IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2023

PRONOUNCED ON : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.22388 and 23846 of 2022
and
W.M.P.Nos.21446, 21447, 22832 & 22835 of 2022

W.P.No.22388 of 2022:

M/s. SCM Silks Private Limited,
Rep. by its Managing Director,
Mr.K.Sivalingam,
No.74, Near Market Street,
Tirupur – 641 604. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by Secretary to the Government,
Revenue and Disaster Management Department,
Land Reforms Wing,
LR3(1) Section, Secretariat,
Chennai – 9.

2.The Principal Secretary & Commissioner,
Commissioner of Land Reforms (i/c)
Government of Tamil Nadu,
Ezhilagam,
Chepauk, Chennai – 600 005.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

4.The Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George, Chennai – 600 009.

5.The District Collector,
Kancheepuram District.

6.The District Revenue Officer,
Kancheepuram.

7.The Revenue Divisional Officer,
Tambaram, Kancheepuram District.

8.Assistant Commissioner,
Land Reforms, Villupuram.

9.The Tahsildar,
Aalandur Taluk,
Kancheepuram District.

10.The International Asset Reconstruction Company
Private Limited,
New No.26, G.N. Chetty Road,
T. Nagar, Chennai – 600 017.

11.The Manager,
Canara Bank,
Spencer Tower-I, Ground Floor,
No.770, Anna Salai, Chennai – 600 002.

12.Sri Ramachandra Educational and Health Trust,
Rep. by its Managing Trustee,
24/26, C.V. Raman Road,
Alwarpet, Chennai – 18. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records relating to Letter No.59183/LR3(1)/2005-57, dated 30.06.2022, to quash the same and consequently forbearing the respondents from interfering with the petitioner's possession over the lands covered under the impugned order.

W.P.No.23846 of 2022:

International Asset Reconstruction Company
Private Limited,
Represented by its Senior Vice President
and Business Head (South),
Ms.Aruna Mannath, Door No.1, 9th Floor,
"Prashanth Real Gold Tower",
D.No.39, North Usman Road, T. Nagar,
Chennai – 600 017. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by Principal Secretary to the Government,
Revenue and Disaster Management Department,
Land Reforms Wing,
LR3(1) Section, Secretariat,
Chennai – 600 009.

2.The Principal Secretary & Commissioner,
Commissioner of Land Reforms (I/c)
Government of Tamil Nadu,
Ezhilagam,
Chepauk, Chennai – 600 005.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

4.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.

5.The District Collector,
Kancheepuram District.

6.The District Revenue Officer,
Kancheepuram.

7.The Revenue Divisional Officer,
Tambaram, Kancheepuram District.

8.Canara Bank,
Represented by its Manager,
Spencer Tower-I,
Ground Floor, No.770, Anna Salai,
Chennai – 600 002.

9.M/s. Siva Industries and Holding Limited,
Represented by its Managing Director,
Old No.19, New No.32, Cathedral Garden Road,
Nungambakkam, Chennai – 600 034.

10.M/s. SCM Silks Private Limited,
Represented by its Managing Director,
Mr.K.Sivalingam, No.74, Near Market Street,
Tirupur – 641 604.

11.Sri Ramachandra Educational and Health Trust,
Represented by its Managing Trustee,
No.24/26, C.V. Raman Road,
Alwarpet, Chennai – 600 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent No.1 herein culminating in the Letter No.59183/LR3(1)/2005-56 dated 30.06.2022 and to quash the same and consequently restrain the respondent Nos.1 to 7, their officers, men, agents, etc. from taking any further action to resume the lands scheduled under G.O.(Ms.) No.1959 dated 17.12.1987.

For Petitioners : Mr.G.Masilamani
Senior Counsel
For Mr.S.Sivashanmugam
(W.P.No.22388 of 2022)

: Mr.P.S.Raman
Senior Counsel
For Mr.Chethan Sagar
(W.P.No.23846 of 2022)

For R1, R2, R4 to R9 : Mr.R.Shunmuga Sundaram
Advocate General
Assisted by Mr.K.M.D.Muhilan
Additional Government Pleader
and Ms.A.G.Shakeenaa
(W.P.No.22388 of 2022)

For R1, R2, R4 to R7 : Mr.R.Shunmuga Sundaram
Advocate General
Assisted by Mr.K.M.D.Muhilan
Additional Government Pleader
and Ms.A.G.Shakeenaa
(W.P.No.23846 of 2022)

For R3 : Mr.Y.Bhuvanesh Kumar
(in 2WPs)

For R11 : Mr.M.L.Ganesh
(in W.P.No.22388 of 2022)

For R8 : Mr.M.L.Ganesh
(in W.P.No.23846 of 2022)

For R12 : Mr.M.K.Kabir, Senior Counsel
For Mr.T.M.Mano
(in W.P.No.22388 of 2022)

For R11 : Mr.M.K.Kabir, Senior Counsel
For Mr.T.M.Mano
(in W.P.No.23846 of 2022)

For R9 : No Appearance
(in W.P.No.23846 of 2022)

COMMON ORDER

The writ petition in WP No.22388 of 2022 has been filed by M/s.SCM Silks Private Limited. The writ petition in WP No.23846 of 2022 has been filed by International Asset Reconstruction Company Private Limited.

2. Both the writ petitions are instituted questioning the validity of the order dated 30.06.2022 issued by the first respondent-Secretary to Government, Revenue and Disaster Management Department, Chennai – 600 009. Thus, the cases are heard together.

FOR MORE CLARITY, LET US FIRST CONSIDER THE SCOPE OF THE IMPUGNED ORDER UNDER CHALLENGE IN THESE WRIT PETITIONS:

3. The impugned order addressed to M/s.SCM Silks Private Limited was issued pursuant to the representation submitted by the said Company, seeking exemption under Section 73 (vi)(vii) of the The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 [herein after

referred as 'The Act', in short]. The order impugned states that the request of the petitioner M/s.SCM Silks Private Limited cannot be considered for grant of exemption under the Act and further action will be taken after resuming the land from Sri Ramachandra Educational and Health Trust. Therefore, the first respondent has not passed any final orders either resuming the lands covered under Section 37-B of the Act or assigned the lands in favour of any other persons. The order impugned in unambiguous terms stipulates that further action will be taken for resumption of the Government lands from Sri Ramachandra Educational and Health Trust for whom the permission was granted to establish Medical Institution under Section 37-B of the Act. Therefore, the Government had no official transaction with the writ petitioners. M/s.SCM Silks Private Limited is no way connected with the permission granted to establish Medical Institution by Sri Ramachandra Educational and Health Trust under Section 37-B of the Act.

4. Thus, the application submitted by the M/s.SCM Silks Pvt Ltd., seeking exemption under Section 73(vi)(vii) of the Land Ceiling Act, was rejected and further intimation was given that actions will be initiated against the Sri Ramachandra Educational and Health Trust. Thus, the scope

of adjudication in the writ petitions filed by the petitioners herein are undoubtedly limited and they are attempting to establish the case pursuant to the sale of 37-B lands by Sri Ramachandra Educational and Health Trust in favour of third parties.

5. Question arises, whether the petitioner M/s.SCM Silks Pvt Ltd., is entitled to seek exemption under Section 73(vi)(vii) of the Act, from the application of the Act by itself, in the absence of any permission granted in favour of the writ petitioner M/s.SCM Silks Pvt Ltd., under Section 37-B of the Act. Thus, the issues are to be confined with reference to the rejection of exemption under Section 73 (vi)(vii) of the Act and it becomes unnecessary to expand the scope of the writ petitions.

FACTS AS STATED IN WP No.22388 of 2022:

6. In G.O.Ms.No.1079, Health and Family Welfare Department dated 01.07.1985, the Government approved the proposal for starting a new Private Medical College in Tamil Nadu without any financial commitment to Government. Sri Ramachandra Educational and Health Trust along with two

other Colleges had permitted to open their Medical Colleges as Private Self-Financing College and Hospital on 24.07.1985. The Government granted permission in favour of Sri Ramachandra Educational and Health Trust to acquire / to hold the lands by public trust for educational or hospital purposes under Section 37-B of the Land Ceiling Act.

7. In G.O.Ms.No.No.1959, Revenue Department dated 17.12.1987, the Government granted permission to the eleventh respondent (R-11) / Trust to acquire and hold approximately 269.34 acres of land in various villages in Kanchipuram District under Section 37-B of the Land Ceiling Act. An extent of 125.66 acres of land is Government Poromboke land and an extent of 133.68 accres of land is patta land belonging to the Trust. Thereafter, the eleventh respondent (R-11) established a Medical College and Hospital.

8. On 16.06.1989, the Trust had requested the Government to alienate approximately 108.40 acres Government Poromboke land to it. Vide G.O.Ms.No.913, Revenue Department, the Government did not accept the Trust petitions and rejected the applications seeking alienation of the

Government lands.

9. On 25.06.1989, the Managing Trustee passed a Resolution agreeing to taking over of Ramachandra Medical College and Research Institute by the Government. A letter dated 25.06.1989 was handed over to the then Chief Minister of Tamil Nadu. Out of 176 acres of land in which Medical College and Hospital were constructed, only 54 acres remained as patta land of the Trust. Vide G.O.Ms.No.1082, Health, Indian Medicine Homoeopathy and Family Welfare Department dated 26.06.1989, Sri Ramachandra Medical College and Research Institute was taken over by the Government with attached Hospital along with the assets. Subsequently, Medical College taken over by the Government was handed over to Tamil Nadu Arasu Medical Science and Research Institute (TAMARAI) on 01.07.1989. On 06.09.1989 TAMARAI addressed the Secretary to Government to take over the lands measuring 59.59 acres (48.41 acres of patta land of Trust + 3.18 acres of Poromboke land) situated at the opposite side of the College for constructing a Housing Colony. Later, TAMARAI initiated land acquisition proceedings for the aforesaid purposes.

10. After taking over of the Ramachandra Medical College by the Government, it was handed over to TAMARAI. Various Sale Deeds were executed by Sri Ramachandra Educational and Health Trust in favour of the third party, namely, M/s.Sterling Computers Private Limited. All the Sale Deeds were executed in the year 1990. The Sale Deeds were executed in respect of the properties belonging to the Trust situate opposite to the College. The details of the Sale deeds are as under:-

S.No.	Date	Details
1.	28.08.1990	By Sale Deed (Document No.3470/1990) Munirathnam (P.A.) sold an extent of 1578.33 sq.m., to Sivasankaran (M.D.), M/s.Sterling Computers Pvt Ltd) in S.No.36p, 35/4, 17p, 42/4p, 35/1p.
2.	05.03.1990	By Sale Deed (Document No.638/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 9308.10 sq.m to C.Chandra Ammal in S.No.14,16,21,22,25,19.
3.	05.03.1990	By Sale Deed (Document No.639/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 1295.04 sq.m to R.Chinnakannan in S.No.38/1, 34p, 9, 17p.
4.	05.03.1990	By Sale Deed (Document No.641/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 8498.40 sq.m to S.Jayalakshmi in S.No.28, 29, 40, 39, 36, 28, 29, 34.
5.	28.03.1990	28.03.1990 by Sale Deed (Document No.902/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra

S.No.	Date	Details
		Educational Trustee) sold an extent of 9429.51 sq.m to M/s.Karthik Software Consultants Pvt Ltd in S.No.5, 7, 8, 19, 13, 41, 37.
6.	11.09.1990	By Sale Deed (Document No.3057/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 2003.27 sq.m to Santhosh Robert in S.No.5, 19, 30, 9p, 26p.
7.	11.09.1990	By Sale Deed (Document No.3058/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 2003.27 sq.m to P.Umapathy (Chief Executive of M/s.Srinivas Enterprise) in S.No.7p, 8p, 18/1p, 18/2, 33/1p.
8.	14.05.1990	By Sale Deed (Document No.901/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 9712.80 sq.m to Charles Chacko (M/s.Shanmugam Consultants Pvt Ltd) in S.No.13, 16, 15, 14, 24, 23, 30, 42.
9.	14.05.1990	By Sale Deed (Document No.3647/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 8579.34 sq.m to Charles Chacko in S.No.29, 30, 32, 33, 27, 38, 34, 26. By Sale Deed (Document No.3650/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 8701.05 sq.m to Laxmiammal in S.No.38, 33, 29, 14, 27, 15, 35, 9, 26. By Sale Deed (Document No.3649/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 3298.31 sq.m to Ms.Nithyavathi in S.No.9.

S.No.	Date	Details
		By Sale Deed (Document No.3648/1990) P.V.Ramaswamy Udaiyar (Sri Ramachandra Educational Trustee) sold an extent of 6070.28 sq.m to P.Umapathy (Chief Executive of M/s.Srinivas Enterprise) in S.No.17, 9p, 18.

11. In the year 1991, Sri Ramachandra Educational and Health Trust filed writ petition in WP No.5135 of 1991, for payment of compensation and WP No.5136 of 1991 challenging the G.O.Ms.No.1082, Health, dated 26.06.1989 and for a direction to restore the possession of the properties. Meanwhile, the land sold in favour of third parties by Ramachandra Trust was classified from 'Agricultural' to 'Primary Residential Zone' in G.O.Ms.No.742, Housing and Urban Development Department, dated 29.04.1991. Both the writ petitions were dismissed on 05.04.1991. After disposal of Government Order for re-classification of lands purchased by M/s.Sterling Computers and others from Agricultural and Primary Residential Zone, an appeal was filed in WA No.740 of 1991 and the Hon'ble Division Bench of this Court allowed the Writ Appeal by quashing G.O.Ms.No.1082, dated 26.06.1989. The Government implemented the orders of the Hon'ble Division Bench of this Court vide G.O.Ms.No.856,

Health and Family Welfare Department, dated 29.07.1992. Thus Sri Ramachandra Medical College and Research Institute was under the Administrative control of the Government from 26.06.1989 to 29.07.1992 (about 3 years). Since the subject land was re-classified as primary residential zone, a potion of the land to an extent of 4.58 acres was gifted for the maintenance of Open Space Reservation Lands (OSR Lands) in the year 1993.

12. Sri Ramachandra Medical College and Research Institute was made as Deemed University by the Central Government on 29.09.1994. Accordingly, vide G.O.Ms.No.1061 dated 01.11.1994, Sri Ramachandra Medical College and Research Institute was recognised as Deemed University.

13. On 04.01.1995, the managing Trustee of the Sri Ramachandra Educational Trust given a statement to the Assistant Commissioner of Land Reforms that an extent of 163.74 acres, out of 259.34 acres was put to use for the College, Hospital, Playground, Park etc., and an extent of 42.70 acres of land was sold to third parties under the

coercion of the then Government. Along with the said statement, the Trustee had enclosed the Sale Deeds. It was an undated statement. Thereafter, M/s.Sterling Computers Limited sought for planning permission for the construction of a building on the land purchased by them and permission was also granted in their favour during the year 1996. M/s.Sterling Computers and other parties on 22.07.1996 requested the Government that an extent of 1.45.9 hectares (4.38 acres) of land comprised in various survey numbers situate at Thelliyaragaram Village, is a poromboke land, which is situated in the lands purchased by them and sort for the alienation of such land.

14. In G.O.Ms.No.9921, Revenue Department dated 22.10.1997, the Revenue Department fixed the sale price at Rs.65,108/- per cent for an extent of 4.38 acres. On 31.08.2000, the District Collector, Kanchipuram has held that none of the land of the M/s.Sterling Computers and others is hit by Tamil Nadu Land Reforms Act and based on G.O.Ms.No.992, dated 22.10.1997 ordered for the conveyance of land measuring 4.38 acres on payment of Rs.6,64,25,863.14 by M/s.Sterling Computers.

