us on behalf of the appellant:

(i) That, in view of the GRANT-I the State of Bihar could not have made GRANT-II in favour of the AUTHORITY without first resuming the lands covered by GRANT-I.
D

(ii) That, GRANT-II dated 18.7.1973 does not include the land which is subject matter of GRANT-I between the appellant and the State of Bihar.

(iii) Assuming for the sake of argument that the land in
E occupation of the appellant is also a part of the GRANT-II, the AUTHORITY can only exercise such rights as are available to it as a successor-in-interest of the State of Bihar under the GRANT-I. The third respondent could not invoke the powers conferred under the ACT insofar
F as the lands which are in occupation of the appellant are concerned.

(iv) The sources of legal authority relied upon for taking the impugned action against the appellant, the show-cause notice dated 15.01.2002 and the final order dated
G 17.11.2008 purporting to cancel the allotment and terminate the GRANT-I are different. Therefore, there is a denial of reasonable opportunity to the appellant to effectively represent its case before the AUTHORITY.

H (v) The High Court justified the impugned order dated

17.11.2008 on a totally new ground not relied upon either in the show-cause notice or the final order i.e. violation of sub-clause (xiv) of condition No.4 contained in Part-II of GRANT-I. Such a process is impermissible in law as the same would have the effect of denying a reasonable opportunity to the appellant to effectively win the case.

(vi) It is submitted that sub-clause (xiv) of condition No.4 authorizes the AUTHORITY to 'terminate the lease' and evict the 'lessee' from the land only on the failure of the lessee to use the land for the 'specified purpose' within a period of one year from the date of the GRANT-I. The appellant used the land for the purpose specified in the GRANT-I within a period of one year. Therefore, sub-clause (xiv) of the Condition No.4 could not be invoked.

(vii) There is no requirement in the covenants contained in Part-II of GRANT-I that every inch of the land leased to the appellant is required to be utilized by making construction and establishing industries thereon.

14. The respondents argued that there is no need to interfere with the impugned judgment as it is a well reasoned judgment in support of the conclusion recorded by the High Court.

15. Before we proceed to examine various submissions made by the appellant, it is necessary to examine:

I. the character of the two documents i.e. 'lease deed' dated 18.03.1969 (GRANT-I) and the 'grant dated 18.07.1973' (GRANT-II) referred to earlier; and

II. the Scheme of the ACT insofar as it is relevant for our purpose;

16. It is almost becoming a forgotten proposition of law that the Government is not bound by the Transfer of Property Act 1882, when it seeks to transfer any land vested in it or any

A interest therein. It may not be possible to trace out the entire history of the vesting of lands in the Government and the legal rights and obligations flowing from such vesting as it is a huge topic by itself. It is sufficient to state that Articles 294[1] to 296 of the Constitution of India provide for vesting of property (which
B includes land) and assets in the Union of India and various States. Article 294 deals with the development of the property and assets which vested (prior to the coming into force of the Constitution) in His Majesty for the purposes of the Government of the Dominion of India and for the purposes of the Government
C of each Governor's Province. Article 295[2] provides for the

[1] **294.** Succession to property, assets, rights, liabilities and obligations in certain cases as from the commencement of this Constitution
(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all
D property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governors Province shall vest respectively in the Union and the corresponding State, and
(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governors Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,
subject to any adjustment made or to be made by reason of the creation before the
E commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab

[2] **295.** Succession to property, assets, rights, liabilities and obligations in other cases
(1) As from the commencement of this Constitution
(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule
F shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and
(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities
G or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List, Subject to any agreement entered into in that behalf by the Government of India with the Government of that State
(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise,
H other than those referred to in clause (1)

succession to the property and assets which vested prior to the commencement of the Constitution in any Indian State[3]. Article 296[4] deals with accrual of properties by escheat or lapse or as *bona vacantia.* The imperial legislature recognised the need of a law to regulate the method and manner by which the governments could transfer or create any interest in the land vested in the Government. Section 2[5] of the Government Grants Act declares that "nothing contained in the Transfer of Property Act, 1882 applies to any grant or other transfer of land or any interest therein" made by or on behalf of the Government either prior to or after the commencement of the said Act. In other words, when Government transfers land or any interest therein to any person, such a transfer is not governed by the Transfer of Property Act, 1882. The rights and obligations flowing from the transfer of either a piece of land or an interest therein by the Government cannot be determined on the basis of the rights and obligations specified under the Transfer of Property Act, 1882. They are to be ascertained

[3] Article 366 (15). "Indian State" means any territory which the Government of the Dominion of India recognised as such a State.

