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NETAI BAG AND ORS.

v.

THE STATE OF WEST BENGAL AND ORS.

SEPTEMBER 27, 2000

B

[K.T. THOMAS AND R.P. SETHI, JJ.]

Land Acquisition Act, 1894:

C

Railway Project—Land acquired for—Surplus land—Leased out to a private party—Procedure of tender and public auction, not followed—Effect of—State action—Fairness of—Onus to prove—Held, lies on the person challenging the said action—Non floating of tender or holding of public auction does not amount to arbitrariness in all cases—On peculiar facts and circumstances of the case, action of State in leasing out land to the private party not illegal, arbitrary or malafide—Constitution of India, 1950—Article 14.

D

Constitution of India, 1950.

E

Articles 226 and 32—Judicial Review—Scope of—Land acquired for a public purpose—Surplus land leased out to a private party—Procedure of tender or public auction not followed—Held, Court can examine only the fairness of the decision making process and cannot interfere with the ultimate policy decision of the State.

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Article 14—Government land—Transferred to a private party—Procedure of tender and public auction not followed—Effect of—Held, arbitrariness cannot be presumed in all cases.

Articles 226 and 136—Appeal—Scope of—Held, appeal being a continuation of the original proceedings, scope of inquiry cannot be enlarged.

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Delay/Laches—Effect of—Land acquired for public purpose—Surplus land leased out to a private party—Challenge after three years—Huge project already came into existence with an investment of crores of Rupees—Interference by Court—Justification of—Held, delay cast doubts on appellants' bonafides,—No interference called for as it would affect employment and industrial growth in the State.

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Practice and Procedure

Plea—New plea of arbitrariness—Raising of—Held, not permissible. A

Under the Land Acquisition Act, 1894, respondent-State acquired certain land for constructing a railway project. The surplus land surrendered by the railways was given to the Animal Husbandary Department of the State for setting up a slaughter house at Mourigram. The State Government's Abattoir Project at Durgapur was running in losses. Thus, realising its inability to profitably run the Abattoir Project, State Government leased out the surplus land to respondent No. 5, a private party by realising 100% market value. Respondent No. 5 also took over the Durgapur Project from the State. Appellants 1 to 4, heirs of the erstwhile owners and appellants 5 and 6 claiming to be propounders of vegetarianism filed a writ petition challenging the transfer of land. The said writ petition and consequent writ appeal were dismissed by High Court. Hence the present appeal. B C

On behalf of appellants it was contended that the respondent-State without issuing any advertisement or resorting to the procedure of auction and tender, secretly leased out the land on a throw away price which was arbitrary and violative of Article 14 of the Constitution. D

On behalf of respondent-State it was contended that there was no defect or error of law on the part of the Government in leasing out the land since the proposed project which had been set up on the said land had generated job opportunities to more than 300 people and was likely to earn foreign exchange to the extent of crores of Rupees per year; that the appellants have not pleaded or argued the arbitrary action of respondents before the High Court and thus, High Court was justified in dismissing their writ petition; that the writ petition suffered from unexplained delay and laches. E

Dismissing the appeal, the Court F

HELD : 1. The action of the respondent-State in executing the lease-deed with respondent No. 5 was not unreasonable, illegal, arbitrary or actuated by any extraneous consideration. Thus, there is no justification for interference with the State action of or judgment of High Court. [441-H; 442-D] G

2.1. It is true that generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. That would be a sure method of guaranteeing the compliance of mandate of Article 14 of the Constitution. Non-floating of tenders or not holding of public H

- A** action would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making an exception to the general rule could be justified by the State executive, if challenged in appropriated proceedings. The Constitutional Courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality; nor the courts could substitute their opinion for the *bonafide* opinion of the State Executive. The courts are not concerned with the ultimate decision but only with the fairness of the decision making process. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. [438-F]

- State of M.P. and Ors. v. Nandlal Jaiswal and Ors.*, [1986] 4 SCC 566; *Sachidanand Pandey and Anr. v. State of West Bengal and Ors.*, [1987] 2 SCC 295; *G.D. Malani and Anr. v. Union of India and Ors.*, [1995] Supp. 2 SCC 512; *Kasturi Lal Lakshmi Reddy v. The State of Jammu and Kashmir and Anr.*, AIR (1980) SC 1992 and *M.P. Oil Extraction and Anr. v. State of M.P. and Ors.*, [1997] 7 SCC 592, relied on.