15. On 09.10.2001, the Collector, Kanchipuram issued a notice of repossession of the land measuring 4.38 acres to the M/s.Sterling Computers. M/s.Sterling Computers sought permission for the construction of residences in the year 2004. The Government has increased the market price payable with 9% interest per annum in the year 2005. A planning permission sought for the construction of residential building complex, was granted by the Government on 26.10.2013. In the mean time, an extent of 3 acres of poromboke land located within the patta land, which is purchased by M/s.Sterling Computers Limited was also assigned in their favour by the Government on payment of twice the market value.

16. At this juncture, M/s.Siva Compulink Ltd., and others have requested the Government to exclude 42.69 acres from the purview of the orders passed under Section 37-B on 24.02.2016. Subsequently, the Company had availed a loan of Rs.500/- Crores from the ninth respondent (R-9) Bank by mortgaging the lands measuring about 40.53 acres purchased from the Trust in the year 2017. On account of failure by the mortgagor in repayment of the loan, the loan amount was declared as a Non Performing

Asset. The eleventh respondent (R-11) thereafter initiated action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as the 'SARFAESI Act, 2002', in short] and assigned the loan amount in favour of the tenth respondent (R-10) / International Asset Reconstruction Company Private Limited. The tenth respondent (R-10) had sold an extent of 1.32 acres of land to a third party and 4.40 acres of land in favour of the petitioner-Company under a Private Treaty and a Sale Certificate was also issued on 30.05.2017.

17. On 30.05.2017, the Director of Land Reforms and the Commissioner of Land Reforms wrote a letter to District Revenue Officer (DRO), Kancheepuram stating that the report was sent to the Government against the sale of lands, which were permitted by the Government under Section 37-B of the Act and requested the DRO to cancel the pattta effected in the name of Ramachandra Trust for the sold out lands. In the meantime, on 30.05.2017, the impugned order has been passed by the second respondent to direct the fifth respondent to take action to cancel the patta granted in favour of the petitioners on the ground that the eleventh

respondent (R-11) Trust had sold the land in favour of M/s.Sterling Computers Ltd., which is in violation of the exemption granted under Sections 37 and 126-B of the Land Reforms Act and therefore the land is liable to be transferred to the Government under Section 20-A of the Land Reforms Act, 1961. Accordingly, the fifth respondent directs the sixth respondent (R-6) to proceed further pursuant to the order passed by the second respondent.

18. On 26.12.2017, M/s.SCM Silks Private Limited applied for Planning Permission to CMDA and one Mr.E.Palani gave petition to CMDA on 23.03.2018 stating that the subject land was sold in violation of Section 37-B of the Act. M/s.SCM Silks Private Limited submitted their explanations setting out the earlier events happened. Under those circumstances, this Court by its order dated 21.12.2018 had directed Dr.Niranjan Mardi, IAS, Chief Secretary to Government to conduct a detailed enquiry with regard to the lands sold by M/s.Sri Ramachandra Educational and Health Trust to M/s.Sterling Computers Ltd., and others. Dr.Niranjan Mardi, IAS, filed his report on 12.06.2019 recording the facts based on the files collected from various Departments.

19. The writ petition was disposed of by this Court with a direction to the twelfth respondent (R-12) to conduct a detailed enquiry on the application filed by the original purchaser M/s.Siva Compulink Limited (formerly known as M/s.Sterling Computers Ltd.,) and and others on 24.02.2016, seeking to exclude the lands under Section 73(vi) and (vii) of the Land Reforms Act, 1961 and other issues arose in the instance case based on the available records after giving an opportunity of hearing to all the parties in the writ petition and other interested parties and pass appropriate orders in accordance with law.

20. Pursuant to the said directions issued by this Court in WP No.19752 of 2018, the present impugned order has been passed rejecting the application filed by M/s.Sterling Computers., seeking exemption under Section 73(vi)(vii) of the Land Reforms Act.

SUBMISSIONS ON BEHALF OF THE PETITIONERS IN WP NO.22388 OF 2022:

21. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that no action has been taken by the Government within a reasonable period of time and several developments took place and the agricultural lands were reclassified as primary residential zone and Building Planning Permission were granted by the Competent Authorities. Several third parties have purchased the property and therefore, at this length of time, actions initiated by the respondents are untenable. The initiation of action is hit by the principles of laches. The lands were originally sold in favour of M/s.Sterling Computers, in the year 1990 and almost, 33 years completed and therefore, the Government is estopped from initiating action at this length of time.

22. The learned Senior Counsel appearing on behalf of the writ petitioners contended that impliedly the Government recognised the same and pass several Government Orders granting construction permissions through its Departments by converting the agricultural lands as primary

residential zone. The various Government Orders passed by the Government Departments would be sufficient to hold that the respondents are estopped from initiating further action.

23. The principles of promissory estoppel is to be pressed in the present case. In view of the order passed by the Government for the past about three decades, actions under Section 37-B of the Land Reforms Act, 1961 has been waived, since the Government granted permission for construction of buildings to the third party buyers have acquired the vested right by spending huge money. The OSR lands given by the Builders were also accepted and acted upon and CMDA is benefited. Therefore, the respondents cannot now approbate and reprobate.

24. The Government Orders referred regarding the re-classification of agricultural lands as primary residential zone and the consequential permissions granted for construction of building would reveal that the Government impliedly accepted the title of the third party purchasers and thus the Government waived their right under Section 37-B of the Land Reforms Act.

25. Sri Ramachandra Trust had not disputed nor challenged to rescind the sale. The Trust received the sale consideration and sold the lands to the third parties. Thus Sri Ramachandra Trust cannot claim back the sold and delivered land and any further action in this regard is barred by limitation.

26. Sri Ramachandra Medical College had now become University. Hence lands of University become exempted under Section 70 of the Land Reforms Act, 1961. Feeding the grant by estoppel under Section 43 of the TP Act shall become applicable in favour of the purchasers.

27. The learned Senior Counsel for the petitioners reiterated that SARFAESI Act overrides all other laws. Thus the sale in favour of the petitioners is protected by law under Section 31(1) of the SARFAESI Act. The agricultural land exemption is not applicable to the facts of the case, in view of the date of mortgage and the date of sale under the SARFAESI Act to the petitioners. If the land ceases to agricultural land and thereafter, the provisions of the land Reforms Act, shall not apply to the non-agricultural

lands. Even presuming the same as irregular, it cannot be construed as void. But only vital as per procedures. However, the Government has not exercised its powers under Section 37-B of the Act, within a reasonable period of time and therefore, now they cannot exercise after this length of time, which is hit by the principles of laches.

28. Section 37-B of the Land Reforms Act, permission was granted to Sri Ramachandra Trust to acquire and hold rent excess of selling the land, the purchasers were made in the matter of Section 37-B permission and the Trust hold his ownership. The lands were not in the name of the Government and therefore, the contention of the Government in this regard is unacceptable. The lands were purchased in the name of the Trust as per the Transfer of Property Act, Stamp Act and Registration Act. The names of the purchasers were mooted in the revenue records pattas were granted under the provision of the Patta Pass Book Act.

29. The Government is not beneficial owner and admittedly there is no benami transactions as such. No action has been taken at any point of time by invoking Section 37-B of the Land Reforms Act read with

Rule 1961.

30. When the procedures under the Rules stipulate the actions to be taken in a particular manner, then it must be taken in regard to the procedures contemplated. In the event of failure on the part of the Government to follow the procedures, the land does not vest automatically with the Government under Section 37-B of the Land Reforms act r/w Land Reforms Rule 61 contemplates special procedures to deal with Section 37-B of the permission violations. The procedures are self contained and complete core. The procedure is to be mandatorily followed under Section 37-B permission and till such time, the permission granted is cancelled, the Government cannot claim any right over the subject property.

31. The Tamil Nadu Land Reforms Act, 1961 is an Agrarian Reforms Act, communicated with an object to redistribute the agricultural lands to the landless poor for doing agricultural work as provided under Section 94 of the Act. Now the subject land is ceased to be an agricultural land and has become an urban residential land as per the Government Orders. Thus in reality the land cannot be distributed for agricultural

purposes. Therefore, invoking the provisions of the said Act, would not arise at all.

32. The petitioner M/s.SCM Silks Pvt Ltd., is the bona fide purchaser of the land for a valuable consideration of more than Rs.500 crores. The petitioners purchased the valuable land with a bona fide belief that there is a protection under the SARFAESI Act. Various Government Orders impliedly recognised the sale made originally in favour of M/s.Sterling Computers.

33. The agricultural lands had been re-classified as primary residential zone and building approval was also granted by the CMDA and the Government. The OSR land offered was accepted. Therefore, the principles of legitimate expectation have to be applied to the petitioners.

34. In the present case, since the petitioner is M/s.SCM Silks Pvt Ltd., the bona fide purchaser and other rights are protected under the provisions of the SARFAESI Act.

35. The learned Senior Counsel appearing on behalf of the petitioners contended that the petitioners has purchased the property by way of an auction through SARFAESI sale. Thus the remedy provided under the SARFAESI Act alone should be followed and the sale cannot be undone by cancellation of patta through an Executive Act under Section 17 of the SARFAESI Act.

36. At the outset, the procedures as contemplated under the SARFAESI Act is to be followed for cancellation of sale and therefore, the very action initiated in this regard by the respondents are liable to be set aside.

37. In support of the above contentions, the learned Senior Counsel appearing on behalf of the writ petitioners relied on the following judgments:

In the case of **State of Punjab vs. Nestle India Ltd and Another [(2004) 6 SCC 465]**, wherein the Hon'ble Supreme Court of India in paragraph-25 held as under:-

"25. *In other words, promissory estoppel*

long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute.

Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it." (SCC p. 453, para 33)

(emphasis added)

38. In the case of **M/s.Motilal Padampat Sugar Mills vs. State of Uttar Pradesh and Others [(1979) 2 SCC 409]**, wherein the Hon'ble Supreme Court of India in paragraphs 5 and 6 held as under:-

"5. We shall first deal with the question of waiver since that can be disposed of in a few words. The High Court held that even if there was

an assurance given by Respondent 4 on behalf of the State Government and such assurance was binding on the State Government on the principle of promissory estoppel, the appellant had waived its right under it by accepting the concessional rates of sales tax set out in the letter of Respondent 5 dated January 20, 1970. We do not think this view taken by the High Court can be sustained. In the first place, it is elementary that waiver is a question of fact and it must be properly pleaded and proved. No plea of waiver can be allowed to be raised unless it is pleaded and the factual foundation for it is laid in the pleadings. Here it was common ground that the plea of waiver was not taken by the State Government in the affidavit filed on its behalf in reply to the writ petition, nor was it indicated even vaguely in such affidavit. It was raised for the first time at the hearing of the writ petition. That was clearly impermissible without an amendment of the affidavit in reply or a supplementary affidavit raising such plea. If waiver were properly pleaded in the affidavit in reply, the appellant would have had an

opportunity of placing on record facts showing why and in what circumstances the appellant came to address the letter dated June 25, 1970 and establishing that on these facts there was no waiver by the appellant of its right to exemption under the assurance given by Respondent 4. But in the absence of such pleading in the affidavit in reply, this opportunity was denied to the appellant. It was, therefore, not right for the High Court to have allowed the plea of waiver to be raised against the appellant and that plea should have been rejected in limine.

6. Secondly, it is difficult to see how, on the facts, the plea of waiver could be said to have been made out by the State Government. Waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be "an intentional act with knowledge". Per Lord Chelmsford, L.C. in Earl of Darnley vs. London, Chatham and Dover Rly. Co. [(1867) LR 3 HL 43, 57 : 16 LT 217] There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge

of such right, he intentionally abandons it. It is pointed out in Halsbury's Laws of England (4th Edn.) Volume 16 in para 1472 at p. 994 that for a "waiver to be effectual it is essential that the person granting it should be fully informed as to his rights" and Isaacs, J. delivering the judgment of the High Court of Australia in Craine vs. Colonial Mutual Fire Insurance Co. Ltd. [(1920) 28 CLR 305 (Aus)] has also emphasised that waiver "must be with knowledge, an essential supported by many authorities". Now in the present case there is nothing to show that at the date when the appellant addressed the letter dated June 25, 1970, it had full knowledge of its right to exemption under the assurance given by Respondent 4 and that it intentionally abandoned such right. It is difficult to speculate what was the reason why the appellant addressed the letter dated June 25, 1970 stating that it would avail of the concessional rates of Sales Tax granted under the letter dated January 20, 1970. It is possible that the appellant might have thought that since no notification exempting the appellant from Sales Tax had been issued by the State

Government under Section 4-A, the appellant was legally not entitled to exemption and that is why the appellant might have chosen to accept whatever concession was being granted by the State Government. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated June 25, 1970. In fact, in the petition as originally filed, the right to claim total exemption from Sales Tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out

in Martindale vs. Falkner [(1846) 2 CB 706 : 135 ER 1124] :

"There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so."

Scrutton, L.J., also once said:

"It is impossible to know all the statutory law, and not very possible to know all the common law."

But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans vs. Bartlam [(1937) AC 473, 479 : (1937) 2 All ER 646] :

"... the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application."

It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the. appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by

addressing the letter dated June 25, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government."

39. In the case of **M/s.Power Control Appliances and Others vs. Sumeet Machines Pvt. Ltd [(1994) 2 SCC 448]**, wherein the Hon'be Supreme Court of India in paragraph 26 held as under:-

> *"26. Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches. In Harcourt vs. White [(1860) 28 Beav 303 : 54 ER 382] Sr. John Romilly said: "It is important to distinguish mere negligence and acquiescence." Therefore, acquiescence is one facet of delay. If the plaintiff stood by knowingly and let the defendants build up an important trade until it had become necessary to crush it, then the plaintiffs would be stopped by their acquiescence. If the*

acquiescence in the infringement amounts to consent, it will be a complete defence as was laid down in Mouson (J.G.) & Co. vs. Boehm [(1884) 26 Ch D 406] . The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant as was laid down in Rodgers vs. Nowill [(1847) 2 De GM&G 614 : 22 LJ KCH 404] . "

40. In the case of **Jaswantsingh Mathurasingh and Another vs. Ahmedabad Municipal Corporation and Others [(1992) Supp.(1) SCC 5]**, wherein the Hon'ble Supreme Court in paragraphs 12 to 14 held as under:-

"12. The purposes of clauses (3) and (4) of Rule 21 are obvious and the consequences that would ensue are self-evident. These sub-rules subserve the principles of natural justice to avoid arbitrariness offending Article 14 and to be just and fair procedures satisfying the mandate of Article 21. Non-observance otherwise would render the scheme illegal. No provision of a statute or rule would be rendered surplusage or

otiose. The construction of the rules by the Full Bench would, however, result in rendering sub-rules (3) and (4) surplusage and otiose. Sub-rule (4) postulates that Town Planning Officer shall give to a person affected by the scheme sufficient opportunity to state his views and shall not give any decision till he duly considers the representation, if any. The issuance of notice under sub-rule (3) and giving of sufficient opportunity under sub-rule (4) are self-evident to subserve the basic concept of fair and just procedure. Accordingly we hold that issuance of special notice of at least three clear days duration and giving sufficient opportunity to the person affected to put forth his views of the scheme are mandatory and non-compliance thereof vitiates the validity of the final scheme.

13. The use of 'shall' in the given circumstances may be construed to be directory but not mandatory as contended by Shri Mehta. The appearance of 'shall' is not conclusive, nor per se connotes its mandatory contour. Its meaning must be ascertained in the light of the legislative intent in its employment, the context in

which it was couched, the consequences it produces the result it effected and above all the purpose it seeks to serve, would all be kept in view. From the fact situation the courts are to cull out the intention whether the construction to be put up would subserve the purpose of the legislative intent or tend to defeat it. Public interest, is always, a paramount consideration. Since the non-compliance with issuance of notice and giving of sufficient opportunity contemplated under sub-rules (3) and (4) of Rule 21 injuriously affects the right to property of the owner or interest of the tenant or sub-tenant, as the case may be, it shall be construed to be mandatory and not directory. In this view it is redundant to burden the judgment with all the decisions cited by either counsel.