[4] 296. Property accruing by escheat or lapse or as bona vacantia Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:
Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State
Explanation In this article, the expressions Ruler and Indian State have the same meanings as in Article 363.

[5] Section 2. Nothing in the Transfer of Property Act, 1882 contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to or in favour of any person whomsoever but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

A only from the tenor of the document made by the Government evidencing such a transfer. This position is clearly recognized by this Court in ***Hajee S.V.M. Mohamed Jamaludeen Bros. & Co.*** *v.* ***Government of Tamil Nadu,*** (1997) 3 SCC 466 as follows:

B

> "10. The combined effect of the above two sections of the Grants Act is that terms of any grant or terms of any transfer of land made by a Government would stand insulated from the tentacles of any statutory law. Section
> C 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two
> D provisions are so framed as to confer unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grants made by the Government to any person. In other words, the rights, privileges and obligations of any grantee of the
> E Government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law."

17. In the light of the above legal position, the rights and
F obligations created by GRANTS-I & II are regulated only by the terms of the documents by which those grants were made.

18. Section 3(1) of the ACT authorizes the State Government to constitute an authority "for any area or areas
G for development and promotion of industry" known as "the Industrial Area Development Authority". Sub-section (2) declares that such authorities are to be bodies corporate with all incidental attributes, such as, the power to acquire, hold and dispose of properties etc.

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19. Section 4(1)[6] of the ACT authorizes the State to declare "any area adjacent to an industrial area" to be a "development area". The expressions "industrial area" and "development area" are defined under Section 2(e)[7] and 2(f)[8] of the ACT respectively. Section 4(2)[9] prohibits a person, company or business house including a department of the State Government to undertake or carry out any construction, modification or demolition of any structure or building within such development area once an area is notified as development area without obtaining the prior approval of the Authority constituted under Section 3 of the ACT.

20. Section 6 stipulates various duties and powers of the Authority.

21. Section 9 of the ACT authorizes the State Government to acquire any land required for the purpose of the Authority. Section 9(1) declares that any acquisition of land by the State Government for the purpose of the Authority is deemed to be a public purpose under the Land Acquisition Act, 1894. Sub-section (2) stipulates that the State Government may transfer, on such terms and conditions, to the Authority by a deed of lease any developed or undeveloped land vested in

[6] Section 4(1). The State Government may by a notification in the Official Gazette declare any area adjacent to an industrial area a "development area" for the purposes of this Act after taking into consideration any objection that may be raised in the manner prescribed in the Rules:

Provided that no objections need be invited for any area already declared as "controlled area" under sub-section (1) of Section 3 of the Bihar Restriction of Uses of Land Act, 1948.

[7] Section 2(e). "Development Area" means any area declared to be a development area under Section 4.

[8] Section 2(f). "Industrial Area" means an area for which an Authority is constituted under Section 3.

[9] Section 4(2). After an area has been notified as development area under sub-section (1) of Section 4 of this Act, no person or company or business house or anybody (including a department of the State Government) shall undertake or carry out any construction, modification or demolition of any structure or building within such development area without the prior approval of the Authority in accordance with the procedure laid down in the Rules prescribed.

A the State Government. Sub-sections (2) and (3) read as follows:

> "(2) The State Government may by a deed of lease, transfer on terms of conditions as may be decided by the State government, to the Authority any developed or undeveloped land vested in the State of Bihar for the purpose of development or use in accordance with provisions of this Act.
>
> (3) If any land so placed at the disposal of the Authority under sub-section (2) is required at any time by the State Government, the Authority shall restore it to the State Government."

22. In substance, the State Government is authorised to constitute an 'Authority' for any area or areas for development and promotion of industries by a notification. By definition of Section 2(f), the area so notified becomes an "industrial area". Once an industrial area is notified, the State is also authorized to notify any other area adjacent to such industrial area to be a "development area". The consequences of an area being notified as a "development area" under Section 4(1) are prescribed under Section 4(2), the contents of which are already taken note of.