- 2.2.** In the instant case, the State Government inspite of their best efforts were unable to set up Mourigram Abattoir Project. The lease was given to respondent No. 5 upon consideration of all the facts and circumstances with the object of setting up an industry in the State which was likely to generate employment to more than 300 persons and earn foreign exchange worth more than Rs. 50 crores. The negotiations were resorted to ensure the disposal of the slaughter house at Durgapur which was proved to have been running in losses. The Government thus decided to make a package deal for the purposes of transferring the Durgapur Project and establishment of Mourigram Project. Since, respondent No. 5 showed its willingness to take over both the projects, land was leased out to it after realising 100% market value. Thus, in view of the peculiar facts and circumstances of the case the action of the respondent-State in executing the lease deed with respondent No. 5 was not unreasonable, illegal or arbitrary. [440-E-F; 441-B-G]

- 3.** In a democracy governed by the rule of law, the Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the Government must be in conformity with reason and should be free from arbitrariness. Government cannot be equated with an individual in the matter of selection of the recipient for its largesse.

In the absence of a statutory restriction imposed upon the State, it is to be seen whether the impugned action is against public interest or actuated by extraneous considerations or is opposed to fair play or the State is shown to have conferred undue benefits upon undeserving party. Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial burden of showing the *prima facie* existence of violation of the mandate of the Constitution lies upon the person approaching the Court. In the instant case the appellants have miserably failed to place on record or to point out any alleged constitutional vice or illegality. [437-D, C, H; 438-A]

A.S. Ahluwalia v. The State of Punjab and Ors., [1975] 3 SCR 82; *Sukhdev Singh and Ors. v. Bhagatram Saroar Singh Raghuvanshi & Anr.*, [1975] 3 SCR 619 and *Ramana Dayaram Shetty v. The International Airport Authority of India and Ors.*, AIR (1979) SC 1628, referred to.

Vitarell v. Seaton, (1959) 359 US 535 : 3 L Ed 2nd 1012, referred to.

4. In order to appreciate the arbitrariness to State action no plea was laid in the writ petition, the counter affidavit and the accompanying documents by the appellants. Whether any advertisement was issued or not, or whether public auction or floating of tenders should have been dispensed with or not, are such matters which require pleadings in order to enable the State Government to explain or justify their action in the circumstances of the case. The appeal before the Division Bench of the High Court and in this Court being in continuation of the original proceedings in the form of writ petition, cannot enlarge the scope of inquiry at this belated stage. In the absence of specific allegations of the *malafides* attributed to any of the respondents, it cannot be said that mere violation of some alleged statutory provisions are safeguards as spelt out by this Court, would render the State action to be arbitrary in all cases. Further, nowhere in their writ petition the appellants had alleged that the land had been sold at a throw away price.

[435-A, B, C, D]

5. The inaction of the appellants in approaching the Court, almost after three years of the impugned lease deed is an additional circumstance to doubt their bonafides in challenging the impugned action. During the pendency of the litigation between the parties, a huge project has actually by now come into existence where the production has also commenced. Respondent No. 5 claimed to have spent a crores of Rupees on the project. Interference at this

A stage will not only adversely affect the business of respondent No. 5 but would also render a large number of people unemployed and deprive the State its cherished desire of developing the industrial growth. [442-B, C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5447 of 2000.

B From the Judgment and Order dated 10.5.99 of the Calcutta High Court in M.A.T. No. 3649 of 1998.

C Altaf Ahmad, Additional Solicitor General, Dr. A.M. Singhvi, K.K. Venugopal, Bhaskar Gupta, B. Sen, Vipin S. Shah, Pranab Kumar Mullick, H.K. Puri, S.K. Puri, Rajesh Srivastava, Ujjwal Banerjee, Ms. Anindita Gupta, Dilip Sinha, D. Mohanty for M/s. Sinha and Das Co., Avijit Bhattacharjee and Atany Saikia for the appearing parties.

The Judgment of the Court was delivered by

D **SETHI, J.** Leave granted.

E Claiming to be the champions to the cause of vegetarians, the Appellant Nos. 5 and 6 along with the heirs of the erstwhile land owners, Appellant Nos. 1 to 4 herein, moved the High Court by way of a writ petition, filed in public interest with prayer for the issuance of a writ in the nature of mandamus commanding the respondents to forbear from using or utilising the acquired lands for the purposes other than the one for which the acquisition was made. It was further prayed that directions be issued to give back the lands in question to the erstwhile land owners or to sell the land by public auction only for the public purpose. Prayer for the issuance of writ of prohibition was also made for restraining the respondents to use the land for slaughter house or abattoir by respondent No. 5. Pending adjudication of the main petition an injunction was prayed for restraining the respondents from using or utilising any part or portion of land in question for any slaughter house/ abattoir and restraining the respondent No. 4 from allowing respondent No. 5 to establish or operate any slaughter house/ abattoir on the land in question. Vide order dated 25.5.1988, the learned Single Judge of the High Court dismissed the writ petition and the appeal filed against the order of the learned Single Judge was dismissed by the Division Bench of the Calcutta High Court vide the judgment impugned in this appeal.