14. The principle of waiver connotes issuance of notice and non-response thereto. Everyone has a right to waive an advantage or protection which law seeks to give him/her. Undoubtedly, if a notice is issued and no representation was made by either the owner, tenant or a sub-tenant, it would amount to waive

the opportunity and such person cannot be permitted to turn round, after the scheme reaches finality, to say that there is non-compliance of sub-rules (3) and (4) of Rule 21. It would amount to putting premium on dilatory and dishonest conduct."

41. In the case of **Ram Chand and Others vs. Union of India and Others [(1994) 1 SCC 44]**, wherein in paragraph-6, the Hon'ble Supreme Court of India held as under:-

"6. In the case of State of Gujarat vs. Patel Raghav Natha [(1969) 2 SCC 187 : AIR 1969 SC 1297 : (1970) 1 SCR 335] , it was considered whether in a statute, if for exercise of the power, no time-limit has been fixed, the authority, who has to exercise such power, can exercise the same at any time. It was said: (SCC p. 193, para 11)

"The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the

facts of the case and the nature of the order which is being revised."

Same view was reiterated in the case of Mansaram vs. S.P. Pathak [(1984) 1 SCC 125] . It was said: (SCC p. 136, para 12)

"But as stated earlier, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time."

42. In the case of **Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahaim [(1997) 6 SCC 71]**, wherein the Hon'ble Supreme Court of India in paragraph-2 held as follows:-

> *"2. Although Mr Bhasme, learned counsel appearing for the appellant took a stand that under Section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made*

investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah [Spe. WA No. 2770 of 1979] disposed of on 1-3-1990, where in connection with Section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha [(1969) 2 SCC 187 : (1970) 1 SCR 335] and in the case of Ram Chand v. Union of India [(1994) 1 SCC 44] has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The

impugned orders are set aside. No costs."

43. In the case of **Santoshkumar Shivagonda Patil and Others vs. Balasaheb Tukaram Shevale and Others [(2009) 9 SCC 352]**, wherein the Hon'ble Supreme Court of India in paragraphs 10 and 11 held as under:-

> *"10. Recently, in State of Punjab vs. Bhatinda District Coop. Milk Producers Union Ltd. [(2007) 11 SCC 363] while dealing with the power of revision under Section 21 of the Punjab General Sales Tax Act, 1948, it has been held: (SCC p. 367, paras 17-19)*
>
> *"17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.*
>
> *18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the*

statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years."

11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo

motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein."

44. In the case of **Shipping Corporation of India Ltd vs. Machado Brothers and Others [(2004) 11 SCC 168]**, wherein the Hon'ble Supreme Court of India in paragraphs 22, 24, 29 and 30 held as under:-

"22.While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu vs. Motor & General Traders [(1975) 1 SCC 770] (SCC at pp. 772-73, para 4) has held thus:

"4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual

jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy

claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

24. Almost similar is the view taken by this Court in the case of J.M. Biswas vs. N.K. Bhattacharjee [(2002) 4 SCC 68 : 2002 SCC (L&S) 475] wherein this Court held: (SCC p. 71, para 10)

"[The dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. ... In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union."

29. The next ground given by the courts below that the dismissal of the suit would prejudice the respondent, again on the ground of

interlocutory order getting dissolved, cannot also be sustained. If the suit in fact has become infructuous consequences of dismissal of such suit cannot cause any prejudice to the plaintiff. As a matter of fact, the consequence should be to the contrary, that is, such continuance of infructuous suit would cause prejudice to the defendant.

30. We have already noticed that the courts below have also held that the application of the appellant lacks in bona fides. We fail to understand how this is so. If a party has a legal right to ask for dismissal of an infructuous suit, and pursuant to the said right it makes an application for dismissal of the said suit, the same cannot be termed as an act in malice."

45. In the case of **T.M.Sulochana Ammal vs. The Commissioner and Secretary to Government, Revenue and Others [2012 (1) LW 490 (DB)]**, wherein the Hon'ble Division Bench of this Court in paragraphs-14 to 20 observed as under:-

"14. In the cases on hand, the lands acquired as 'surplus' from the landlady have been 'reserved' for the purpose of allotting it to

the members of the 'Tamil Nadu Land Reforms Staff cooperative Housing Society'. In support of their contention that the government is empowered to 'reserve' the lands for a purpose, it deems fit and proper as 'public purpose', the Department and also the said Society, would rely on Rule 13 and say that there is nothing wrong in such reservation of the land by the Government.

15. Rule 13 of the Rules states that 'notwithstanding anything contained in these rules, the Government may if it considers that any surplus land is required for any public purpose, reserve such land for such purpose.

16. These Rules have been framed in exercise of the powers conferred by Section 94(1) of the Tamil Nadu Land. Reforms (Fixation of Ceiling on Land) Act, 1961. Therefore, we have to fall back on Section 94(1) of the Act, to know the purpose for which the Rules have been framed. Section 94 of the Act deals with 'disposal of land acquired by the Government'. For better appreciation, we shall now extract hereunder Section 94:

"94. Disposal of land acquired by the

Government:

(1) Subject to the provisions of sub-section (2) and Section 94-A, the Government may, after taking into consideration the object specified in the preamble, make rules providing for the manner in which any land acquired by the Government under this Act shall be disposed of: (2)(a) In the disposal of the land acquired by the Government under this Act, the Government shall give preference to any person who is completely dispossessed of his holding, or whose extent of holding is reduced below three acres of dry land or one and a half acres of wet land held by him partly as cultivating tenant and partly as owner wholly as cultivating tenant, by virtue of the provisions of this Act."

17. Therefore, the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, came into existence to fulfil the objects sought to be achieved under Section 94 of the Act. Under Section 94, it has been mandated that the Rules to be formulated to achieve the object specified in the preamble of the Act. Therefore, we have to see the objects of the Act.

18. Under sub-clauses (b) and (c) of Article 39 of the Constitution in the Directive Principles of State Policy, the State shall, in particular, direct its policy towards securing That the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In compliance of these obligations created under the Constitution, the State of Tamil Nadu has enacted the Tamil Nadu Land Reform (Fixation of Ceiling on Land) Act, 1961 to provide for the fixation of ceiling on agricultural land holdings and for certain other matters connected therewith with object of reducing disparity in the ownership of agricultural land in the State; to acquire agricultural land in excess of the ceiling area and to distribute such land to the landless and other persons among the rural population so as to best sub-serve the common good, increase agricultural production and promote justice, social and economic.

19. Therefore, the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, particularly Rule 13, cannot be said to deviate from the objects sought to be achieved by the Act, by fixing ceiling on the lands and distribution of the land to the landless poor for increasing the agricultural production and promote justice, social and economic. Though there cannot be any doubt that the State is empowered to reserve the land so acquired, under Rule 13, it cannot be for the purposes, which have not been contemplated under the Act and the Rules. Thus, if we keep these avowed objects sought to be achieved by the Legislature in mind, we cannot justify the action of the official respondents in 'reserving' the land for the purpose of allotting to their staff members for construction of house sites.

20. More so, allotting the agricultural land without changing the nature of the land to suit for construction of houses is contrary to the provisions of the Act and this colourable exercise of power on the part of the Government is in utter disregard to the principles underlying the enactment of the Act."

46. In the case of **Indian Bank and Another vs. K.Pappireddiyar and Another [(2018) 18 SCC 252]**, wherein in paragraphs 6 to 10, the Hon'ble Supreme Court of India held as under:-

> *"6. On the other hand, reliance was placed by the learned counsel appearing on behalf of the first respondent on a recent judgment of this Court in ITC Ltd. vs. Blue Coast Hotels Ltd. [ITC Ltd. vs. Blue Coast Hotels Ltd., 2018 SCC OnLine SC 237] , in support of the submission, that no security interest could be created in respect of agricultural land, having due regard to the provisions of Section 31(i). The learned counsel adverted to the findings which were recorded in the judgment of DRAT.*
>
> *7. Section 31(i) of the SARFAESI Act stipulates thus:*
>
> *"**31. Provisions of this Act not to apply in certain cases**.—The provisions of this Act shall not apply to—*
>
> ***
>
> *(i) any security interest created in agricultural land;"*

The expression "security interest" was defined, prior to its amendment, in Section 2(zf) as follows:

*"**2. (zf)** "**security interest**" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31;"*

Clause (zf) was substituted with effect from 1-9-2016 by Act 44 of 2016. At present, the expression is defined as follows:

*"**2. (zf)** "**security interest**" means right, title or interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes—*

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation

incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;."

8. The expression "security interest", both before and after the amendment, excludes what is specified in Section 31. Clause (i) of Section 31 stipulates that the provisions of the Act will not be applicable to any security interest created in agricultural land. The statutory dictionary in Section 2 does not contain a definition of the expression "agricultural land". Whether a particular piece of land is agricultural in nature is a question of fact. In the decision of this Court in Blue Coast Hotels Ltd. [ITC Ltd. vs. Blue Coast Hotels Ltd., 2018 SCC OnLine SC 237] , a security interest was created in respect of several parcels of land which were meant to be a part of

a single unit, for establishing a hotel in Goa. Some of the parcels were purchased by the debtor from agriculturists and were entered as agricultural lands in the revenue records. The debtor had applied to the revenue authority for the conversion of the land to non-agricultural use, but the applications were pending. This Court held that the fact that the debtor had created a security interest was indicative of the position that the parties did not treat the land as agricultural land. The undisputed position was that the hotel was located on 1,82,225 sq m of land of which 2335 sq m were used for growing vegetables and fruits for captive consumption. In this background, the two-Judge Bench of this Court held that:

"49. The mortgage is thus intended to cover the entire property of the Goa Hotel. Prima facie, apart from the fact that the parties themselves understood that the lands in question are not agricultural, it also appears that having regard to the use to which they are put and the purpose of such use, they are indeed not agricultural."

The Court further held that : (SCC OnLine SC para 57)

"57. ... having regard to the character of the land and the purpose for which it is set apart, we are of the view that the land in question is not an agricultural land. The High Court misdirected [Blue Coast Hotels Ltd. vs. IFCI Ltd., 2016 SCC OnLine Bom 2663] itself in holding that the land was an agricultural land merely because it stood as such in the revenue entries, even though the application made for such conversation lies pending till date."

9. The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.

10. The Division Bench of the Madras High Court has failed to adjudicate on the basic issue as to whether the land in respect of which the

security interest was created, was agricultural in nature. DRT rejected the objection of the debtor that the land was agricultural. In appeal, DRAT reversed that finding. Apart from referring to the position in law, the impugned judgment [A. Akthar Hussain vs. K. Pappireddiyar, 2016 SCC OnLine Mad 1838 : AIR 2016 Mad 114] of the High Court contains no discussion of the material which was relied upon by the parties in support of their respective cases; the Bank urging that the land was not agricultural while the debtor urged that it was. Both having regard to the two-Judge Bench decision in Blue Coast Hotels Ltd. [ITC Ltd. vs. Blue Coast Hotels Ltd., 2018 SCC OnLine SC 237] and as explained above, the question as to whether the land is agricultural has to be determined on the basis of the totality of facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties on the date on which the security interest was created. In the absence of a specific finding, we are of the view that it would be appropriate and proper to set aside the judgment of the High Court and to

remit the proceedings for being considered afresh."

47. In the case of **Punjab National Bank vs. Union of India and Others [(2022) 7 SCC 260]**, wherein the Hon'ble Supreme Court of India in paragraphs 21, 22 and 23 held as under:-

> *"21. The learned Senior Counsel has further submitted that Section 35 of the SARFAESI Act, 2002 inter alia, provides that the provisions of the said Act, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law, the provisions of the SARFAESI Act, 2002 shall have overriding effect on all other laws. It was further contended that even the provisions contained in Section 11-E of the Central Excise Act, 1944, which has been inserted w.e.f. 8-4-2011, provides for first charge on the property of the assessee and is a non obstante clause. However, the provisions contained in Section 11-E are subject to the provisions contained in the SARFAESI Act, 2002. Thus, the provisions of the SARFAESI Act,*

2002, even after insertion of Section 11-E in the Central Excise Act, 1944 w.e.f. 8-4-2011, have overriding effect on the provisions of the 1944 Act.

22. In addition to the abovementioned submissions, the learned Senior Counsel for the appellant has argued that it is well-settled law laid down by this Court that the crown debts (unsecured) have no priority over the secured dues of the secured creditors/pawnee/bailee. In support of the above submission, reliance has been placed upon the following judgments:

(i) Bank of Bihar vs. State of Bihar [Bank of Bihar vs. State of Bihar, (1972) 3 SCC 196]

(ii) Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co. [Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694]

(iii) Central Bank of India vs. Siriguppa Sugars & Chemicals Ltd. [Central Bank of India vs. Siriguppa Sugars & Chemicals Ltd., (2007) 8 SCC 353 : (2007) 2 SCC (L&S) 919]

(iv) Union of India vs. SICOM Ltd. [Union of India vs. SICOM Ltd., (2009) 2 SCC 121]

(v) Rana Girders Ltd. vs. Union of

India [Rana Girders Ltd. vs. Union of India, (2013) 10 SCC 746 : (2014) 1 SCC (Civ) 130]

(vi) Sitani Textiles & Fabrics (P) Ltd. vs. Collector of Customs & Central Excise [Sitani Textiles & Fabrics (P) Ltd. vs. Collector of Customs & Central Excise, 1998 SCC OnLine AP 416]

(vii) UTI Bank Ltd. vs. CCE [UTI Bank Ltd. v. CCE, 2006 SCC OnLine Mad 1182 (FB)]

(viii) Krishna Lifestyle Technologies Ltd. vs. Union of India [Krishna Lifestyle Technologies Ltd. vs. Union of India, 2008 SCC OnLine Bom 137]

23. Mr Mehta has, thus, submitted that in view of the above submissions and decided cases, the appellant Bank, being a secured creditor under the provisions of the SARFAESI Act, 2002, had first charge on the secured assets and is entitled to recover its secured dues, prior to the dues of the Excise Department. It has also been submitted that the intention of the legislature, apart from the provisions contained in Section 11-E in the Central Excise Act, 1944 [inserted w.e.f. 8-4-2011], is also evident from the subsequent

provisions inserted in the RDBA Act, 1993, by way of Section 31-B [notified w.e.f. 1-9-2016] and insertion of Section 26-E in the SARFAESI Act [w.e.f. 24-1-2020], that the legislature has always intended that the banks and financial institutions will have priority to recover its secured dues from the secured assets prior to payment/recovery of the dues of the Revenue/taxes, government dues.