23. Under Section 6[10], an Authority constituted under Section 3 of the ACT is responsible for –

[10] **6. General duties and powers of the Authority**—(1) Subject to the provisions of this Act, the Authority shall be responsible for the planned development of the Industrial Areas (including preparation of the Master Plan of the area) and promotion of industries in the area and other amenities incidental thereto.

(2) The Authority shall be responsible for planning, development and maintenance of the Industrial Area and amenities thereto and allotment of land, execution of lease and cancellation of such allotment or lease, realisation of fees, rent charges and matters connected thereto.

xxx xxx xxx xxx

(3) The State Government may from time to time entrust the Authority with any other work that is connected with planned development, or maintenance of the Industrial Area and its amenities and matters connected thereto.

(i) planned development, A
(ii) promotion of industries, and
(iii) other amenities incidental thereto in the industrial areas falling within its jurisdiction.

Under Section 6(2), the Authority is responsible for planning, B development and maintenance of the industrial area and the amenities thereto. The Authority is also responsible for allotment of land and execution of lease. Such power of allotment of land and execution of lease is expressly declared to carry the power to cancel such allotment or lease. In other C words, Section 6(1) obligates an Authority to formulate policy, 6(2) obligates that Authority to execute the policy formulated under Section 6(1). It must be noted here that Sections 6(1) and (2) authorise the Authority only to deal with 'industrial area' but not 'development area'. Sub-section 3 authorises the State D Government to entrust the Authority with any other work connected with the responsibilities mentioned in Section 6(1) and (2) with respect to the industrial areas.

24. Sub-section (4)[11] on the other hand expressly confers E on the Authority certain powers enumerated in the various sections of the Bihar and Orissa Municipal Act, 1922 with regard to the development area. Remaining sub-sections deal with other matters, the details of which are not necessary for the present purpose, except noticing that the duties and powers F of the Authorities are not common with respect to "industrial area" and "development area" under the Act.

25. It is in the background of the abovementioned Scheme of the Act, the various issues involved in this appeal G are required to be examined. The second respondent

[11] **6(4).** The Authority shall have the powers of the Commissioner of a Municipality as specified in Sections 196, 197, 198, 199, 200, 201 and 202 of Bihar and Orissa Municipal Act, 1922, for purposes of removal of encroachment on roads, houses, gullies, any land in the development area and properties of the Authority. H

A AUTHORITY was constituted by notification dated 29.06.1972 under the Ordinance which preceded the **ACT**. By GRANT-II dated 18.7.1973, the Government of Bihar transferred an area of 1266 acres of land alongwith structures, appurtenance etc. in favour of the AUTHORITY "to own, possess and hold the B same for the purposes of the development of industries of that area". The appellant disputes that the land transferred to them under GRANT-I is not part of the above-mentioned 1266 acres of land. The second respondent AUTHORITY asserts to the contra. However, the High Court[12] declined to go into that C question on the ground that it is a question of fact which was never raised by the appellant herein any time earlier. We see no reason to take a different view.

26. We, therefore, proceed on the basis that the land in D dispute is part of the 1266 acres of the land covered by the "GRANT-II" dated 18.7.1973. But the question still remains whether the land in question is a part of either the "industrial area" or the "development area" or beyond both the areas. We do not find any material on the record to reach any definite E conclusion on the above question. It goes without saying that the responsibility to establish that fact is on the respondents by producing the appropriate notification. Unfortunately, none is produced. Therefore, we proceed on the presumption that the land in dispute is not part of any notified industrial or F development area.

27. The power (legal authority) of the second respondent AUTHORITY to deal with any land can flow from two sources,

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G [12] "Para 20. Learned counsel for the AIADA vehemently submitted that the question of identity of the property which has been handed over to the AIADA or the plea that the lease land of the petitioner is not included in the notification was never raised by the petitioner before any authority even after several notices to the petitioner and, therefore, this question of fact cannot be raised in the writ jurisdiction that too, without laying down the factual foundation for which particularly the petitioner did not even annex the map which was part of H the lease deed by which the lease was granted to the writ petitioner, reference of which map is already there in the lease deed."