H The facts leading to the filing of the present appeal are that by notification dated 22nd August, 1961 issued under the Land Acquisition Act, the

Government of West Bengal acquired land measuring 151.18 acres for a public purpose, namely, construction of Mourigram-Dankuni Link Project of South-Eastern Railways. After completion of the project, the Railways surrendered the surplus land measuring 77.36 acres to the State Government on 7.7.1972. On 12.5.1973, the State Government handed over the possession of 74.21 acres of the surplus land to Animal Husbandry & Veterinary Services, now Animal Resource Development Department. The West Bengal Livestock Processing Development Corporation was authorised to set up the Mourigram Abattoir Project on this land. In furtherance of the establishment of abattoir, a Memorandum of Understanding was signed between India and Australia by which the Australian Development Assistance Bureau agreed to provide assistance for the establishment of an abattoir, in the year 1977. The consultants of the Australian Development Assistance Bureau prepared a detailed three-volume Feasibility Report stating therein that the Mourigram Project was feasible. By that time the State Government had established another abattoir project at Durgapur which, after commissioning, was running into losses. The appellants apprehended that the State Government, in collusion with some outsiders, was negotiating to sell out and to transfer the land in fiduciary manner exclusively for a profit purpose allegedly to defraud and mislead the people of the State. The private party referred to was Al-Kabeer, a Dubai based concern for the purposes of establishing a slaughter house/abattoir. Some correspondence ensued between the appellants and the respondents 1 to 4. It was contended that the respondents were encroaching upon the Constitutional Rights of the appellants by establishing a slaughter house/abattoir on the land acquired for a specified public purpose. It was submitted that after the completion of the project, the excess land should have been transferred to the land owners or sold in public auction but could not be utilised for any private purpose particularly for the establishment of a slaughter house/abattoir. The petitioners alleged that the establishment of the slaughter house/abattoir was not in conformity with List III Entry 17 of the Seventh Schedule of the Constitution. The action was further alleged to be contrary to List III Entry 17(B) and violative of the mandate of Articles 31(2), 48, 48A, 49 and 51 of the Constitution. The delay in filing Writ Petition was sought to be explained on the ground that respondents had allegedly kept the deal a guarded secret.

The disputed land comprises of an area measuring 46.42 acres, being part of the unutilised surplus land. It appears that realising its inability to profitably run the abattoir at Durgapur, the State Government was in search

A of some private party to take over the said abattoir along with the proposed Project of establishing abattoir at Mourigram. Newspaper advertisements appears to have been issued by the West Bengal Livestock Processing Development Corporation in 1986, inviting private parties to take over the Durgapur Abattoir which is shown to be running in losses and for which the

B Comptroller & Auditor General had severely criticised the aforesaid Corporation vide its Report submitted in 1993. Respondent No. 5 is stated to have been invited by the State Government vide letter dated 19th October, 1993 for taking over Durgapur Abattoir. In reply Enagro Foods (India) Limited, a sister concern of respondent No. 5 intimated that "we are willing to take over the existing facilities at Durgapur on 'as is where is basis' at reasonable terms for

C subsequent development into an export oriented integrated complex". On 22nd December, 1993 they informed the Minister concerned that to effectively utilise the State's agro based materials being livestock, fruits and vegetables, fresh water and sea fish in addition to milk based product, the concern proposed to create integrated food processing and preservation facilities. For

D that purpose, they promised that factory would be complete in accordance with the highest international standards and specifications for conversion and production of food products. They declared that the pulp of mango fruits besides mango slices and other fruits and vegetables from Bardhaman, Malda and Murshidabad Districts would be received at their proposed preliminary and processing centres to be set up in the Districts to ensure direct linkage

E with the farmers and for maintaining steady supply to their processing unit. Upon the suggestion of the Secretary, Department of Animal Resource Development, the representatives of Enagro Foods inspected the vacant plot of land at Mourigram and found the same to be suitable for their proposed venture. They desired that the entire site be leased out to them on a long term

F basis as per the standard terms of the concerned Department of the West Bengal Government at reasonable terms. On 14th January, 1994, the said concern was offered the land at Mourigram and Durgapur upon the following terms:

G "Through long-term lease for 99 years on realisation of 100% market value only.