48. In the case of **K.Sreedhar vs. Raus Constructions (P) Ltd and Others [2023 SCC OnLine 13]**, wherein the Hon'ble Supreme Court of India in paragraph-28 held as follows:-

"28. Now, so far as with respect to remaining properties/secured assets viz. Item Nos. 3 and 9 to 12 and the submission on behalf of the borrowers that as the said scheduled properties were agricultural properties, therefore the said properties were exempted from the provisions of the SARFAESI Act in view of Section 31(i) of the SARFAESI Act is concerned, at the outset, it is required to be noted that except the revenue records, the borrowers did not file any evidence to show that the agricultural work

was being done in the said properties. On the contrary, the secured creditor produced the photographs to show that there was no agricultural activities being done and no agricultural activity was going on. The High Court has observed and held that the scheduled properties in question were exempted from the provisions of SARFAESI Act in view of Section 31(i) of the SARFAESI Act on the ground that the revenue records and Pattadar pass-books and the title deeds show that the properties were agricultural properties/lands and that no evidence is produced by the secured creditor that these properties are non-agricultural lands and have been put to non-agricultural use after obtaining permission from the competent authorities. Therefore, the High Court has shifted the burden upon the secured creditor to prove that the properties are non-agricultural lands. The view taken by the High Court is just contrary to the two decisions of this Court in the case of Blue Coast Hotels Limited (Supra) and K. Pappireddiyar (Supra). In both the aforesaid decisions, this Court has specifically observed

and held after considering the object and purpose of Section 31(i) of the SARFAESI Act that merely because in the revenue records the secured properties are shown as agricultural land is not sufficient to attract Section 31(i) of the SARFAESI Act. In the aforesaid decision, it is specifically observed and held that for the purpose of attracting Section 31(i) of the SARFAESI Act, the properties in question ought to be actually used as agricultural lands at the time when the security interest was created. In the case of Blue Coast Hotels Limited (Supra), it is also further observed by this Court that since no security interest can be created in respect of agricultural lands and yet it was so created, goes to show that the parties did not treat the land as agricultural land and that the debtor offered the land as security on this basis. After following the decision of this Court in the case of Blue Coast Hotels Limited (Supra), in the case of K. Pappireddiyar (Supra), it is observed and held in paragraphs 8 and 9 as under:

"8. The expression "security interest", both before and after the amendment, excludes what is

specified in Section 31. Clause (i) of Section 31 stipulates that the provisions of the Act will not be applicable to any security interest created in agricultural land. The statutory dictionary in Section 2 does not contain a definition of the expression "agricultural land". Whether a particular piece of land is agricultural in nature is a question of fact. In the decision of this Court in Blue Coast Hotels Ltd.,4 a security interest was created in respect of several parcels of land which were meant to be a part of a single unit, for establishing a hotel in Goa. Some of the parcels were purchased by the debtor from agriculturists and were entered as agricultural lands in the revenue records. The debtor had applied to the revenue authority for the conversion of the land to non-agricultural use, but the applications were pending. This Court held that the fact that the debtor had created a security interest was indicative of the position that the parties did not treat the land as agricultural land. The undisputed position was that the hotel was located on 1,82,225 sq m of land of which 2335 sq m were used for growing vegetables and fruits

for captive consumption. In this background, the two-Judge Bench of this Court held that:

"9. The mortgage is thus intended to cover the entire property of the Goa Hotel. Prima facie, apart from the fact that the parties themselves understood that the lands in question are not agricultural, it also appears that having regard to the use to which they are put and the purpose of such use, they are indeed not agricultural."

The Court further held that : (SCC OnLine SC para 57)

"57. ...having regard to the character of the land the purpose for which it is set apart, we are of the view that the land in question is not an agricultural land. The High Court misdirected5 itself in holding that the land was an agricultural land merely because it stood as such in the revenue entries, even though the application made for such conversation lies pending till date."

9. The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of

land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart."

ARGUMENTS MADE IN WP No.23846 OF 2022:

49. The learned Senior Counsel appearing on behalf of the petitioner i.e., International Asset Reconstruction Company Private Limited mainly contended that the Nationalised Banks verified the title documents and other revenue documents and accordingly sanctioned loan to the tune of Rs.500/- crores. The various Government Orders issued regarding re-classification of agricultural land as primary residential zone and the subsequent approval granted for building constructions and mutation of revenue records would be sufficient to form an opinion that the borrowers have a clear title over the property and accordingly the Banks sanctioned the loan. Since the borrowers committed default in repayment of loan, the Loan Account was declared as Non Performing Asset. Consequently, action was initiated under SARFAESI Act, and thereafter, the Loan Account was

sustained in favour of the writ petitioner, namely, M/s.International Assets Reconstruction Company Private Limited.

50. The learned Senior Counsel for the petitioner reiterated and supported the arguments advanced on behalf of the M/s.SCM Silks Private Limited regarding the period of limitation, the applicability of Section 37-B of the Land Reforms Act, on account of lapse of time and on the ground of promissory estoppel. It is contended that there is no prohibition for sale of lands and Section 37-B of the Land Reforms Act, does not contain any restrain in respect of alienation of lands. Section 37-B stipulates public trust to apply to Government for permission to hold and acquire lands for educational and hospital purposes.

51. Permission was granted subject to the condition that the lands shall be fully utilised for establishment within such period as the Government may from time to time by general or special orders specified. In the absence of such an order, the land shall be utilised for such establishment within a period of five years from the date of order granting permission.

52. The learned Senior Counsel for the petitioner reiterated that Rule 66 of the Land Reforms Rules, also does not contain any restraint in respect of alienation of lands.

53. In this context, it is contended that Sub Rule (2) to Rule 66 of the Land Reforms Rules, deals permission so granted and it states that permission is granted subject to conditions specified in Rule 66(2) (i) to (x). Rule 66(2)(i) pertains to utilisation of the land by the trust for the purpose for which the permission stands granted. Rule 66(2)(ii) and (ii-a) would be applicable where a trust acquire a land for future expansion and hence the said Sub Rules are not applicable hereto. Rule 66 (2) (vi) would not be applicable to this case, as the amendment was made on 31.07.2018 and hence the said Rule cannot now be enforced against the trust after 33 years of transfer of the mortgaged lands. Prior to 31.07.2018 intimation regarding sale of mortgaged lands to the Government was unnecessary and the Government now cannot raise any defence of lack of intimation/knowledge as the Rule itself contemplates such intimation. Therefore, Section 37B of the Land Reforms Act and Rules and Rule 66 of the Land Reforms Rules,

does not create any restriction on the transfer of lands.

54. The learned Senior Counsel for the petitioners relied on the judgment in the case of **Mohinder Singh (Dead) Through LRs and Another vs. Narain Singh and Others [2023 SCC OnLine SC 261]** and the Hon'ble Supreme Court of India in paragraphs 35 and 36 held that "once the rural area is declared to be urbanized by issuance of notification under Section 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of the Act, 1954 cease to apply". In sequel thereto, the proceedings pending under the Land Reforms Act, 1954 become non est and loses its legal significance. Consequently, the Government is not entitled/empowered to take any action, including resumption of land under the Land Reforms Act and the impugned order dated 30.06.2022 passed under the Land Reforms Act, is also without jurisdiction.

55. In the case of **DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622]**, wherein the Hon'ble Supreme Court had an opportunity to deal with similar issue regarding restriction on transfer of title by an owner and in paragraph 36, it

has been held as under:-

> "36. **Right of transfer of land is indisputably incidental to the right of ownership. Such a right can be curtailed or taken away only by reason of a statute. An embargo upon the owner of the land to transfer the same in the opinion of this Court should not be readily inferred.** Section 3(3)(*a*)(*iv*) of the Act does not expressly impose any restriction. The same is merely a part of an undertaking. *Assuming that a prohibition to transfer the land can be read therein by necessary implication, it is interesting to note that the consequence of violation of such undertaking has not been specified. In other words, if a transfer is made in violation of the undertaking, the statute does not provide that the same would be illegal or the transferee would not derive any title by reason thereof.*"

56. Apart from the above, it is also submitted that, as an over-arching principle, the Government is estopped by its conduct and acquiescence from raising any dispute as regards the ownership of SIHL. It

is submitted that, after expiry of almost thirty years, it is not open to the Government to challenge the transfer of mortgaged lands to SIHL. More-so, because the Government by its aforesaid action has effectively made all the stakeholders to alter their respective position by disbursing loans relying upon its orders/assurance and therefore, the Government by promise of representations (over a long period of 30 years) cannot now challenge or raise any dispute on the transfer of the mortgaged lands.

57. In this regard, reliance is placed upon the following judgments:-

In the case of **Motilal Padampat Sugar Mills vs. State of Uttar Pradesh [(1979) 2 SCC 409]**, wherein the Hon'ble Supreme Court of India in paragraphs 7 and 8, held as under:-

> *"7. That takes us to the question whether the assurance given by Respondent 4 on behalf of the State Government that the appellant would be exempt from Sales Tax for a period of three years from the date of commencement of production could be enforced against the State Government by invoking the doctrine of promissory estoppel. Though the origins of the*

doctrine of promissory estoppel may be found in Hughes vs. Metropolitan Railway Co. [(1877) 2 AC 439 : 36 LT 932] and Birmingham and District Land Co. v. London and North-Western Rail Co. [(1888) 40 Ch D 268, 286 : 60 LT 527] , authorities of old standing decided about a century ago by the House of Lords, it was only recently in 1947 that it was rediscovered by Mr Justice Denning, as he then was, in his celebrated judgment in Central London Property Trust Ltd. vs. High Trees House Ltd. [(1956) 1 All ER 256 : 1947 KB 130] This doctrine has been variously called "promissory estoppel", "equitable estoppel", "quasi estoppel" and "new estoppel". It is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel", it is, as we shall presently point out, neither in the realm of contract nor in the realm of estoppel. It is interesting to trace the evolution of this doctrine in England and to refer to some of the English decisions in order to appreciate the true scope and ambit of the doctrine

particularly because it has been the subject of considerable recent development and is steadily expanding. The basis of this doctrine is the inter-position of equity. Equity has always, true to form, stepped in to mitigate the rigours of strict law. The early cases did not speak of this doctrine as estoppel. They spoke of it as "raising an equity". Lord Cairns stated the doctrine in its earliest form — it has undergone considerable development since then — in the following words in Hughes vs. Metropolitan Railway Company:

> *"It is the first principle upon which all Courts of Equity proceed if parties, who have entered into definite and distinct terms involving certain legal results . . . afterwards by their own act, or with their own consent, enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not*

be enforced, or will be kept in suspense, or held in abeyance, that the person who otherwise might have enforced these rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have taken place between the parties."

8. This principle of equity laid down by Lord Cairns made sporadic appearances in stray cases now and then but it was only in 1947 that it was disinterred and restated as a recognised doctrine by Mr Justice Denning, as he then was, in the High Trees' case. The facts in that case were as follows. The plaintiffs leased to the defendants, a subsidiary of the plaintiffs, in 1937 a block of flats for 99 years at a rent of £ 2500 a year. Early in 1940 and because of the war, the defendants were unable to find sub-tenants for the flats and unable in consequence to pay the rent. The plaintiffs agreed at the request of the defendants to reduce the rent to £ 1250

from the beginning of the term. By the beginning of 1945 the conditions had improved and tenants had been found for all the flats and the plaintiffs, therefore, claimed the full rent of the premises from the middle of that year. The claim was allowed because the court took the view that the period for which the full rent was claimed fell outside the representation, but Mr Justice Denning, as he then was, considered obiter whether the plaintiffs could have recovered the covenanted rent for the whole period of the lease and observed that in equity the plaintiffs could not have been allowed to act inconsistently with their promise on which the defendants had acted. It was pressed upon the Court that according to the well settled law as laid down in Jorden vs. Money [(1854) 5 HLC 185 : 10 ER 868] , no estoppel could be raised against the plaintiffs since the doctrine of estoppel by representation is applicable only to representations as to some state of facts alleged to be at the time actually in existence and not to promises de future which,

if binding at all, must be binding only as contracts and here there was no representation of an existing state of facts by the plaintiffs but it was merely a promise or representation of intention to act in a particular manner in the future. Mr Justice Denning, however, pointed out:

"The law has not been standing still since Jorden vs. Money. There has been a series of decisions over the last fifty years which, although they are said to be cases of estoppel, are not really such. They are cases of promises which were intended to create legal relations and which, in the knowledge of the person making the promise, were going to be acted on by the party to whom the promise was made, and have in fact been so acted on. In such cases the courts have said these promises must be honoured."

The principle formulated by Mr Justice Denning was, to quote his own words, "that a promise intended to be binding intended to be acted on and in fact acted on, is binding so far as its terms properly apply".

Now Hughes vs. Metropolitan Railway Co. and Birmingham and District Land Co, vs. London & North Western Rail Co. the two decisions from which Mr Justice Denning drew inspiration for evolving this new equitable principle, were clearly cases where the principle was applied as between parties who were already bound contractually one to the other. In Hughes vs. Metropolitan Railway Co. the plaintiff and the defendant were already bound in contract and the general principle stated by Lord Cairns, L.C. was:

"[If parties who have entered into definite and distinct terms involving certain legal results afterwards — enter upon a course of negotiations. Ten years later Bowen, L.J. also used the same terminology in Birmingham and District Land Co. vs. London and North Western Rail Co. that if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe ...."

These two decisions might, therefore, seem to suggest that the doctrine of promissory estoppel is limited in its operation to cases where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be enforced. But we do not think any such limitation can justifiably be introduced to curtail the width and amplitude of this doctrine. We fail to see why it should be necessary to the applicability of this doctrine that there should be some contractual relationship between the parties. In fact Donaldson, J. pointed in Dunham Fancy Goods Ltd. vs. Michael Jackson (Fancy Goods) Ltd. [(1968) 2 All ER 987, 991] :

"Lord Cairns in his enunciation of the principle assumed a pre-existing contractual relationship between the parties, but this does not seem to me to be essential, provided that there is a pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties."

But even this limitation suggested by Donaldson, J. that there should be a pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties is not warranted and it is significant that the statement of the doctrine by Mr Justice Denning in the High Trees case does not contain any such limitation. The learned Judge has consistently refused to introduce any such limitation in the doctrine and while sitting in the Court of Appeal, he said in so many terms, in Evenden vs. Guildford City Association Football Club Ltd. [(1975) 3 All ER 269 : (1975) 3 WLR 251] :

"Counsel for the appellant referred us, however, to the second edition of Spencer Bower's book on Estoppel by Representation [(1966) pp. 340-342] by Sir Alexander Turner, a Judge of the New Zealand Court of Appeal. He suggests that promissory estoppel is limited to cases where parties are already bound contractually one to the other. I do not think it is so limited : see Durham Fancy

Goods Ltd. vs. Michael Jackson (Fancy Goods) Ltd. It applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding, intended to induce a person to act on it and he does act on it."

This observation of Lord Denning clearly suggests that the parties need not be in any kind of legal relationship before the transaction from which the promissory estoppel takes its origin. The doctrine would seem to apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future. Vide Halsbury's Laws of England 4th Edn., p. 1018, Note 2 to para 1514. Of course it must be pointed out in fairness to Lord Denning that he made it clear in the High Trees case that the doctrine of promissory estoppel cannot found a cause of action in itself, since it can never do away with the necessity of consideration in the formation of a contract, but he totally

repudiated in Evenden case the necessity of a pre-existing relationship between the parties and pointed out in Crabb vs. Arun District Council [(1975) 3 All ER 865 : (1975) 3 WLR 847] , that equity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute. The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so

irrespective of whether there is any pre-existing relationship between the parties or not.

58. In the case of **LML Enterprises vs. State of Uttar Pradesh [(2008) 3 SCC 128]**, wherein the Hon'ble Supreme Court of India in paragraph-41, held as under:-

> *"41. Application of said doctrine has been analysed by this Court in several judgments. We would only refer to some of them. In Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector & ETIO [(2007) 5 SCC 447] this Court upon noticing a large number of precedents including State of Punjab vs. Nestle India Ltd. [(2004) 6 SCC 465] opined as under: (Southern Petrochemical case [(2007) 5 SCC 447] , SCC p. 495, para 121)*
>
> *"121. The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis*

of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive instructions. The appellants had undoubtedly been enjoying the benefit of (sic exemption from) payment of tax in respect of sale/consumption of electrical energy in relation to the cogenerating power plants."

59. In the case of **Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Limited [(2010) 10 SCC 420]**, wherein the Hon'ble Supreme Court of India in paragraph-34 held as under:-

"34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles

of right and good conscience. (Vide Nagubai Ammal vs. B. Shama Rao [AIR 1956 SC 593] , CIT vs. V.MR.P. Firm Muar [AIR 1965 SC 1216] , Maharashtra SRTC vs. Balwant Regular Motor Service [AIR 1969 SC 329], P.R. Deshpande vs. Maruti Balaram Haibatti [(1998) 6 SCC 507 : AIR 1998 SC 2979] , Babu Ram vs. Indra Pal Singh [(1998) 6 SCC 358 : AIR 1998 SC 3021], NTPC Ltd. vs. Reshmi Constructions, Builders & Contractors [(2004) 2 SCC 663 : AIR 2004 SC 1330], Ramesh Chandra Sankla vs. Vikram Cement [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713] and Pradeep Oil Corpn. vs. MCD [(2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712] .)"