(i) **the statutory powers** conferred on it under various provisions of the ACT over the areas notified under the ACT to be either "industrial area" or "development area". We have already noticed even with the reference to those two categories, the powers and functions of the second respondent AUTHORITY are not common; and

(ii) **holding of land** - The AUTHORITY is a body corporate by virtue of Section 3(2)[13] of the ACT. (It is capable of holding and disposing of properties both movable and immovable and the expression holding can mean holding either as owner or lessee or mortgagee etc.). Such right to hold immoveable property extends to holding of such property even beyond the areas which are notified under the ACT either as "industrial area" or "development area".

28. From the tenor of GRANT-II, the powers of the second respondent AUTHORITY are said to be the "powers to use the said lands for the purposes of development of industry in planned manner and in that connection **to lease out pieces** of lands, structures and appurtenance thereto to entrepreneurs for a period of not exceeding 99 years on such terms and conditions as the Authority may deem fit". It is obvious from the language of GRANT-II that the second respondent AUTHORITY is conferred with the right to lease out pieces of land for the purpose of development of industry. But, such right enables the AUTHORITY to lease out pieces of land only from a date subsequent to the date of 'GRANT-II' (i.e. 18.07.1973) because a non-sovereign body cannot create or destroy rights with retrospective effect. However, the right of the second respondent AUTHORITY over the land transferred to it "to own, possess and hold the same for the purposes of the

[13] Section 3(2). The Authority shall be a body corporate by name aforesaid having perpetual succession and a common seal with powers to acquire, hold and dispose of properties, both movable and immovable, and to contract and shall by the said name sue and be sued.

development of industries of that area", can only be subject to the pre-existing legal rights and obligations of the grantor because the grantor could not convey any interest which the grantor did not hold at the time of the GRANT-II. The State of Bihar created a legal interest in favour of the appellant herein and parted with possession of the land in dispute by virtue of GRANT-I for a specified period. Without determining such a legal interest created by GRANT-I in accordance with law, neither the grantor (State of Bihar) nor the subsequent grantee under GRANT-II (the AUTHORITY) could create a fresh lease. Because a lease in the context of the AUTHORITY can only be a lease contemplated under the Transfer of Property Act, which in the context necessarily requires possession of land to be given to the lessee by the lessor.

29. The first submission made on behalf of the appellant is that a transfer of land such as the once evidenced by GRANT-II could not have been legally made insofar as the property in dispute is concerned without the State of Bihar first resuming the lands which are in the possession of the appellant pursuant to GRANT-I. In our opinion, the said submission is required to be rejected for the reason that though the State of Bihar did not have possession of the land in dispute when it made the GRANT-II in favour of the AUTHORITY, the second grantee (i.e. the AUTHORITY) takes the property covered by the GRANT-II subject to the rights of the earlier grantee. There is no need in law for the termination of the interest created under GRANT-I in favour of the appellant, before the State of Bihar chose to transfer the property covered by the GRANT-II. Because the interest created under GRANT-I was a limited interest and the title of the property still vested with the State of Bihar.

30. The next submission that is required to be examined is -whether the second respondent AUTHORITY can exercise the power vested in it by the ACT vis-à-vis the lands in dispute

as the said land is held by it only by virtue of GRANT-II. We have already recorded that there is nothing on record to establish that the land in question is part of either "industrial area" or "development area". A

31. This question assumes importance because the show-cause notice dated 15.01.2002 issued by the AUTHORITY invokes the powers both under Section 6 (2-a) of the ACT and Clause 4 (xiv) of GRANT-I and the final order dated 17.11.2008 relied upon clause 4(xiv) of GRANT-I and Section 6 (2)(a) and 2(b) of the ACT. B C

32. It is necessary to identify the source of power which authorizes the second respondent AUTHORITY to recover possession of 100 acres of land from the appellant. Because depending upon the source, the consequences and the procedure by which such recovery of possession can be made varies. D