2. Approximate market value at Mourigram has been assessed at Rs. 1,92,800 per acre for Danga/Bastu/Bagan land, Rs. 1,54,240 per acre for 'Sali', Rs. 77,120 per acre for 'Doba', Rs. 1000 per acre for 'Khal'.

H 3. The market value in respect of Durgapur land will be communicated

to you shortly.

4. If you do not use the land within a reasonable time for the purpose for which it is given, Govt. will reserve the right *suo moto* to determine the lease.”

The offer was accepted by the company on 18th January, 1994 with intimation that the leased property shall be utilised for development of integrated multipurpose product food processing plants. The market value of the Durgapur land, building, plant and machinery was communicated to respondent No. 5 on 1.2.1994 which was accepted the same day. On 25th February, 1994, the State Government granted approval to respondent No. 5 for setting up of Mourigram and Durgapur Projects. On 2nd March, 1994, the District Land & Land Reforms Officer, Howrah was requested to furnish a report as to whether the entire 46.42 acres of land was fit for settlement for the proposed project and also to furnish the details of the land which would be fit for settlement by mentioning specifically the exact extent for each class and area involved. A decision was taken on 18.4.1994 for transferring the land to the respondent No. 5 on long term basis, initially for a period of 99 years on payment of Rs. 71,59,820.80. On 13th June, 1994, respondent No. 5 was informed that possession of the land would be handed over after payment of the lease premium. Respondent No. 5 is stated to have made the payment of Rs. 87,27,000 for the purchase of building, plant and machinery of Durgapur Slaughter House and on 13th July, 1994 and sum of Rs. 71,59,820 as lease premium for Mourigram Abattoir. The lease deed was executed between the parties on 9th June, 1995 on terms and conditions which were incorporated in Part II of the Schedule attached to the said lease deed.

Feeling aggrieved, the appellants are stated to have filed the writ petition on 13.4.1998 without impleading respondent No. 5 as party thereto. Respondent No. 5 is shown to have been impleaded as party in the writ petition on 17th August, 1998. The writ petition was dismissed on 25th September, 1998 and appeal filed against it met the same fate on 10.5.1999, vide the judgment impugned in this appeal.

Dr. Abhishek Singhvi, learned Senior Counsel appearing for the appellants has challenged the action of the respondent solely on the ground of arbitrariness and violation of Article 14 of the Constitution. He has contended that the State largesse in the form of the land, the subject matter of the litigation has been bestowed upon respondent No. 5 merely for a song without adhering to the settled norms of fair play and equity. It is contended

A that the respondent State, without issuing any advertisement or resorting to the procedure of auction and tender, has secretly leased out the land which has resulted in huge monetary loss worth crores of rupees to the State exchequer. Elaborating the arguments, it was submitted that the State Executive is not and should not act as free as an individual in selecting the recipient for its largesse, as has been allegedly done in this case. The Government cannot lay down arbitrary and capricious standards for choice of persons for the conferment of State benefits. Referring to a host of documents, the learned Senior Counsel submitted that the arbitrary action of the respondent-State is writ large in this case. The respondents are stated to have not satisfied either the High Court or this Court about their bonafides in initiating, processing and concluding the lease agreement with respondent No. 5. Inviting our attention to the lease deed, the learned Senior Counsel submitted that the said document in fact was a sale deed in cloak of a lease agreement. The consideration of the sale deed has been termed to be "on throw away price". Conceding that the appellants had not made allegations of malafides against any one of the respondents, it is contended that though not actual but legal malafides are discernible from the pleadings of the parties and the record produced by them.

Per contra Shri K.K. Venugopal, Senior Counsel who was followed by Shri Altaf Ahmad, Additional Solicitor General contended that the writ petition is not a *bonafide* action of the appellants. Four of whom are stated to be the erstwhile owners interested only to get back the land legally acquired from them. The petition is stated to be suffering from unexplained delay and latches. The appellants are stated to have not pleaded or argued the points including the plea of arbitrary action of the respondents before the High Court. It is submitted that in the light of the pleadings and the record produced before it, the High Court was justified in dismissing the writ petition filed by the appellants. The proposed setting up of the industry is stated to have provided job opportunities to more than 300 people and is likely to earn foreign exchange to the extent of Rs. 50 crores per year. It is argued that there is no defect or error of law in the decision making process of the State Government by which the land has been leased out to respondent No. 5. It is conceded that though the documents executed between the parties is styled as a lease deed, yet in fact it is a sale as the whole of the then prevalent market value of the land has been paid by the respondent No. 5. The lease deed is stated to have been got executed for keeping interests of the State alive in the land which in no way affects the public interest but in effect is adverse to the interests of the respondent No. 5. The deed is stated to have

been concluded on the basis of negotiations, a recognised method of transferring the State property. **A**