60. In fact, all the statutory actions taken by the Government since 1991 (as detailed in paragraph 4 above) tantamount to tacit concurrence and approval of sale of mortgaged lands by the Trust. More-so, all the said actions/approvals have been obtained legally and the Government at this belated stage cannot undo any of those approval/action (which are statutorily in force until date) and unjustly resume the mortgaged

lands to the detriment of the petitioner and other Public Sector Undertakings."

61. It would also be relevant to mention that the Trust has alleged that it was coerced to sell the mortgaged lands to SIHL. It is respectfully submitted that, the issue of coercion may not be taken note of since it is purely speculative in nature. The Sale Deeds executed by the Trust in favour of SIHL clearly mentions that the sale was made for the benefit of the Trust and the Trust having received legal consideration under the said Sale Deeds and also, having not initiated any suit/legal proceedings challenging the execution of the Sale Deeds in favour of SIHL, the plea of coercion could be disregarded as being belated and barred by limitation.

REPLY BY THE LEARNED ADVOCATE GENERAL APPEARING ON BEHAL OF THE STATE:

62. The learned Advocate General raised a preliminary objection by stating that the writ petitions are pre-mature, since the impugned order only proposes about the further actions to be initiated for

resumption of the land on the ground of violations of permission granted under Section 37-B of the Tamil Nadu Land Reforms Act, but the action for resumption is yet to be initiated. The impugned order has been passed on the application filed by the M/s.SCM Silks Pvt Ltd., seeking exemption under 73(vi)(vii) of the Act. Therefore, the petitioners have excessively made submissions beyond the scope of the impugned order and more-so, actions are not initiated for resumption of land or otherwise. Until actions are initiated for resumption of land, the grounds raised in advance by the writ petitioners deserve no merit consideration. No doubt, certain facts are placed, but the view of the Government for resumption of lands and the grounds to be applied, are yet to be taken and therefore, the writ petitions are to be rejected.

63. M/s.SCM Silks Pvt Ltd., submitted an application under Section 73(vi)(vii) of the Act, seeking exemption from the application of the Act. The said application was rejected on the ground that the writ petitioners are not entitled to seek any such exemption and the permission under Section 37-B of the Act, was granted in favour of Sri Ramachandra Educational and Health Trust. The impugned order further states that

actions will be initiated for resumption of land. Thus, the grounds raised by the writ petitioners presuming that the lands are resumed deserves no merit consideration.

64. The learned Advocate General states that Section 5(1)(d)(i) of the Act, permits a public trust to hold only five standard acres. In G.O.Ms.No.1196, Health and Family Welfare Department dated 24.07.1985, the Ramachandra Trust was permitted to start a Private Medical College. Consequently, the Revenue Department in G.O.Ms.No.1959, dated 17.12.1987 granted permission to hold and acquire land by Sri Ramachandra Educational and Health Trust. Accordingly, Sri Ramachandra Trust hold to an extent of 259.34 acres of land in various villages in Kanchipuram District. 125.66 acres of land is Government Poromboke land and assignment of 119.6 acres alone granted in the year 1995. 133.68 acres of land is patta land of Ramachandra Trust.

65. The Government issued G.O.Ms.No.1082, Health, Indian Medicine and Homoeopathy and Family Welfare Department dated 26.06.1989 taking over the Ramachandra Trust and the Government has

taken over the College and Hospital along with assets in entirety. Thus, the subject land of 42.70 acres of land situate opposite to the College, was also taken over by the Government. However, physical possession of the land remained with the Trust. On 06.09.1989 TAMARAI addressed a letter to the Government to take over the subject land of 42.70 acres opposite to the College. Thus, the entire land held by Sri Ramachandra Trust was taken over by the Government, including the subject land situate opposite to the College measuring to an extent of 42.70 acres. Accordingly, Sri Ramachandra Trust has no power of alienation, since permission was granted under Section 37-B of the Act, wherein the conditions are stipulated.

66. In view of the fact that the Sale Deeds executed by the Ramachandra Trust in favour of M/s.Sterling Computers Limited and others are violative of conditions under Section 37-B read with Rule 66, the sale made is void and the Government has got every right to resume the land on account of violations committed by Sri Ramachandra Trust. The rights of the Government to resume the land in view of the violations of the provisions of the Act and Rules, cannot be taken away. The Sale Deeds executed by Sri Ramachandra Trust in the year 1990, primarily void in view of the fact that

the Government had taken over the entire College, Hospital and the assets through G.O.Ms.No.1082 dated 26.06.1989 and the administration was re-handed over to the Trust after three years. However, the lands were sold by the Trust when the Government was administrating the Medical College, Hospital and its assets. When the land vested with the Government, Sri Ramachandra Trust sold the property in favour of M/s.Sterling Computers and others. Thus, the sale, per se, becomes void and consequently the application submitted by the M/s.SCM Silks Pvt Ltd., to grant exemption under Section 73 of the Act, was rejected.

67. The learned Advocate General reiterated that the Sale Deeds executed by Ramchandra Trust in favour of M/s.Sterling Computers and others, are in violation of the conditions stipulated under Section 37-B read with Rule 66 of the Act. The Sale Deeds admit that the subject land is "agricultural land". The Sale Deeds suppressed the fact that the subject land is 37-B permission land, but to the contrary, it specifically states that the vendor "**not debarred to transfer the subject land**". The Sale Deed merely states that the subject land was purchased vide a Sale Deed in the year 1986 without referring the permission granted by the Government under Section

37-B of the Act.

68. Pertinently, at the time of executing the Sale Deeds, Ramachandra Trust had no right over the land, since the College and Hospital along with the assets were taken over by the Government vide G.O.Ms.No.1082 dated 26.06.1989. TAMARAI addressed a letter dated 06.09.1989 to Government Health Department to take over the subject land opposite to the College, since the possession was with the Trust during the relevant point of time. As on the date of sale, the Government did not have powers to permit such transfer, since such power was vested with the Government only with effect from 31.07.2018 by way of amending Rule 66 (2) (vi) vide G.O.Ms.No.277, Revenue and Disaster Management, dated 31.07.2018, whereby "**Fully or partly or the Public Trust transfer lands partly"** was inserted in Rule 66(2)(vi). The writ petitions filed by the Ramachandra Trust challenging taking over G.O.Ms.No.1082 was dismissed initially and the Writ Appeal in WA No.740 of 1991 filed by the Ramachandra Trust was allowed.

69. The learned Advocate General mainly contended that when

the assets of the Trust were under the administrative control of the Government, the Trust has sold the subject land measuring 42.70 acres in favour of M/s.Sterling Computer Limited and others. Based on the sale, they have obtained re-classification from agricultural to primary residential vide G.O.Ms.No.742, Housing and Urban Development Department, dated 29.04.1991. Interestingly at the time of re-classification, the fact that the subject land was 37-B permission land was not brought to the knowledge of the officials of the Housing and Urban Development Department. Based on the title documents, which reflect that the vendor is "not debarred" to transfer the subject land, the officials were misled to believe that the subject land was purely a patta land. Re-classification of land will not affect the applicability of the Act, since the definition of "land" under Section 3(22) of the Act, includes a land, which is used or capable of being used for agricultural purposes. Relying on the photographs enclosed along with the typed set of papers, the learned Advocate General states that the subject land is fertile and the same is very much capable of being used for agricultural purposes even as on date. In order to apply the principles of estoppel against the Government, knowledge that the subject land is covered under Section 37-B, which first be established and such knowledge has to be explicit and

cannot be implied or resumed. There can be no estoppel against a Statute.

70. In the present cases, Tamil Nadu Land Reforms Act, prescribes cancellation of Section 37-B permission if the conditions are violated. In all Government proceedings, which were issued subsequent to the illegal sale of the subject land by the Trust in favour of third parties. The third parties had not brought to the knowledge of the Government Department about the subject land, which is covered under Section 37-B permission. Merely based on the title documents, which reflect that the vendor is "not barred to transfer the subject land, the officials were misled to believe that the subject land was a patta land". Curiously, all the title deeds suppressed that the subject land is Section 37-B permission land. Merely referred to the previous title document for establishing flow of title and no reference is made to Section 37-B permission.

71. Regarding the contentions of the petitioner that Sri Ramachandra College was recognised as a Deemed University, the learned Advocate General replied by stating that Ramachandra College was recognised as Deemed University only in the year 1994 much after Section

37-B permission was granted in 1989 and therefore, the same does not attract Section 73(ii) of the Land Reforms Act, which excludes the application of the lands to the Deemed Universities.

72. In a statement given by the Managing Trustee to the Assistant Commissioner of Land Reforms reflects the sale of 42.70 acres of land allegedly under the coercion of the then Government. Since the Ramachandra contends that the subject land was transferred by way of coercion by 1990 Sale Deeds, the same cannot be accepted and the statement given after five years has no sanctity. In G.O.Ms.No.567, Revenue Department, dated 20.06.1995, Ramachandra Trust was granted assignment of 119.6 acres of Government Poromboke land. At the request of the M/s.Sterling Computers and others, assignment of 4.38 acres of poromboke land was granted at Rs.65,108/- per cent vide G.O.Ms.No.9921, Revenue Department, dated 22.10.1997.

73. Vide G.O.Ms.No.35, Revenue Department, dated 24.01.2005 the price of the land to be assigned was increased. The observation of the District Collector, Kanchipuram that none of the lands of

the M/s.Sterling Computers and others, is covered under the Tamil Nadu Land Reforms and Urban Land Ceiling Act, is relied on by the petitioners. The fact that the Collector had observed that the subject land is not covered under the Tamil Nadu Land Reforms and Urban Land Ceiling Act, clearly show that the officials were not aware that the land is covered under Section 37-B as such estoppel cannot be applied. The very Government Order itself shows that the understanding of the officials that the land is not covered under Section 37-B of the Land Reforms Act. In order to apply estoppel in the present case, the petitioner has to establish that the officials had knowledge that the land is covered under Section 37-B and despite such knowledge, no action was taken. However, the very Government Order states that the officials were under the belief that the subject land is not covered under the Tamil Nadu Land Reforms Act and Urban Land Ceiling Act.

74. The Canara Bank sanctioned Rs.500/- crores in favour of M/s.Siva Compulink Limited based on 40.57.14 acres of subject land being offered as security. The Government agreed approval for multi-storey

building on 24.10.2013 through a Deed of Assignment / Assignment Agreement, IARC stepped into the shoes of the Canara Bank. In February 2016 M/s.Siva Compulink Limited and others, requested the Government to exclude the subject land of 42.69 acres from the purview of the Land Reforms Act, in view of Section 73(vi) and (vii) by alleging that the land was originally used for growing casuarina tree. Since the borrower did not repay the loan, by invoking the SARFAESI Act IARC sold an extent of 1.32 acres of land in favour of Vallal RCG Trust, sale certificates were issued on 30.05.2017. Commissioner of Land Reforms directed the DRO to cancel the patta pertaining to 42.70 acres in view of Section 37-B violation. On 26.12.2017 M/s.SCM Silks Private Limited applied for planning permission to CMDA. Consequently, the M/s.SCM Silks filed WP No.14752 of 2018 challenging CLRs instructions to DRO for cancellation of patta. One Mr.Palani gave objection to CMDA. This Court directed Dr.Niranjan Mardi, IAS,, Additional Chief Secretary to Government to conduct detailed enquiry with regard to the lands sold by the Ramachandra Trust to M/s.Sterling Computers Limited. On 12.06.2019, Dr.Niranjan Mardi, IAS, filed his report. This Court disposed of the said writ petition on 20.05.2020 directing the authorities to conduct a detailed enquiry on the application filed by the

original purchaser M/s.Siva Compulink Limited (formerly known as M/s.Sterling Computers and others) dated 24.02.2016 seeking to secure the lands under Section 73(vi) and (vii) of the Land Reforms Act without being influenced by any of the findings or observations made in the order. This Court held that report of the Additional Chief Secretary can be relied on. However, the opinion expressed in the said report should not be relied on for deciding the issues.

75. The learned Advocate General pointed out that there is a clear findings in the judgment dated 20.05.2020 in WP No.14752 of 2018 that Ramachandra Trust has violated 37-B conditions. No appeal has been filed against the order passed in the writ petition. Thus, the findings therein are binding on the Trust.

76. Regarding the impugned order dated 30.06.2022 passed by the Revenue Secretary rejecting the application seeking exemption under Section 73 of the Act and proposing to take further action to resume the land, the learned Advocate General submitted as under:-

(i) Article 112 of the Limitation Act prescribes a limitation

period of 30 years for any suit to be filed by the Government. Hence, the Government has 30 years from the date of actual knowledge of the 37-B violation to sue for recovery of possession.

(ii) Date of knowledge of the violation is a disputed question of fact that cannot be gone into in a writ petition.

(iii) TNLR Act does not specify any limitation period. Hence, in view of the judicial precedents, a reasonable time should be taken as the period of limitation.

(iv) Since Article 112 of the Limitation Act prescribes 30 years, the reasonable time under the TNLR Act cannot be less than 30 years and it necessarily has to be something more than 30 years.

(v) An interim order was passed against the Government during 2018 in WP No.14752 of 2018 and the writ petition was disposed on 20.05.2020.

(vi) In the present case, an interim order was passed against the Government on 29.08.2022 in the present WP No.22388 of 2022 and on 13.09.2022 in the present WP No.23846 of 2022.

(vii) The aforesaid period when the interim order was in operation, has to be excluded in computing the period of limitation in terms

of Section 15 of the Limitation Act.

(viii) Hence, while the period of limitation is still alive, the Government cannot be barred from initiating a suit against the petitioner and Ramachandra Trust in the present writ petitions.

(ix) Limitation, being a mixed question of fact and law, the same cannot be gone into under Article 226 of the Constitution.

(x) Further, while the petitioners have place heavy reliance on the alleged knowledge of the official respondents regarding Section 37-B permission in order to press estoppel into service, the same being a pure question of disputed fact, which requires leading of evidence, the same cannot be decided in a writ petition under Article 226 of the Constitution.

77. The learned Advocate General in respect of his contentions relied on the judgment in the case of **Indian Dental Association vs. Union of India [ILR 2003 KAR 4564]**, wherein the Hon'ble Karnataka High Court in paragraphs-19 and 20, it has been observed as under:-

> *"19. In fact, the Supreme Court had an occasion to consider this aspect in the case of Dental Council of India vs. Hari Prakash (Supra) wherein it was called upon to*

decide whether All India Institute of Medical Sciences (AIIMS) which is established by Section 3 of the All India Institute of Medical Sciences Act, 1956 is a University established by law under Section 3(d) of the Dentist Act. In that case a learned Judge of the Delhi High Court had held the doctrine of reading down needs to be applied to interpret Section 3(d) of the Act to treat AIIMS as a deemed University because though not technically established as a University, it apparently has, for the purpose of the Act, all the trappings of a University, and to equate the Academic Committee of AIIMS with the Senate of a University and the Governing Body as the Court of the University for the purpose of Section 3(d) of the Act. Disagreeing with the said reasoning of the Delhi High Court, Supreme Court held has under:

"6.1. The fact that there are three kinds of authorities empowered to grant degrees or diplomas is too well known in the educational field and is legislatively taken note of as aforesaid. Thus it is clear that there are various institutions in India other Universities which are

empowered to confer or grant degrees and diplomas and AIIMS is one such institution. Therefore, it cannot be said that the mere fact of being empowered under the AIIMS Act to confer degrees or diplomas would convert it into a University established by law.