33. The power to terminate the lease in exercise of the statutory power under Section 6(2-a) can be resorted to only in one contingency that is "necessary effective steps are not taken within the fixed period to establish the industry". Section 6(2)[14] authorizes the second respondent AUTHORITY to make an allotment of land and execute a lease deed. It also authorises the Authority to cancel "such allotment or lease", obviously meaning allotments and leases made by the AUTHORITY. In our opinion, the expression "allotment" in the context only means a formal administrative decision of the AUTHORITY to lease a particular piece of land in favour of an applicant who is desirous of establishing industry thereon. Once such a decision is taken the second respondent AUTHORITY can transfer an interest in such a piece of land by way of a lease. The expression lease in the context of sub- E F G

[14] 6(2) The Authority shall be responsible for planning, development and maintenance of the Industrial Area and amenities thereto and allotment of land, execution of lease and cancellation of such allotment or lease, realisation of fees, rent charges and matters connected thereto. H

A section (2) can only mean a lease as defined under the Transfer of Property Act because the Government Grants Act does not apply to instrumentalities and bodies corporate controlled by the State. A lease of immovable property granted for the agricultural or manufacturing purposes is terminable only in B the manner indicated under Section 106[15] of the Transfer of Property Act. Section 111[16] of the Transfer of Property Act

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[15] Section 106. Duration of certain leases in absence of written contract or local usage.—
(1) In the absence of a contract or local law or usage to the contrary, a lease of C immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.
(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.
D (3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.
(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or E servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

[16] Section 111. Determination of lease.- A lease of immoveable property determines -
(a) by efflux of the time limited thereby;
(b) where such time is limited conditionally on the happening of some event - by the happening of such event;
(c) where the interest of the lessor in the property terminates on, or his power to F dispose of the same extends only to, the happening of any event—by the happening of such event;
(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;
(f) by implied surrender;
G (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;
(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, H the property leased, duly given by one party to the other.

specifies various contingencies in which a lease of immovable property determines. Sub-section (h) stipulates that expiration of a notice to determine the lease duly given by the lessor (in compliance with the requirements of Section 106) is one of such contingencies but Transfer of Property Act does not authorize the lessor to physically recover possession of the property on the determination of the lease. The lessor is still required to approach the competent court for the recovery of the possession of the property over which the lease is terminated. Section 6(2-b)[17] of the ACT on the other hand authorizes the second respondent AUTHORITY to take possession of the property which it had allotted and leased out earlier in exercise of the power under sub-section (2). Sub-sections (2-a) and (2-b) do not make any mention of the termination of lease. They only speak of the "cancellation of allotment" made which to our mind clearly indicates that the cancellation of allotment and taking of possession of the "plot/shed" can be resorted to only in the case of allotment made by the second respondent AUTHORITY. In the cases of property transferred by the State (prior to the ACT by whatever name such transfer is called) can be dealt with by the second respondent AUTHORITY only in terms of the original document by which the property was transferred because such a transfer is a grant within the meaning of Government Grants Act, i.e. GRANT-I insofar as the appellant is concerned. We therefore conclude that the AUTHORITY is entitled to deal with the land in question only as a 'grantee' under the 'GRANT-II' dated 18.07.1973 and holder of the land.

34. In the light of our above conclusion, it is necessary for us to examine the terms of GRANT-I made in favour of the appellant herein (the so called "lease" dated 18.03.1969). Clauses (iv), (v), (xiv) and (xvii) of Condition No.4 of the Terms

[17] 6(2-b) The authority shall, after cancellation of allotment of the plot/shed take possession of the said plot/shed.

A and Conditions of the 'lease' are relevant in this context, which read as follows:

"(iv) That if subsequently **any part or parts of the said land** is/are **required** by the State Government for a public
B purpose, (of which matter ....). the State Government shall be the sole judge, the lessee shall on being asked by the State Government transfer to them **such part or parts of the said land** as the State Government shall specify, to be necessary for the purpose aforesaid and
C in consideration of such transfer the State Government shall pay back to the lessee a sum proportionate or equal as the case may be, to the cost of land and its development if any earlier realized from him, together with compensation for the buildings and other structures
D erected with approval in writing of the lessor or its nominee on such part or parts of the land at a valuation to be determined by the State Government on a report from a Civil Engineer authorized in this behalf and the decision of the State Government will not be questioned
E by any authority ....