The learned Single Judge formulated the three questions for his adjudication which read as under:

“(a) Whether the writ petitioner Nos. 3 to 6 can as a matter of right get back the land which was acquired from the predecessor in interest or not; **B**

(b) Whether a property which has been vested under the Acquisition Act, 1894 can be dealt with and/or used by the State Government otherwise than public purpose or not; **C**

(c) Whether granting of lease of a vested land to a private company for the purpose of industrial development and for earning foreign exchange is public purpose or not.”

Learned counsel who appeared in the High Court for writ petitioners 3 to 6 conceded that his clients had no right to ask for return of the surplus land. Relying upon the judgments of this Court in AIR (1977) SC 448 and [1997] 2 SCC 627, the learned Single Judge held that “once the property has been vested unto the Government under Section 17 of the Land Acquisition Act, neither the previous owner nor their successors-in-interest can question the dealing and disposal of the property by the Government”. Referring to the decisions of this Court reported in AIR (1986) SC 72 and AIR (1986) SC 910 and analysing the facts of the case the learned Single Judge held:- **D**

“There are enough materials placed before me which unmistakably substantiate that Mr. Pal’s client has brought a promise and/or hope that at least 400 employed youths would be provided in this industry. This industry will also bring foreign exchange to the public exchequer nearly worth 40 crores per annum. It is now accepted position that one of the prime economic policies of this country is to earn foreign exchange as much as possible. So, in my view, when the State utilizes a land in furtherance of development of industry and/or earning foreign exchange the same is nothing short of public purpose, notwithstanding a statement made in clause 16 of the lease deed. The statements made in clause 16 of the lease at best operate as admission. This admission however, is displaced by the above fact to prove the fact of public purpose. My view has been expressed accepting the decision of case reported in AIR (1978) Pat.136. Moreover, here the State Government **F**
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A instead of leaving the land being unutilised has gainfully utilized by granting long lease to Mr.Pal's client with a premium of Rs. 71,59,820.80 which has gone to the State exchequer."

B The construction of a slaughter house was also held to be a public purpose. In appeal, while upholding the judgment of the learned Single Judge, the Division Bench dealt with the submissions of the appellants to the effect that the land should have been sold by public auction, if after acquisition it was not used for any other public purpose by the Government. The Division Bench held that the surplus land in question need not have been sold in auction when the State had declared to utilise the land by leasing out the same for 99 years in favour of Respondent No. 5. Agreeing with the learned C Single Judge, it was held by the Division Bench in appeal, that:

D "We are, however, of the opinion that this court is not at all required to be satisfied whether a surplus land has been utilised for a public purpose. After acquisition of the land in accordance with the procedure established by law a surplus land has vested in the State free from all encumbrances. Article 298 empowers the State to carry on any trade or business and make contracts for any purpose."

E Finding that no allegations of malafide and discrimination had been pleaded in the petition, the State Government was held competent to enter into contracts with private persons for disposal of the property irrespective of the purpose of such acquisition or disposition subject only to the condition of compliance with the relevant provisions of the Constitution. The appellants were held to be having no *locus standi* to question the agreement executed between the respondent-State and the respondent No. 5.

F As noticed earlier, Dr. Abhishek Singhvi, learned Senior Counsel appearing for the appellants has not challenged the legality or constitutionality of the lease agreement or the action of the respondent-State on the grounds alleged in the writ petition. He has conceded that the erstwhile owners of the land had no right to ask for the return of the land to them. Similarly, the Vegetarian Congress, petitioner No. 5 was not justified in seeking the relief of restraining the respondents from utilising the land for the purposes of G abattoir at Mourigram. The sole point urged before us was with respect to the alleged arbitrariness of the State Government. To appreciate the only submission made before us we scanned the writ petition, the counter affidavit and the accompanying documents and found that no basis for such a plea was laid in the writ petition and the arguments addressed before the Division H Bench were not referable to any pleadings. It is contended that as the issue