7. The intention of the legislature if primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation.

8. To interpret the meaning of the expression "University" the High Court proceeded ta examine various dictionaries. That exercise could not have been undertaken by the High Court in view of the fact that the expression used in Section 3(d) of the Act is a "University established by law". The expression used is not just a "University" but "University established by law" and one expression "University" cannot be divorced from the following words "established by law". The entire expression

"University established by law" constitutes one concept and is well known in law as indicated in Section 22 of the UGC Act. Hence, construction of the expression used in the Act with reference to dictionaries is not called for. Such a course will result in either omission of words in the Act such as "established by law" or to add different words which is not permissible in the language of the Act.

9. The learned counsel for the respondents referred to a large number of decisions where the meaning of the expression used in an enactment has been given a wider meaning or even to cover a situation which could not have arisen when the law was enacted. But we are afraid, these principles cannot be applied in the present context, for Parliament is well aware of the situation of University, deemed University, and the institutions constituted and empowered under relevant enactments to confer degrees and the Act has been amended from time to time, to suit fresh needs as and when they arose. Thus, the Act has not remained static but is catching up with the times. Therefore what is not included by the

legislature cannot be undone by us by adopting the principle of purposive interpretation.

10. AIIMS is an institution, which is specially empowered by an Act of Parliament to confer or grant degrees. As a result thereof, AIIMS may impart education in dentistry and also confer degrees or diplomas as provided under the AIIMS Act but that circumstance would not itself convert such an institution into a University established by law. If Parliament had intended that all categories of institutions which impart dental education will also be covered by Section 3(d) of the Act, it would not have provided that it is only a "University established by law" imparting dental education which could send its representative to the Council. The object of Section 3(d) of the Act being to provide representation to the University established by law, to give any other meaning would strain the meaning of the expression "University established by law" so as to treat any other institution empowered by an Act of Parliament to confer or grant degrees on a par with the University established by law for the purpose of

representation on the Council. May be Parliament found that such an institution is to be merely covered by Section 3(c) of the Act so that the institution is merely treated as a dental college in a State training students for recognized dental qualifications from whom the principals, Deans, Directors and Vice-Principals or Head of the dental wing would also be elected, if found fit. Again, it is for Parliament to amend the law to give representation appropriately in the Council to AIIMS and the High Court ought not to have proceeded to consider other modes of interpretation when the language of the provision itself is absolutely clear. Therefore, we think the view taken by the High Court cannot be sustained. The other question whether the Governing Body or the Academic Committee of AIIMS is equivalent to a Senate or a Court in a University does not arise for consideration in the view we have taken in the matter."

In this case the Supreme Court was dealing with an institution specially empowered by the Act of Parliament to confer or grant degrees. The

law laid down in the said decision equally applies to a deemed University.

20. In view of the aforesaid authoritative pronouncement of the Supreme Court it is clear we cannot import into the Act the meaning of the word University defined under various Acts because the expression used in Section 3(d) of the Act is "University established by law". The expression used is not just a University but a University established by law. The expression "University" cannot be divorced from the following words "established by law and the entire expression "University established by law" constitutes one concept. The UGC Act only defines "University" and not "University established by law" but recognizes the difference. Section 3 of the UGC Act only confers power on the Commission to recognize an 'institution as a University for the purposes of the Act, that recognition is only as a "University" and not as a "University established by law". Section 22 of the UGC Act maintains a distinction between a University established by law, a deemed University and an institution specially

empowered by an Act of Parliament to confer or grant degrees. Section 23 of the UGC Act categorically states that no institutions other than a University established by law shall be entitled to have the word "University" associated with its name in any manner whatsoever there by meaning a deemed University cannot use the word "University" in its name. Though the Act is a pre-constitutional enactment it has been amended several times after Constitution came into force. If the Parliament did not choose to amend the law as contained in Section 3(d) of the Act, the Courts cannot adopt the purposive interpretation and attribute a meaning to the phrase "University established by law" which the legislature did not intend to attribute. When the language used in the Section is not ambiguous and when literal meaning is to be applied which is the golden rule of interpretation, we cannot ignore the intention of the legislature. Not only the intention of the legislature has to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. Therefore, the Parliament by

not amending Section 3(d) has made their intention very clear. The language used in Section 3(d) is plain and it conveys the intention of the legislature in unmistakable terms, i.e. only University established by law which is competent to send a representative to the Council under Section 3(d) of the Act whereas deemed University can always send their representative under Clause 3(c) of the Act. Therefore, there is no scope whatsoever for construing the word 'University established by law' which is used in Section 3(d) to include a deemed University under Section 3 of the UGC Act. But in spite of several amendments brought to the Act, if the phrase "established by law" in Section 3(d) is retained as it is and not amended it is impermissible for the Courts to interpret the word "University" de horse the words "established by law" used in the said Section so as to include all categories of institutions which impart dental education whether they are creatures of a statute or whether they are deemed to be University by virtue of Section 3 of the UGC Act or an institution specially empowered by an Act of

Parliament to confer or grant degrees."

78. In the case of **Dental Council of India vs. Hari Prakash and others [(2001) 8 SCC 61]**, wherein the Hon'ble Supreme Court in paragraph-8 held as follows:

> *"To interpret the meaning of the expression "university" the High Court proceeded to examine various dictionaries. That exercise could not have been undertaken by the High Court in view of the fact that the expression used in Section 3(d) of the Act is "a university established by law". The expression used is not just a "university" but "university established by law" and the expression "university" cannot be divorced from the following words "established by law". The entire expression "university established by law" constitutes one concept and is well known in law as indicated in Section 22 of the UGC Act. Hence, construction of the expression used in the Act with reference to dictionaries is not called for. Such a course will result in either omission of words in the Act such as "established by law" or to add different*

words which is not permissible in the language of the Act."

DISCUSSIONS:

79. The impugned order admittedly is not a final decision taken by the Government for resuming the subject land. The impugned order has been passed pursuant to the application submitted by M/s.SCM Silks Private Limited seeking exemption from the purview of the Land Reforms Act under Section 73(vi) and (vii). The application was rejected mainly on the ground that M/s.SCM Silks Private Ltd., cannot seek any such exemption and the Government has already decided to initiate further action against Sri Ramachandra Turst for resuming the subject land.

80. Thus, the lands are yet to be resumed by the Government. Therefore, the arguments advanced on behalf of the petitioners as if the lands are resumed deserve no merit consideration. The information given by the Government for initiation of further action under Land Reforms Act, would not provide any cause for adjudication of those issues, which all are connected with the provisions of the Land Reforms Act, for resumption of lands. The cause of action would arise only if the lands are resumed by the Government by following the procedures and by passing speaking orders.

However, the petitioners have raised the ground that the Government has decided to resume the lands and therefore, they have rejected the application filed by the M/s.SCM Silks Private Ltd., for granting exemption from the purview of the Act under Section 73(vi) and (vii) of the Act. Taking a provisional decision to initiate action is one aspect of the matter and resumption of land by following the procedures as contemplated under the provisions of the Act and Rules, is the ultimate action, which would provide cause for institution of litigations. Mere information provided by the Government that they have proposed to initiate action would not be sufficient enough to adjudicate all those grounds raised, which would be available for the petitioners only if the lands are resumed by following the procedures.

81. Therefore, this Court is of the considered opinion that entitlement of the petitioners seeking exemption from the provisions of the Act, in view of Section 73(vi) and (vii) of the Land Reforms Act, is to be considered. In this context, it would be relevant to consider the scope of Section 37-B of the Act also.

82. That apart, the writ petitioners before this Court are not directly connected with the permission granted in favour of Sri Ramachandra Educational and Health Trust under Section 37-B of the Act. When the petitioners are no way connected with the permission granted by the Government under Section 37-B of the Act, now they are stepping into the shoes of Sri Ramachandra Trust in order to protect their purchase from Sri Ramachandra Trust.

83. No doubt, the third party purchasers are entitled to protect their rights. However, the scope of Section 37-B of the Act, is to be considered with reference to the conditions stipulated while granting permission in favour of Sri Ramachandra Trust under Section 37-B of the Act.

84. The **Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 58/61)** was enacted with a view to reduce the disparity in the ownership of the agricultural land and concentration of such land with certain persons and to distribute such land among the landless poor.

85. It also provides fetters on the right to hold lands paving way for equitable distribution among the citizens. Considering the scope and reasoning behind the enactment, a wider interpretation will have to be given to a welfare legislation. The Court will have to adopt a goal oriented approach by acting as an activist and a catalyst. While dealing with welfare legislation of so fundamental a character as agrarian reform, the Court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation. Therefore, wider interpretation has to be given considering the object of the Act and proper reading of the provisions contained therein.

INTERPRETATION OF THE TERM "TO HOLDTHE LAND " UNDER THE ACT

86. In the very same judgment cited supra, the division bench of this Hon'ble High court went on to analyse and interpret the meaning of the term TO HOLD under the Act, as observed in the following paragraphs:

*"**9. Sub-section 19 of Section 3 of the Act** reads as follows:*

"3(19)."to hold land", with its

grammatical variations and cognate expressions, means to own land as owner or to possess or enjoy land as possessory mortgage or as tenant or as intermediary or in one or more of those capacities."

9.1. A reading of the above said Section would throw light on the fact that to hold a land one has to be a owner, mortgagee, tenant or intermediary or in one or more of those capacities. Considering the scope of the enactment a wider import cannot be given to give the benefit to any other person. The definition of the word hold or held has been considered by the Honourable Supreme Court in ***A.G.VARADARAJULU vs. STATE OF TAMIL NADU*** *[(1998) 4 SCC 231] wherein it has been held as under:*

"26.The word hold or heldin the context of land has come up for consideration in several cases before this Court. ***In State of U.P. vs. Sarjoo Devi*** *while dealing with the said word in Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, as follows: (SCC p.8, paras 8 and 10) The word held occurring in the*

above definition which is a past participle of the word hold is of wide import. In the Unabridged Edition of The Random House Dictionary of the English Language, the word hold has been inter alia stated to mean to have the ownership or use of; keep as ones own.

** * * In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance the word held means to possess by legal title. Relying upon this connotation, this Court in* ***Bhudan Singh vs. NabiBux*** *interpreted the word held in Section 9 of U.P. Zamindari Abolition and Land Reforms Act, 1950 as meaning possession by legal title.(emphasis supplied) Again in* ***State of A.P. vs. Mohd. Ashrafuddin8*** ***it was held as follows: (SCC p. 4, para 8)****. According to Oxford Dictionary held means: to possess; to be the owner or holder or tenant of; keep possession of; occupy. Thus, held connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term held only in the sense of possession.The word holds was again interpreted in* ***Hari Ram vs. BabuGokul***

Prasad *where it occurs in Section 185(1) of the Madhya Pradesh Land Revenue Code, 1959.* ***It was observed: (SCC p.611, para 5).*** *The word holds is not a word of art. It has not been defined in the Act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary, it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title.*

9.2. ***Therefore, the words 'owner, mortgagee, tenant and intermediary' will have to be read on the principle of ejusdem generis and there is no scope for giving any other interpretation to include all other persons.*** *Further, Section 3(21) defines the word 'intermediary' which only means that a person who acts in between as a broker, agent or negotiator, between the two parties, which is not the position of the petitioner in the present case."*

SCOPE OF SEC 37-B OF THE ACT

87. Section 37-B of the Act speaks about a consideration of the

application made by public trust seeking permission to hold or acquire land for educational or hospital purposes. A perusal of the said section would exemplify the fact that an application has to be made prior to the proposed acquisition. **The application is only for seeking a permission to hold or to acquire the land which cannot be construed to ratify the sale already effected in contravention of the provisions of the Act.** Admittedly in the present case on hand, the appellant has made the application initially in the year 1990 and after not following such procedure, thereafter made another application in the year 1995. The possession was also taken after the proceedings under section 20-A and the lands were no longer held by the appellant thereafter. Section 37-B is subject to the provisions contained under section 73 of the Act. Section 73 of the Act which comes under Chapter-IX deals with exemption. Section 73 would come into effect only after an order is passed under section 37-B provided the permission granted therein would continue to be in force.

88. Admittedly, the land has been taken possession after following the due procedure and given to the landless poor. The proceedings in favour of the landless poor have become final and there is no clause in the

assignment deed towards cancellation on any other ground other than the conditions mentioned therein. **The appellant is neither a owner nor an intermediary and he is a persona non grata having no right to invoke the provisions under section 37-B of the Act. Section 37-B of the Act is only for an intending purchaser and therefore the same cannot be used for validating an illegal act done by a party concerned."**

EXCEPTION CLAUSE HAS TO BE STRICTLY INTERPRETED

89. It is a well settled principle of law that an exemption is an exception to the provisions of the Act. In such an eventuality it is for the appellant to prove that he is entitled to invoke the exemption under section 37-B read with section 73 of the Act. Such a power cannot be exercised for a mere asking but has to be exercised with utmost care and caution by the authority concerned. **Therefore, a clause containing exception will be strictly interpreted and such a clause will have to befriend the general provision and disfavour the exception.** The Honourable Apex Court in **PROJECT OFFICER, IRDP AND OTHERS v. P.D.CHACKO [(2010) 6 SCC 637]** has held as follows:

"14.An exception clause is normally part of the enacting section, unlike a proviso which follows an enacting part. Crawford's Interpretation of Laws (1989), p.128, speaks of exception as follows:

"91.Exceptions and provisos.-... The exception, however, operates to affirm the operation of the statute to all cases not excepted and excludes all other exceptions; that is, it exempts something which would otherwise fall within the general words of the statute."

15. It is trite law that an exception clause has to be strictly interpreted and cannot be assumed but be proved. An exception clause is always subject to the rule of construction and in case of doubt, it must befriend the general provision and disfavour the exception. If any category of person claims exception from the operation of the statute it must establish that it comes within the exception."

90. In the case of **K.Seethalaxmivs The Commissioner on 5 October, 2012, the Madras High court while disposing of the case vide common order** held as follows :

"23. Assignment has been made in favour of the first petitioner, in each of the Writ Petitions, subject to certain conditions. The petitioners do not acquire any alienable right, before the expiry of 20 years, from the date of assignment. The assignments made to them, have been cancelled, for violation of statutory provisions, after giving them a reasonable opportunity. The purchasers, second petitioners in each of the writ petitions, have no right to be given an opportunity of making any representation before cancellation. Orders of cancellation of assignments have been served on the assignees. Persons, who claim a right or interest over the property, pursuant to an action, prohibited under the statutory provision, cannot demand that he should be provided with an opportunity, before cancellation. ***Needless to state that no sale or transaction, in contravention of a statutory provision, can be recognised and approved by Courts. Any sale or transfer, during the period of assignment, contrary to statutory provisions, would not confer any right or interest, on the second petitioners, to enter into the shoes of the assignees, to challenge an order of***

cancellation, along with the assignees."

TRANSFEREE HOLDING DEFEASIBLE TITLE

91. Paragraph Nos.15 and 17 of the judgment reported in (1984) 3 SCC 301, **Manchegowda and others vs. State of Karnataka** which read as under:

> *'15. **Any person who acquires such granted land by transfer from the original grantee in breach of the condition relating to prohibition on such transfer must necessarily be presumed to be aware of the prohibition imposed on the transfer of such granted land. Anybody who acquires such granted land in contravention of the prohibition relating to transfer of such granted land cannot be considered to be a bona fide purchaser for value and every such transferee acquires to his knowledge only a voidable title to the granted land. The title acquired by such transfer is defeasible and is liable to be defeated by an appropriate action taken in this regard.** If the Legislature under such circumstances seek to intervene in the interests of these weaker sections of the community and choose to substitute a*

speedier and cheaper method of recovery of these granted lands which were otherwise liable to be resumed through legal process, it cannot, in our opinion, be said that any vested rights of the transferees are affected. ***Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defeasible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law.*** *The position will however, be somewhat different where the transferees have acquired such granted lands not in violation of any term of the grant or any law regulating such grant as also where any transferee who may have acquired a defeasible title in such granted lands by the transfer thereof in contravention of the terms of the grant or any law regulating such grant has perfected his title*

by prescription of time or otherwise. We shall consider such cases later on. But where the transferee acquires only a defeasible title liable to be defeated in accordance with law, avoidance of such defeasible title which still remains liable to be defeated in accordance with law at the date of commencement of the Act and recovery of possession of such granted land, on the basis of the provisions contained in Section 4 and Section 5 of the Act cannot be said to be constitutionally invalid and such a provision cannot be termed as unconscionable, unjust and arbitrary. The first two contention raised on behalf of the petitioners are, therefore, overruled."