Provided that for the purpose of this sub-clause the State Government would be entitled to resume only such part or parts of the land leased out to the lessee as were not
F actually being used for the purposes of the manufacture or/are not essentially required for any purpose connected with the Industry ..

(v) If at any time the **said land or any part or parts thereof**
G shall no longer be required by the lessee for the purpose for which it is leased out to him. the lessee shall, while selling or assigning the said land or such part or parts. thereof as aforesaid first make an offer of the same to the State Government at a price proportionate or equal,
H as the case may be, to the cost of the land and its

development, of any realized earlier from him, and he shall not make any sale or assignment thereof to any other party unless such offer shall have been declined by the State Government.

When such offer has been made by the lessee the State Government may accept of in respect of such part or parts of the land so offered as it may deem fit and decline it in respect of the remainder.

When the first offer of selling or assigning said land or such part or parts thereof as aforesaid has been declined by the State Government, the lessee, while selling or assigning the said land or such part or parts thereof as aforesaid to any other party shall do so with prior approval of the State Government.

(xiv) That the lessee shall use the land for the specified purpose within a period of one year from the date of the lease, failing which the lease may be terminated and the lessee evicted from the lands without notice. In case extension is required it can be granted within the discretion of the lessor.

(xvii) In case of breach by the lessee of any of the terms and conditions, the lessor shall have right to **resume and enter upon the whole of the said land** without payment of any compensation to the lessee and upon such a re-entry the interest of the lessee in the said land shall cease and determine.

35. It can be seen from the above extracted clauses of GRANT-I that under condition 4(iv) the appellant is obliged to transfer to the grantor (the state of Bihar or its successor in interest - the AUTHORITY) such parts of the land required by the AUTHORITY when the AUTHORITY requires the same for a "public purpose". It is further stipulated that in the event of

A any such demand by the AUTHORITY, the AUTHORITY is required to pay to the appellant certain amounts. Thirdly, such power **cannot** be exercised even for a public purpose with reference to that portion of land which is either actually "being used for the purposes of the manufacture" or "essentially
B required for any purpose connected with the industry".

36. Condition No. 4(v) recognizes the right of the appellant to sell or assign the said land. On a true and proper construction of the clause, such a right 'to sell or assign'
C obviously means only the right to see the interest created in favour of the appellant under GRANT-I and nothing beyond that. Whenever the appellant chooses either to sell or assign such interest in any part of the land covered by the GRANT I, the appellant is required to make an offer to the AUTHORITY at a
D price described in the said clause. Unless such an offer is declined by the AUTHORITY, the appellant cannot sell or assign its interest to a third party. Further, such sale or assignment cannot be made by the appellant without the prior approval of the AUTHORITY.

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37. Condition No. 4(xiv) authorizes the AUTHORITY to terminate the lease and evict the appellant without notice if the appellant does not use the land for the purpose specified in the lease within a period of one year from the date of lease.

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38. Condition No. 4(xvii) authorizes the AUTHORITY to resume and enter upon the land covered by the 'lease' in the event of a breach by the appellant of the terms and conditions of the GRANT I.

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39. The substance of the four clauses is that appellant would be obliged to transfer the property by virtue of Condition No. 4(iv) when a part of the property covered by GRANT-I is needed for a public purpose. Such stipulation perhaps implies an obligation on the part of the appellant to give possession of

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the property without the need for the State to resort to a civil court for recovering the possession. We do not wish to give any final opinion in this regard as this issue does not arise in this case and not argued before us. In the contingency contemplated under Condition No.4 (v), since it would be a transfer at the instance of the appellant, obviously the question of the mode of recovery of possession does not arise as it would be a voluntary act of the appellant. On the other hand, in the contingencies contemplated under condition Nos.4 (xiv) and 4 (xvii), the language of the grant expressly authorizes the AUTHORITY "to evict the lessee from the lands" or "resume and enter upon the whole of the land". Whether such right "to evict" or "resume", of the AUTHORITY includes the right to recover possession without the need to resort to a civil suit is also a question we need not decide in this case as that issue does not arise.