had specifically been pleaded in the appeal before the High Court and has been urged in the grounds of appeal in this Court, a decision on the point was warranted, notwithstanding the absence of sufficient pleadings. We are not impressed with such an argument. Whether any advertisement was issued or not, or whether public auction or floating of tenders should have been dispensed with or not, are such matters which require pleadings in order to enable the State Government to explain or justify their action in the circumstances of the case. The appeal before the Division Bench of the High Court and in this Court being in continuation of the original proceedings in the form of writ petition, cannot enlarge the scope of inquiry at this belated stage. In the absence of specific allegations of the malafides attributed to any of the respondents, it cannot be said that mere violation of some alleged statutory provisions are safeguards as spelt out by this Court, would render the State action to be arbitrary in all cases. To buttress his arguments, the learned counsel for the appellants submitted that as the land was transferred to respondent No. 5 for a song and at throw away price, resulting in corresponding loss to the State exchequer, it reflected the legal malafides and the arbitrary action of the respondents. The argument has to be noted to be rejected inasmuch as nowhere in their writ petition the appellants had alleged that the land had been sold at a throw away price.

Referring to the lease agreement it is contended that as in fact transaction is sale under the cloak of lease, the legal malafides are writ large exhibiting the arbitration action of the respondents. Learned counsel appearing for the respondents have brought to our notice that in fact the value charged from respondent No. 5 was the market value of the land and not lease money as urged. In this regard, in the counter affidavit filed on behalf of the respondent No. 1 in this Court it is stated:

“In order that the proper and correct lease premium and lease rent were arrived at a valuation of the land in question was caused to be made by the Special Land Acquisition Officer. By the memo No. 49(c) dated 12th January, 1994 of the District Magistrate, Howrah, a copy whereof is annexed hereto and marked “Annexure R1/8”, the valuation Report (in L.V. Case No. 46/93) was forwarded to the Secretary, ARD Department of the Government of West Bengal Officer. A photocopy of the said valuation report is annexed hereto and marked “Annexure R1/9”. From the memo dated 12.1.94 it would be seen that a part of the land which was ultimately leased out to the respondent No. 5 was under water and hence demarcation could be done only in respect of

A 30 acres of the land. On the basis of the said valuation the selami, i.e., lease premium, annual rent and cess payable by the respondent No. 5 for the lease to be granted were calculated as per the circulars issued by the Land and Land Reforms Department of the State Government for determination of land revenue and Board of Revenue, West Bengal respectively, copies whereof are annexed hereto and marked *Annexure RI/10*. copy of the documents evidencing the manner in which the value of the lands at both Mourigram and Durgapur were arrived at and the lease premium, annual rent, cess etc., arrived is annexed hereto and marked *Annexure RI/11*. The lease premium so arrived at was of a sum of Rs. 71,59,820.80 on the basis of the market value of the land then prevailing. The ground rent arrived at was Rs. 418 per annum and cess Rs. 296 per annum without granting any concessions whatsoever.

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D From the above-mentioned valuation report of the Land Acquisition Officer, the manner in which the market value of the said land which was to be given on lease basis to the respondent No. 5 for setting up of the above-mentioned project and the documents relied upon for the said purpose, which included five numbers of executed lease deeds as available in the Sub-Registry Office at Howrah for the year 1992 and applying appreciation percentage thereon, as well as the order of the Collector dated 29th April, 1993 in a land acquisition case were taken into account. The same clearly shows that, contrary to what had been alleged in the Special Leave Petition, the lease in question has been granted taking into consideration the market price of subject land on the relevant date.”

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F The public purpose, which the State had in mind has been spelt out in its affidavit as under:

G “In finalising the lease terms and conditions and the proposal of the respondent No. 5, the fact that setting up of the said industry in the low lying land at Mourigram would not only provide employment to more than 300 persons. (Which estimate was provided even by Shedden Meating Group, Australia in its feasibility study report carried out in the year 1983 as aforesaid) and indirect employment to large number of persons in West Bengal were taken into consideration. It was also taken into consideration that setting up an industry in such a semi-rural area in Mourigram, a Gram Panchayat area under Duillya Gram Panchayat of Zilla Parishad Howrah would help in industrialisation of

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the said area and consequently the State of West Bengal. The fact that the proposed unit would be an export oriented which would earn valuable foreign exchange of more than Rs. 50 crores under export obligation in terms of the EPGC Scheme of the Government of India where-under machinery and equipment for setting up the Project would be imported, as represented by the respondent No. 5 during the course of negotiation, was also taken into account.”