92. In the case of **Amrit Bazar PatrikaPvt. Ltd. vs. State of U.P. and Ors. (31.10.2019 - ALLHC) : MANU/UP/4630/2019 Hon'ble Judges/Coram: SudhirAgarwal and Virendra Kumar Srivastava, JJ. Held as follows:-**

*"12. **Even otherwise, we find nothing arbitrary or illegal in resumption clause. State is the owner of land. If for public purpose, it wants to take back its land by way of resumption, there***

is nothing per se arbitrary. Secondly, condition of resumption is a part of contract between the parties and having accepted the same and contract has been carried out and completed its term, it order to wriggle out the rights, obligations and liabilities incurred and acquired thereunder,one of the parties cannot wriggle out by contending that one of the conditions of such agreement is bad."

The fact that petitioners were given permission under Section 37B to acquire land beyond ceiling limit does not operate as estoppel against Government from acquiring said lands.

93. In the case of **In Dalmia Cement (Bharat) Ltd. vs. The State of Tamil Nadu and Ors. (16.12.2002 - MADHC) : MANU/TN/2465/2002**, this Court observed as under:-

"6. POINT NO. VII : Whether the grant of permission under section 37 B granting prior permission under The Land Reforms Act in favour of M/s. Dalmia Cements takes away the power of eminent domain ? Whether the

respondents are estopped by grant of such prior permission ?

47. ***The purpose of securing prior permission under Section 37B is to acquire lands in excess of ceiling limit for industrial purpose. It may be that the petitioner M/s. Dalmia Cements have acquired the lands by purchase for quarrying lime stone deposit which they may require in course of time. Section 37B is an enabling provision which enables the State Government to grant prior permission if either an industry or establishment or an institution or factory requires the land in excess of the ceiling area. Such prior permission, if at all just enables the petitioner to acquire lands and it cannot be a ground to hold that the power of eminent domain is lost. There cannot be a plea of estoppel in this respect nor such a plea is sustainable."***

48. ***At no point of time the State Government has represented or made the petitioner M/s. Dalmia Cements and others similarly placed to believe that in the event of***

the said entrepreneur acquiring the lands by purchase, the lands will not be acquired at all. There is no such plea at all. That is not the ground on which the challenge is made. By mere grant of permission under Section 37 B of The Land Reforms Act it cannot be contended that the State Government has lost its power of eminent domain to acquire under The Land Acquisition Act. *But for Section 37 B, the petitioners would not have validly acquired the land. Such acquisition without prior permission results in the lands being transferred automatically and it vests with the State Government. Prior permission under Section 37 B does not mean that the State Government has granted blanket permission in favour of the petitioner not only to acquire the lands but to possess it for all time to come by way of implied exemption or in relaxation of the provisions of the Land Acquisition Act or its power. No such representation has been made nor such a case has been pleaded. Hence these contentions deserve to be dismissed. That apart, the* ***conditional permission granted under Section 37***

B was only for a limited period. *The said condition has not been complied with. The prior permission under Section 37 B will not enure beyond two years as seen from the very proceedings. After the lapse of two years only acquisition proceedings were initiated. Hence, this contention cannot be countenanced."*

94. In the case of **SCINDIA EMPLOYEES' UNION vs. STATE OF MAHARASHTRA [MANU/SC/1591/1996],** the Apex Court held that **so long as the public purpose subsists, the exercise of power of eminent domain cannot be questioned.** While following the above pronouncement, this Court holds that it is for the State Government to take a decision whether a particular land is needed for a public purpose or not and the Court cannot substitute its opinion on the public purpose to that of the appropriate Government. So long as the public purpose continuous or subsists, the exercise of power under Section 6 of the Land Acquisition Act is a conclusive evidence of public purpose.

95. **The fact that said lands were mere agricultural lands on**

date of notification renders Government competent to acquire same - nothing to prove mala fide - held, acquisition proceedings justified.

"77. Nextly it was contended that limestone being a major mineral, it is governed by the provisions of the Mines and Minerals (Regulation and Development) Act, which is controlled by the Central Government and, therefore, there cannot be any acquisition at all. It should not be forgotten that the acquisition is not as a limestone mine or quarry where the limestone operation is being undertaken or is in progress. Acquisition is in respect of agricultural lands, which has potentiality or deposit of limestone and it may be a potential mine, but as of today it is not a limestone mine. Therefore, this contention cannot be countenanced as it is not being acquired as a mine, but it is acquired as agricultural land.

78. The purpose for the acquisition being for TANCEM and the object being to quarry limestone for manufacture of cement, which are available in the lands. As on the date of Section

4(1) Notification or Section 6 Declaration, the lands are dry lands and they are ordinary agricultural lands, which can be acquired under The Land Acquisition Act. The survey fields in question are not limestone quarries, but they are agricultural lands simpliciter and its market value are to be assessed as such agricultural land and the proposed or potential user cannot be a ground to assess. Section 24, fifth exclusion clause operates in this respect and it is on the point. Therefore, the lands could be acquired under The Land Acquisition Act by exercise of powers of eminent domain by the State for the public purpose as it is an acquisition of agricultural lands only as against the intended or proposed user by the writ petitioner companies on a future date. It is also pointed out by the respondents that it is only the petitioners, who knew about the acquisition proposal, have purchased the very lands surveyed and they cannot now be allowed to advance such a contention. This contention just deserves to be mentioned."

96. Let us consider the scope of Section 37-B of the Act. Subject to the provisions of Section 73, the Government may cancel the permission in respect the land granted under Section 37-B of the Act on the breach of any conditions specified by the Government.

97. Section 37-B(1)(b) stipulates that “If any public trust created after the 1st March 1972 desires to acquire any land or desires to hold land acquired, for the purpose of,- (i) establishing any educational institution or hospital; or (ii) expanding any existing educational institution or hospital by way of addition to, alteration of, or improvement to, any educational institution or hospital”. The provision defines 'Educational Institution' and it further defines 'Hospital'.

98. Section 37-B(2) enumerates that “The Government may grant the permission [prospectively] for the whole or part of the land specified in the application, subject to such conditions as they deem deem fit, or refuse to grant such permission. The order granting such permission shall contain the particulars of the land in respect of which such permission is granted”. Sub Section (3) to Section 37-B of the Act, denotes that “The

Government shall, in deciding whether to grant or refuse the permission under sub-section (2), take into consideration, the following factors, namely:-

(a) the purposes and objectives of the public trust;

(b) whether the land is required for immediate use or use in future; and

(c) such other particulars as may be prescribed."

99. Pertinently sub-section (4) to Section 37-B stipulates that "The Government may cancel the permission in respect of any land granted under this section on the breach of any condition specified by the Government".

100. Therefore, there is no doubt in respect of the powers conferred on the Government to cancel the permission granted under Section 37-B of the Act. The Government find that there is a prima facie violation committed by Sri Ramachandra Trust in alienating the land governed under Section 37-B permission. More particularly, when the College including the

assets were taken over by the Government and vested with the Government, a portion of the property had been sold in favour of the third parties. In other words, at the time of sale of the properties in favour of M/s.Sterling Computers Ltd., and Others, by Sri Ramachandra Trust the property was vested with the Government in the year 1990. Since the College and its assets were taken over by the Government in the year 1989 and it was re-handed over to the Trust after three years, in 1992.

101. With reference to the sale, admittedly, it was made by Sri Ramachandra Trust after taking over of the assets by the Government and it was vested with the Government. Therefore, beyond the application of Section 37-B permission, the sale becomes void on account of the fact that the Government had taken over the entire administration of Sri Ramachandra Trust and its assets in the year 1989 and released the same only after three years, pursuant to the orders of the Division Bench of this Court. In twine angle, the land governed under Section 37-B is subject to cancellation, if any conditions are violated and in the present case, it is not only that the Trust has violated the conditions stipulated under Section 37-B

of the Act, but also sold the property in favour of third parties when the land vested with the Government in the year 1990.

102. Section 73 of the Land Reforms Act provides exemptions. In the present case, Sri Ramachandra Medical College and Research Institute was made as deemed University by the Central Government on 01.11.1994, but the land governed under Section 37-B of the Land Reforms Act, was sold by the Trust in the year 1990. Thus the grounds taken by the petitioners that the assets of the Universities are exempted under Section 73 of the Act, is inapplicable as far as the case of Ramachandra Trust is concerned.

103. Curiously, Ramachandra Trust remained as a silent party subsequent to sale and allegedly given a statement before the Assistant Commissioner of Land Reforms in the year 1995 that the said Sale Deeds were executed by coercion. However, those statements cannot be relied on since it has no sanctity nor be trusted upon.

104. Application seeking exemption was submitted by

M/s.SCM Silks Pvt. Ltd., under Section 73 (vi)(vii) of the Act. Section 73 (vi) grants exemption to "all plantations in existence on the date of commencement of this Act. Provided that such plantations shall be exempt only so long as they continue to be plantations.". Section 73 (vii) stipulates that "lands converted on or before the 1st day of July 1959 into orchards or topes or arecanut gardens, whether or not such lands are contiguous or scattered. Provided that such land shall be exempt only so long as they continue to be orchards, topes or arecanut gardens".

105. It is not made clear beyond the application submitted by M/s.SCM Silks Pvt Ltd., under Section 73 of the Act, is entertainable, since Ramachandra Trust sold the property in favour of M/s.Sterling Computers., in the year 1990 in violation of the conditions stipulated under Section 37-B of the Land Reforms Act, 1961. The subsequent purchaser submitted an application seeking exemption. However, the case of M/s.SCM Silks Pvt. Ltd., would not fall under the Exemption Clause. Thus there is no infirmity in respect of the impugned order passed by the first respondent for rejecting the application submitted by the writ petitioners seeking exemption from the provisions of the Land Reforms Act, 1961. More-so, the writ petitioners are

no way connected with the permission granted under Section 37-B of the Land Reforms Act, 1961 made in favour of the Ramachandra Trust.

106. The right of the writ petitioners is only against their vendors i.e., Ramachandra Educational Trust and the Government has not granted Section 37-B permission in favour of the writ petitioners. Thus seeking exemption under Section 73 of the Land Reforms Act, 1961 by the writ petitioners is untenable. Thus there is no perversity in respect of the order impugned.

107. The petitioners have raised the ground of limitation that the sale was made by Ramachandra Trust in the year 1990 and 33 years lapsed and violations of Section 37-B conditions, if any, have to be initiated within a reasonable period of time.

108. In this context, the petitioners have relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Government of India vs. Citedal Fine Pharmaceuticals [(1989) 3 SCC 483]**, wherein in paragraph-5, it has been held as under:-

"5. As already noted rules contained in Chapter III of the Rules particularly Rules 6, 9, 10 and 11 provide for payment and recovery of duty and also the time and manner of its payment. Rule 12 is designed to confer residuary power for recovery of duty if unpaid on account of short levy or deficiency or for any reason it remains unpaid. If recovery of duty or any amount of sum payable to the Government under the Act is not covered by any specific rule, additional supplementing provision is made for its recovery by Rule 12. Rule 12 provides for recovery of duty, as well as any other sum payable to the collecting Government under the Act if the same is not paid on account of short levy or deficiency, or for any reason. In substance Rule 12 contains additional safeguard for recovery of duty, it does not create any additional charge or liability on the manufacturer for the payment of the duty. The liability to pay tax is created by the charging Section 3 and Rule 12 confers, on the authorised officer to recover duty if the same has not been paid on account of any short levy or deficiency

or any other reason. Rule 12 is referable to Section 19(2)(i) of the Act. The rule carries out the purposes of the Act as it seeks to provide for recovery of duty as contemplated by Section 3(3) of the Act. The High Court committed error in holding that the rule provides for recovery of escaped duty although the Act is silent on the question of escaped assessment and therefore Rule 12 is ultra vires the Act."

109. In respect of the case relied upon, the facts are dissimilar and the provisions of the Medicinal and Toilet Preparations (Excise Duty) Act was discussed by the Hon'ble Supreme Court of India. The general principle regarding the period of limitation and the rulings of the Supreme Court that actions must be taken within a reasonable period, cannot be directly applied with reference to the facts established in the present writ petitions. Thus the abovesaid judgment is of no avail to the petitioners.

110. The petitioners further raised the ground that the

Government has impliedly accepted the sale in view of the fact that several orders were passed, including reclassification of agricultural land as residential zone. Once they have recognised and accepted the sale and reclassified the land as residential zone, the Government is estopped from invoking Section 37-B of the Land Reforms Act, 1961, more-so beyond the reasonable period of time. It is to be noted that waiver of action under Section 37-B of the Act, is not automatic. The time of knowledge of the Government and the other mitigating factors are also to be taken into consideration for the purpose of accepting the ground regarding waiver of action as raised by the petitioners. Undoubtedly, the waiver of action, at no circumstances, be automatic, merely based on the duration of time. The factors relating to the circumstances are to be considered.

111. Let us now consider the ground regarding promissory estoppel raised by the petitioners.

112. Admittedly, when the subject land of 42.70 acres opposite to the College, was purchased by M/s.Sterling Computers., and others in the year 1990, was reclassified from 'Agricultural' to 'Primary Residential' vide

G.O.Ms.No.742, Housing and Urban Development Department, dated 29.04.1991. However, at the time of re-classification the fact that the grant of Section 37-B permission to the subject land was not brought to the knowledge of the officials of the Housing and Urban Development Department. The Sale Deed executed by Ramachandra Trust and the title documents reflect that the vendor is '**not debarred to transfer the subject land**'. Therefore, the arguments advanced by the learned Advocate General that officials were misled to believe that the subject land was purely the patta land, deserves to be considered.

113. Mere re-classification of land will not affect the applicability of the Act, in view of the definition of **'Land'** under Section 3(22) of the Act, which includes a land, which is used **or capable of being used for agricultural purposes**. Therefore, in order to apply estoppel against the Government, knowledge that the subject land covered under Section 37-B of the Act, must first be established and such knowledge has to be explicit and cannot be implied or presumed. That apart, there can be no estoppel against a Statute.

114. In the present case, the Land Reforms Act, 1961, contemplates cancellation of Section 37-B permission, if the conditions are violated.

115. The various Departments under the Government are functioning within their administrative spheres. It is possible that certain documents, if not brought to the notice of the Department, they may not be in a position to know about certain factors.

116. In the present cases, the re-classification order was passed by the Housing and Urban Development Department, building plan permission was granted by the CMDA Authorities. In the Sale Deed executed by Ramachandra Trust, there is no mentioning about 37-B permission granted in their favour. Therefore, this Court has no hesitation in forming an opinion that there are certain doubtful circumstances, where the third parties, who may have no knowledge about 37-B permission proceeded with their actions for construction of buildings, borrowing of loans etc. In other words, Ramachandra Trust by suppressing the fact regarding 37-B

permission and when the land vested with the Government sold the lands in favour of third parties. Such third parties also have failed to inform the Authorities about 37-B permission, while obtaining building plan permission or at the time of transfer of patta or otherwise. These factors have not been established by the writ petitioners. However, perusal of the documents would show that there is a schematic and systematic conversion of agricultural lands into residential area for personal gains and thereafter an attempt was made to legalise the illegal sale and to protect the developments made therein.

117. Illegality occurred in the initial sale by Sri Ramachandra Trust cannot be cured. When the illegality goes to the root of the issue, mere efflux of time would be insufficient to validate the illegality and the Courts cannot act on misplaced sympathy.