40. We have discussed the Scheme of GRANT-I dated 18.03.1969 only to indicate the difference between the nature of the rights of the AUTHORITY against the appellant because we have already recorded a conclusion that the AUTHORITY cannot invoke any statutory powers flowing from the ACT against the appellant and could only exercise such rights that are available to it under the GRANT-I.

41. We have already set out the four clauses under GRANT-I in paragraph 34 supra which deal with the termination of the grant made in favour of the appellant. The only clause, invoked in the show cause notice dated 15.1.2002 of the AUTHORITY is clause (xiv).

42. Even the respondents do no claim that the impugned action could be justified under the other three clauses. Clause (xiv) purports to enable the AUTHORITY to terminate the GRANT-I and evict the appellant in only one contigency. At the cost of repetition, we extract clause (xiv) again;

A (xv) That the lessee shall use the land for the specified purpose within a period of one year from the date of the lease, failing which the lease may be terminated and the lessee evicted from the lands without notice. In case extension is required it can be granted within the B discretion of the lessor.

43. Clause (xiv) stipulates that in the event of the appellant failing to "use the land for the specified purpose within a period of one year from the date of the lease" (GRANT-I), the same C may be terminated and the appellant be evicted from the lands without notice. It is an undisputed fact that the appellant was given the land in dispute for the purpose of establishing "alloy tool and special steel plants and the roll foundry" project. That is the purpose specified under the GRANT. Admittedly, the D appellant utilized 200 acres of land out of 350 acres of land for the establishment of the said project. The question is whether clause (xiv) obligates the appellant to utilise every inch of the 350 acres for the "specified purpose within a period of one year". Whether the appellant is liable to be evicted from a E portion of the land on the ground that portion of the land is not physically utilised for the specified purpose?

44. In our view, the answer must be in the negative for the following reasons;

F (i) To understand the meaning and scope of clause (xiv), the following factors are required to be examined ; (i) purpose for which the GRANT was made, (ii) the terms and conditions upon which the GRANT was made, (iii) the various contingencies under which the GRANT could G be terminated in full or in part etc. (iv) the scheme of the GRANT

(ii) The land in dispute was transferred to the appellant for a specific purpose under GRANT-I. The appellant H

did in fact establish the industry for the establishment of which the GRANT-I was made and has been successfully running the industry for the last about 40 years (approximately). For the said purpose, the appellant utilised a substantial portion of the land covered by the GRANT and therefore, it cannot be said that the appellant did not utilise the land for the purpose specified under the GRANT-I. Such a GRANT was made for a consideration (Salami of Rs. 24,48,670/-) apart from an annual rent for the land which the appellant has admittedly been paying.

(iii) Analysis of the scheme of clauses (iv), (v), (xiv) and (xvii), reveals that only clauses (iv) and (v) speak about "any part" or "parts" of the land which the appellant is liable to transfer on demand by the AUTHORITY under clause (iv) or voluntarily under clause (v). Clause (xvii) stipulates the right of the second respondent "to resume and enter upon the whole of the said land" in the event of breach by the appellant of any of the terms and conditions of GRANT-I, whereas clause (xiv) significantly does not employ the expression "part" or "parts of the land".

(iv) Clause (xiv) does not contemplate 'taking possession of parts of the land' in contra-distinction to clauses (iv) and (v). It only contemplates the termination of the GRANT-I in the event of the failure on the part of the appellant to use the land for the specified purpose and eviction of the appellant from the land. In our opinion, the language of the clause is significant. It can only be invoked in the case of total failure to utilise the land for the specified purpose. Clause (xiv) read with the right of the appellant under clause (v) to sell a part of the land covered by the GRANT-I which is no longer

A required by him, can lead to only one conclusion that it was never intended by the GRANT-I that every inch of the land must be utilised for the purpose of the establishment of the industry. Any other construction of clause (xiv) would simply render the clause (v) B meaningless and destructive of the right created thereunder in favour of the appellant. We are, therefore, of the opinion that the second respondent is not entitled to invoke clause (xiv) in support of its impugned decision.

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45. In view of the above conclusion, the other submission of the appellant need not be examined.

46. The appeal is allowed. The impugned judgment is D set aside. Consequentially, the writ petition is allowed and the order dated 17.11.2008 of the third respondent is quashed. No order as to costs.

Kalpana K. Tripathy Appeal allowed.