Learned counsel for the appellant has not referred to any statutory provision mandating the State to adhere to a specified procedure in the matter of transfer of its property either by way of sale or by lease. In the absence of a statutory restriction imposed upon the State, it is to be seen whether the impugned action is against public interest or actuated by extraneous considerations or is opposed to fair play or the State is shown to have conferred undue benefits upon undeserving party.

It has been consistently held by this Court that in a democracy governed by the rule of law, the Executive Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the Executive Government must be in conformity with reason and should be free from arbitrariness. The Government cannot be equated with an individual in the matter of selection of the recipient for its largesse. Dealing with the limits on the exercise of Executive authority in relation to rule of administrative justice, Mr. Justice Frankfurter in *Vitarell v. Seaton*, (1959) 359 US 535: 3 L Ed 2d 1012] said:

“An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ...This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

This Rule of Administrative law, was accepted as valid and applicable in India by this Court in *A.S. Ahluwalia v. The State of Punjab & Ors.*, [1975] 3 SCR 82, *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.*, [1975] 3 SCR 619 and *Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.*, AIR (1979) SC 1628.

Though the State cannot escape its liability to show its actions to be

A fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial burden of showing the *prima facie* existence of violation of the mandate of the Constitution lies upon the person approaching the Court. We have found in this case, that the appellants have miserably failed to place on record or to point out to any alleged constitutional vice or illegality. Neither the High Court nor this Court would have ventured to make a rowing inquiry particularly in a writ petition filed at the instance of the erstwhile owners of the land, whose main object appeared to get the land back by any means as, admittedly, with the passage of time and development of the area, the value of the land had appreciated manifold. It may be noticed that in the year 1961 the erstwhile owners were paid about Rs. 5.5 lakhs and the State Government assessed the market value of the property which was paid by respondent No. 5 at Rs. 71,59,820. The appellants have themselves stated that the value of the land round about the time, when it was leased to respondent No. 5 was about Rs. 11 crores. There cannot be any dispute with the proposition that generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. That would be a sure method of guaranteeing the compliance of mandate of Article 14 of the Constitution. Non-floating of tenders or not holding of public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making an exception to the general rule could be justified by the State executive, if challenged in appropriated proceedings. The Constitutional Courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor the courts can substitute their opinion for the *bonafide* opinion of the State executive. The courts are not concerned with the ultimate decision but only with the fairness of the decision making process.

The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In *State of M.P. & Ors. v. Nandlal Jaiswal & Ors.*, [1986] 4 SCC 566 it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or malafide. In the matter of different modes, under the rule of general application made under the M.P. Excise Act, the Court found that the four different modes, namely, tender, auction, fixed licence fee or such other manner were alternative to one another and any one of them

could be resorted to. In *Sachidanand-Pandey & Anr. v. State of West Bengal & Ors.*, [1987] 2 SCC 295, it was held that as regards the question of propriety of private negotiation with an individual or corporation, it should be borne in mind that State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed, public interest being the paramount consideration. One of the methods of securing the public interest when it is considered necessary to dispose of the property is to sell the property by public auction or by inviting tenders. But such a rule is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule. As and when a departure is made from the general rule, it must be shown that such an action was rational and not suggestive of discrimination. In that case on facts the Court found that on the commercial and financial aspect, the lease granted in favour of a group of hoteliers, not arbitrary as the method of "nett sales" was held to be fairly well-known method adopted in similar situations. To the same effect is the judgment in *G.D. Zalani & Anr. v. Union of India & Ors.*, [1995] Supp. 2 SCC 512. In *Kasturi Lal Lakshmi Reddy v. The State of Jammu & Kashmir & Anr.*, AIR (1980) SC 1992, this Court, after referring to various judgments, including the judgment in *Ramana Dayaram Shetty's case*, held:

"It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the Court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of *mala fides* though it may, in a given case, furnish evidence of *mala fides*."

In *M.P. Oil Extraction & Anr. v. State of M.P. & Ors.*, [1997] 7 SCC 592 this Court held:

"Although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such

A largesse by negotiation is permissible. In the instant case, as a policy decision protective measure by entering into agreements with selected industrial units for assured supply of sal trees at concessional rate has been taken by the Government. The rate of royalty has also been fixed on some accepted principle of pricing formula as will be indicated hereafter. Hence, distribution or allotment of sal seeds at the determined royalty to the respondents and other units covered by the agreements cannot be assailed. It is to be appreciated that in case, distribution by public auction or by open tender may not achieve the purpose of the policy of protective measure by way of supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements on being selected on valid and objective considerations.”