118. Systematic frauds, misrepresentation leading to illegalities at no circumstances be encouraged by the Constitutional Courts. Question arises whether the rights of the bona fide purchasers are to be protected. The answer would be that the bona fide purchasers have remedy against their

vendors or the persons misled them.

119. Thus, the bona fide purchasers are at liberty to sue their vendors for their misrepresentation, suppression fraud or otherwise or for any other suitable relief under law. Therefore, violation in respect of the land governed under Section 37-B permission cannot be validated at any circumstances, in view of the fact that the Authorities during the relevant point of time was not informed about the permission granted under Section 37-B of the Land Reforms Act, 1961.

120. It is brought to the notice of this Court that the grant of 37-B permission for the subject land was not brought to the knowledge of the officials concerned during the relevant point of time. The title of the documents reflect that the vendor is not debarred to transfer the subject land. Therefore, the Authorities were misled to believe that the subject land was purely the patta land. Even the title deeds suppressed the fact regarding the permission granted under Section 37-B of the Land Reforms Act, 1961 in favour of Ramachandra Trust.

121. The District Collector, Kancheepuram had observed in G.O.Ms.No.35, Revenue Department, 24.01.2005 that none of the lands of M/s.Sterling Computers and others is covered under the Tamil Nadu Land Reforms Act, 1961 and Urban Land Ceiling Act, 1978. The very findings of the District Collector, Kancheepuram reveals that the officials were not aware of the fact that the land is covered under Section 37-B of the Act and therefore, the principles of promissory estoppel is of no avail to the petitioners.

122. The very understanding of the officials while granting re-classification, building permission etc., was that the land is not covered under Section 37-B of the Act. When the Government Orders reflect that the Authorities had no knowledge about 37-B permission and their vendors also have suppressed the fact that the land falls under Section 37-B permission, this Court cannot form an opinion that the Government Authorities had knowledge about Section 37-B permission and while passing various Government Orders, re-classifying agricultural lands as residential zone and subsequent building plan permission etc.

123. Even the Canara Bank was misguided for obtaining loan to the tune of Rs.500/- crores. M/s.Sterling Computers, at no circumstances, informed the Canara Bank that the lands are governed under Section 37-B permission of Land Reforms Act. The Banks provided loan by verifying the title deeds and the Government Orders passed. The loan amount of Rs.500/- crores was sanctioned based on the title deeds and the other Government Orders produced by the borrowers. In none of those documents, there is mention about 37-B permission granted under the Land Reforms Act, in favour of Ramachandra Trust. Therefore, the bank was also misled to believe that the subject land was purely the patta land.

124. The first respondent came to know about the fact that the application was submitted by M/s.SCM Silks Pvt Ltd., seeking exemption from the provisions of the Land Reforms Act under Section 73 of the Act. That is the point, which is to be construed as “official knowledge” of the Government for the purpose of initiation of action. Mere knowledge of certain individual officials of the Government cannot be construed as “official knowledge” of the Government, since there is a possibility of

collusion between the parties and the Government Authorities. Such collusion or misrepresentation on the part of the individual Officers, cannot be taken into consideration for the purpose of application of the principles of promissory estoppel or the implied recognition or acceptance of sale. But the "official knowledge" of the Government is to be considered only if there is a document to establish that Section 37-B proceedings are explicitly stated in any one of the Sale Deeds or in the Government Orders passed granting re-classification of lands from 'Agricultural' to 'Residential Zone' or in the orders passed granting building plan permission etc.

125. The petitioners are unable to establish that in any one of these documents have relied upon that there is a mentioning about 37-B permission granted in favour of Ramachandra Trust under the provisions of the Land Reforms Act.

126. In the absence of any such mentioning merely based on the presumptions and assumptions, one cannot form an opinion that the Government has knowledge about the Sale Deeds executed in favour of the third parties or re-classification of lands and transfer of patta etc. Thus

implied acceptance or sale as stated on behalf of the petitioners is untenable. The Statute admittedly prescribes conditions and violations if any noticed, then the earlier misconduct of the parties cannot be approved by applying the principles of 'implied acceptance'. In the event of applying the principles of 'implied acceptance', the very purpose and object of the Statute will be defeated.

127. In the present cases, the very object of the Act, is to ensure that the ceiling area in the case of public Trust/Charitable neither extends on the date of commencement of the Act, shall be five standard acres (under Section 5(1)(d)(i) of the Land Reforms Act). The Government has granted permission to hold and acquire the land only for education or hospital purposes under Section 37-B of the Act. Thus violation of conditions stipulated under the Act, empowers the Government to cancel the permission granted under Section 37-B of the Act.

128. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Rules, 1962, provide conditions with reference to Section 37-B of the Act. Rule 66(2)(i) stipulates that “if the land proposed to be acquired by the

public trust is required for the establishment of any educational institution or hospital, the land shall be fully utilised for establishment within such period as the Government may, from time to time, by general or special order, specify. In the absence of such an order, the land shall be utilised for such establishment within a period of five years from the date of the order granting permission". Therefore the conditions stipulated under Rule 66 unambiguously stipulates that the land shall be fully utilised for establishment for the purpose for which permission granted under Section 37-B of the Act.

129. The petitioners have relied upon Rule 66(2)(vi) stating that "if, at any time, the public trust is transferred fully or partly or the public trust transfer lands partly, the transferor and the transferee shall, within thirty days from the date of such transfer, intimate the fact of transfer to the Government and the Government may, after making such enquiry as they deem fit pass an order".

130. Pertinently the words '**fully or partly or the public trust transfer lands partly**' were inserted by G.O.Ms.No.277, Revenue and

Disaster Management dated 31.07.2018.

131. Relying on the above words inserted by way of an amendment, the learned Senior Counsel appearing on behalf of the petitioners made a submission that the transfer of land is permissible and more-so the statement was given by the Managing Trustee of the Ramachandra Trust in the year 1995 before the Assistant Commissioner of Land Reforms. In the context of the said Rule, one has to understand that any transfer of land under Rules 66 must be read along with Section 37-B of the Act. The above Clause cannot be read in isolation in view of the fact that permission under Section 37-B of the Act, was granted only for the purpose of educational or hospital purposes. Thus Rule must be read in consonance with the provisions of the Act. The transfer of lands partly by the public trust must be understood that such transfers are intended for educational or hospital purposes. Therefore the said clause relied on by the petitioners is of no avail to them.

132. Rule 66(2)(vii)(a) denotes that “If the land in respect of which permission has been granted is used for any purpose other than the

purpose for which permission was granted, the public trust concerned shall intimate the diversion of the purpose to the Authorised Officer within thirty days from the date on which such diversion of purpose takes place". Sub Clause (b) to Section 66 provides by stating that "the Authorised Officer shall, on receipt of such intimation, inspect the land and make such enquiry as he deems fit and if he is satisfied that the land is not used for the purpose for which the permission was granted or for any ancillary purpose, he shall report the matter to the Government through the Land Commissioner, for such action as the Government may deem fit".

133. With reference to the above Rules, the petitioners have no way connected with the permission granted under Section 37-B of the Act, in favour of Ramachandra Trust. Ramachandra Trust says that the Managing Trustee has given statement in the year 1995 before the Assistant Commissioner of Land Reforms. But neither the petitioners nor Ramachandra Trust could establish the intimation as contemplated under Rule 66 has been properly submitted before the Competent Authority, which was forwarded to the Government through Land Commissioner for such action as the Government may deem fit. In the absence of any such proof to

establish compliance of the requisite procedures contemplated, the petitioners cannot now plead that the Government is estopped from initiating action against Ramachandra Trust or the petitioners, who all are the subsequent purchasers of the land from the Trust.

134. Rule 66(2)(x) enumerates that "in the event of the cancellation of permission by Government for violation of any of the conditions subject to which the permission is granted, the provisions of the Act shall apply to the land in respect of which the permission was granted and action shall be taken under that Act accordingly by the Authorities concerned".

135. Form 38 submitted by Ramachandra Trust with reference to Rule 64 seeking permission to public Trust to acquire or to hold the land acquired reveals that all particulars including the extent of land the purpose for which the permission is sought for expansion if any and other details are recorded. Form 38 of the Tamil Nadu Land Reforms Fixation of Ceiling on Land) Rules, 1962 concludes with a declaration by the applicant-Public Trust as follows:-

"I hereby declare that the particulars furnished in the application are to the best of my knowledge and belief, true and correct.

I further declare that, in the event of the permission applied for being granted, I shall abide by the conditions subject to which the permission is granted and the provisions contained in the Tamil Nadu Land Reforms (Fixation of Ceiling on Land), Act, 1961 (Tamil Nadu Act 58 of 1961) as amended and the rules made thereunder. I shall also abide by such other conditions as the Government may, by general or special order, specify.

Place: *Signature of the person competent to act on behalf of the applicant-public trust."*

136. It is not in dispute that the entire subject land to an extent of 42.70 acres opposite to Ramachandra Medical College also is falling under the permission granted by the Government under Section 37-B of the Land Reforms Act, 1961. Therefore, Sri Ramachandra Trust is bound by their own declaration that they will abide by the conditions subject to which the permission is granted in the event of granting permission. That apart,

they have declared that the particulars furnished in the application are true and correct.

137. Perusal of the Forms would reveal that every single details regarding establishment of Educational Institution or Hospital has to be furnished and it was actually furnished by Sri Ramachandra Trust, while obtaining permission under Section 37-B of the Act.

138. Pertinently, the land to an extent of 125.66 acres is the Government Poramboke land (assignment of 119.6 acres of land granted in 1995).

139. In view of the fact that the petitioners have not established any acceptable ground for the purpose of assailing the order impugned, they are not entitled to succeed in the present writ petitions. More-so, the impugned order has been passed on the application submitted by M/s.SCM Silks Pvt Ltd, seeking exemption from the provisions of the Land Reforms

Act, 1961 under Section 73(vi)(vii) of the Act and it was rejected.

140. The order impugned further states that actions will be initiated against Ramachandra Trust for its violation of the conditions stipulated under Section 37-B of the Land Reforms Act, 1961 read with Rule 66 of the Rules framed thereunder. Such an action is proposed to be taken only against Sri Ramachandra Trust. The petitioner in WP No.22388 of 2022 M/s.SCM Silks Pvt Ltd., is the subsequent purchaser and if at all any grievance exists in respect of the allegations of misrepresentation, suppression of fact, fraud etc., the petitioner in WP No.22388 of 2022 M/s.SCM Silks Pvt Ltd., is at liberty to initiate all appropriate actions against their vendors and certainly they cannot seek any relief from the Government in respect of the violations committed by Sri Ramachandra Trust under Section 37-B of the Land Reforms Act, 1961.

141. As far as the the petitioner in WP No.23846 of 2022 M/s.International Asset Reconstruction Company Private Ltd., is concerned, they have also misled by the borrower of loan and they are at liberty to sue them to recover the bank dues in accordance with law.

142. The facts as a whole placed before this Court would reveal that there were political interventions in dealing with the subject land and this requires investigation. The politics and bureaucracy nexus causing damage to public properties or resulting in financial loss are to be viewed seriously. Whenever such facts are brought to the notice of the Government, they are duty bound to conduct an elaborate investigation and prosecute all persons, including the officials responsible for omissions, commissions lapses, negligences and dereliction of duty.

143. In the present cases, the Report filed by Dr.Nirangan Mardi IAS, Additional Chief Secretary to Government may be referred for the purpose of ascertaining the entire facts and circumstances and all appropriate actions are to be initiated against persons, who have involved in dealing with the properties, which all are or otherwise governed under Section 37-B of the Land Reforms Act, 1961.

144. Large scale frauds, land grabbings and causing financial loss to the Government public funds are in growing trend. In view of the fact

that the litigants are confident about achieving their illegal goals through litigative process, litigious continuance has been promised by many persons, including the legal brains. Such evidence of litigious continuance provides scope for these persons to continue their illegality one way or the other. Several rounds of litigations are filed and interim orders are obtained and steps are taken so as to see that the litigations never end and continues for several decades. Finally the ultimate loser is '**We the People of India**' and the end would be '**unconstitutionality**'.

145. Initiation of writ petitions against proposed actions/show cause notices/premature cause, which itself would delay the process. The Courts have time and again had repeatedly declared that writs instituted prematurely or against show cause notice, cannot be subjected to Judicial Review unless, it bristles with want of jurisdiction, arbitrariness or mala fide. Abstinence from interference at the premature stage is objected to relegate the parties to the proceedings before the concerned Authorities or to the Competent Civil Court, which is the normal rule. Mere assertion by the writ petitioner regarding jurisdiction or abuse of process of law, would not

suffice. It should be prima facie established to do so, Where factual adjudications would be necessary.

146. Tactics to delay the action contemplated under such proposals by the Government or show cause notices, in several cases, caused irreparable loss and prejudice to the respondents, who all are mostly State or limbs of the State. If a person is unsuccessful in such writ petitions after canvassing the merit of his side, in a Higher Forum, he deemed to have exhausted his right to re-canvass the same before the Authority, who passed such proceedings.

147. The writ petitioner M/s.International Assets Reconstruction Company Pvt Ltd., is concerned, possibly they would have misled by the borrower of loan, who purchased the land from Ramachandra Trust. Therefore, the Bank, who sanctioned the loan also failed to scrutinise the transactions thoroughly and proceed based on the mislead facts by the borrowers. Hence, their claim that they hold first charge in the SARFAESI Act, would not have any direct application, since the Bank has not granted loan in accordance with the Statutes and Rules and in this regard, it is to be

investigated whether the Bank Officials had colluded with the borrowers for sanctioning such huge amount of loan. When there is a possibility of collusion between the Banks and the borrowers in the matter of scrutinisation of the documents and other relevant facts, the Bank cannot now claim that they hold first charge in respect of the property which did not belong to the borrower at all. In this context, the writ petitioners are entitled to redress their grievances against their vendors i.e., Ramachandra Trust and as far as the Bank is concerned, they are entitled to proceed against the borrowers in the manner known to law. However, it is for the writ petitioners to work out their remedy.

148. The loan transaction between the Nationalised Bank and the borrower is no way connected with the right of the Government to invoke the conditions stipulated under the provisions of the Land Ceiling Act. The Government is not a party to the sale of the subject property or the loan transaction between the third party purchaser and the Bank. Thus, none of these transactions are binding on the Government and in respect of all such transactions, the parties who have committed illegality are liable to be prosecuted and the Banks are at liberty to recover the dues in the manner

known to law. As far as the Government land is concerned, it is no way connected with the transactions between the Bank and the third party purchaser from the Ramachandra Trust, who committed an illegality and liable to be prosecuted under law. Thus the petitioners are not entitled for any relief from the hands of this Court and the Government is empowered to initiate all further actions by following the procedures as contemplated under law with reference to Section 37B of the Land Ceiling Act.

149. With the above observations, both the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

07.07.2023

Jeni/Svn
Index : Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No

To

1.The Secretary to the Government,
The State of Tamil Nadu,
Revenue and Disaster Management Department,
Land Reforms Wing,
LR3(1) Section, Secretariat,
Chennai – 9.

2.The Principal Secretary & Commissioner,
Commissioner of Land Reforms (i/c)
Government of Tamil Nadu,
Ezhilagam,
Chepauk, Chennai – 600 005.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

4.The Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George, Chennai – 600 009.

5.The District Collector,
Kancheepuram District.

6.The District Revenue Officer,
Kancheepuram.

7.The Revenue Divisional Officer,
Tambaram, Kancheepuram District.

8.The Assistant Commissioner,
Land Reforms, Villupuram.

9.The Tahsildar,
Aalandur Taluk,
Kancheepuram District.

10.The Principal Secretary to the Government,
The State of Tamil Nadu,
Revenue and Disaster Management Department,
Land Reforms Wing,
LR3(1) Section, Secretariat,
Chennai – 600 009.

S.M.SUBRAMANIAM, J.

Jeni/Svn

W.P.Nos.22388 & 23846 of 2022

07.07.2023