D It was further held that principle of reasonableness and non- arbitrariness in governmental action is the core of our entire Constitutional scheme and structure. On the facts of that case, the action of the State Government in granting a contract by way of negotiation was held not arbitrary or irrational.

E In the backdrop of the legal position noticed herein, it has to be seen, in the instant case, as to whether the action of the respondent No. 1 was illegal, arbitrary or malafide. To justify their action of entering into an agreement of lease by negotiation, even in the absence of pleadings on behalf of the appellants, the State has submitted that the entire transaction of granting the lease to the respondent No. 5 for an integrated food processing unit with an abattoir in a semi-rural area, which was a low lying land, despite their best efforts, the State Government were unable to set up any project. The lease was given to respondent No. 5 upon consideration of all the facts and circumstances with the object of setting up an industry in the State of West Bengal which was likely to generate employment to more than 300 persons and earn foreign exchange worth more than Rs. 50 crores. The negotiations were resorted to ensure the disposal of the slaughter house at Durgapur which was proved to have been running in losses. The respondent-State had failed to get any buyer for Durgapur Project despite Newspaper advertisements.

G The Government had decided to make a package deal for the purposes of transferring the Durgapur Project and establishment of Mourigram Project. Earlier a memorandum of understanding had been arrived at between Government of India and Australia which ultimately did not mature in the shape of an abattoir. Due to financial constraints, continuous loss suffered at Durgapur and lack of technical expertise, the respondent-State could not

venture to undertake the Mourigram Project for setting up of an abattoir. Having failed in all its efforts, the then Minister-in-charge of the Animal Husbandry and Veterinary Services Department of the Government of West Bengal is stated to have written to some Bombay based firms, reputed in the field, to salvage the two projects. Positive response is stated to have been received from some firms including Genagro Foods (India) Limited, namely, respondent No. 5 and M/s. I. Ahmed & Company. The proposal of I. Ahmed & Company being very vague was not accepted. Respondent No. 5 had shown interest in taking over both Durgapur & Mourigram sites under certain terms and conditions for the purpose of revitalising and making operational the existing abattoir at Durgapur and for setting up of Integrated Food Processing Unit along with abattoir at Mourigram. It is further stated in the counter-affidavit of the respondent-State, that:

“Since, no response was received from the advertisements and the personal requests made in the manner above by the Minister-in-charge of the Department from any concern except as aforesaid, the State took into account the credentials of the group of companies of which Genagro Foods (India) Ltd., was one, including the export award certificate awarded to M/s.Allanasons Limited for outstanding contribution for promotion of agricultural and processed food products during the year 1992-93 as proof of their excellence in their field and thereupon proceeded to finalise the lease terms and conditions under which *inter alia* the Mourigram land would be leased out to the respondent No. 5 for setting up of an integrated food processing unit along with an abattoir, products whereof could be exported as well as sold in the State of West Bengal. Respondent No. 5 alongwith its associated companies was the first company in India to export 1000 million rupees on agricultural and process food products (in 1992-93). The Agriculture and Processed Foods Export Development Authority (APEDA), Ministry of Commerce, Govt. of India, had acknowledged and certified the efforts of Respondent No. 5 and its associated companies in the export of Meat and other agro products such as rice, tea, coffee, spices, onion, cashew, pulses extractions, marine products and processed Food and vegetable.”

In view of the peculiar facts and circumstances of the case we are not persuaded to hold that the action of the respondent-State in executing the lease deed with respondent No. 5 was unreasonable, illegal, arbitrary or actuated by extraneous considerations. In this regard it is worth noticing that

A none except the erstwhile owners and the propounders of vegetarianism have made any grievance to the effect that the market value of the property, as charged from respondent No. 5, was either allegedly for a song or at a throw away price.

B The inaction of the appellants in approaching the Court, almost after three years of the impugned lease deed is an additional circumstance to doubt their bonafides in challenging the impugned action. During the pendency of the litigation between the parties, a huge project has actually, by now, come into existence where the production has also commenced. Respondent No. 5 is claimed to have spent a sum of Rs. 73.01 crores as on 30.10.1999 on the project. Interference at this stage will not only adversely affect the business of respondent No. 5 but would also render a large number of people unemployed and deprive the State its cherished desire of developing the industrial growth.

D Under the circumstances, we do not find any ground to interfere with the impugned judgments or the action of the respondent-State in granting the lease to respondent No. 5. The appeal is accordingly dismissed but without any order as to costs.

S.V.K.I.

Appeal dismissed.